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Presidential Documents

Title 3—

The President

Proclamation 10150 of March 1, 2021

American Red Cross Month, 2021

By the President of the United States of America

A Proclamation

Throughout our country's history, the humanitarian spirit of the American people has shined as a beacon of hope in times of crisis. It is written in our DNA that when hardship strikes, we come together to ensure that no one faces it alone. It is in that spirit that we celebrate American Red Cross Month, a chance to honor all those selfless Americans who step up and lend a hand whenever and wherever people are in need.

For 140 years, the American Red Cross has been synonymous with the prevention and alleviation of human suffering across the globe. Founded by Clara Barton in 1881, the organization's mission lives on in the dedication of Red Cross workers—more than 90 percent of whom are volunteers—and the generosity of the American people in moments of crisis.

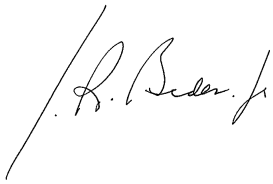
We saw unmistakable evidence of that spirit through the challenges of this past year. In 2020, more than 70,000 people became new Red Cross volunteers and stepped up on behalf of those in need—as disaster shelter workers, health workers, blood donor ambassadors, and transportation specialists. And when our country faced a severe blood shortage, the American people rolled up their sleeves, with more than a half-million of our friends and neighbors donating blood with the Red Cross for the first time.

In a year like no other, people made a lifesaving difference. As months of relentless hurricanes, wildfires, and other extreme weather events battered communities, families spent more nights in emergency lodging than in any other year over the past decade—thanks to the hard work and generosity of Red Cross volunteers and partners who provided more than 1.3 million people with overnight stays last year. When the pandemic strained emergency services, Red Cross workers adapted to help fulfill urgent needs. They responded to increased emergency calls from military families, aided hundreds of thousands of home fire survivors, supported international health and hygiene services, and safely provided health and safety courses to essential workers and others to help them manage the COVID–19 threat. In recent days, as harsh winter storms left many Americans without power and water across the South and Midwest, the Red Cross and its partners have worked to help people recover and restore access to safe water.

This month, we renew our commitment to Clara Barton's remarkable vision and join together, as one Nation, to recommit ourselves to a foundational American principle: the duty of care we owe to one another when times get tough. I urge all Americans to take part in that tradition through our own everyday acts of compassion—helping a neighbor, a stranger, or a community in need.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America and Honorary Chairman of the American Red Cross, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim March 2021 as American Red Cross Month. I encourage all Americans to observe this month with appropriate programs, ceremonies and activities, and by supporting the work of service and relief organizations.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of March, in the year of our Lord two thousand twenty-one, and of the Independence of the United States of America the two hundred and forty-fifth.



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Billing code 3295–F1–P

Presidential Documents

Proclamation 10151 of March 1, 2021

Irish-American Heritage Month, 2021

By the President of the United States of America

A Proclamation

Since before the founding of our Nation, Irish immigrants have arrived on our shores with an unyielding spirit of determination that has helped define America's soul and shape our success across generations. Driven by the same dreams that still beckon people the world over to America today, so many crossed the Atlantic with nothing but the hope in their hearts and their faith in the possibility of a better life.

That's what brought the Blewitts from County Mayo and the Finnegans of County Louth to the United States. For years, they brought Ireland into their homes in America. Working hard. Raising families. Remembering always where they came from. By 1909, my grandparents Ambrose Finnegan and Geraldine Blewitt met and married in Scranton, Pennsylvania, and passed on to my mother, Catherine Eugenia Finnegan Biden, a pride and a passion that runs through the bloodstream of all Irish-Americans.

The story of the Irish the world over is one of people who have weathered their fair share of hard times, but have always come out strong on the other side. From often humble beginnings, Irish Americans became the farmers, servants, miners, factory workers, and laborers who fed our Nation, kept our homes, and built our industry and infrastructure. They became the soldiers who won American independence, died to preserve our Union, and fought in every battle since to defend America and its values.

Irish Americans became the firefighters and police officers who have protected us. They are the activists who organized unions to give voice and strength to America's workers. They are the educators who taught generations of American students and the public servants who have answered the call to service in the halls of the Congress, the Supreme Court, and the White House.

We owe a debt of gratitude to the Irish-American inventors and entrepreneurs who helped define America as the land of opportunity. Irish-American writers pollinated America's literary landscape with their love of language and storytelling, while Irish lyricism has brought poetry, art, music, and dance to nourish our hearts and souls.

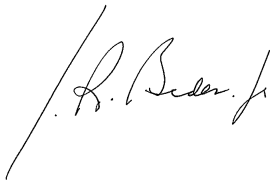
As I said when I visited Dublin in 2016, our nations have always shared a deep spark—linked in memory and imagination, joined by our histories and our futures. Everything between us runs deep: literature, poetry, sadness, joy, and, most of all, resilience. Through every trial and tempest, we never stop dreaming.

The fabric of modern America is woven through with the green of the Emerald Isle. This month, we celebrate the sacrifices and contributions that generations of Irish Americans have made to build a better America, and we renew the bonds of friendship that will forever tie Ireland and the United States.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim March 2021 as Irish-American Heritage Month. I call upon all Americans to celebrate the

achievements and contributions of Irish Americans to our Nation with appropriate ceremonies, activities, and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of March, in the year of our Lord two thousand twenty-one, and of the Independence of the United States of America the two hundred and forty-fifth.



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Presidential Documents

Proclamation 10152 of March 1, 2021

National Colorectal Cancer Awareness Month, 2021

By the President of the United States of America

A Proclamation

For my family, for the Vice President's family, and for millions of families across our Nation, the fight against cancer is personal. Too many of us know the sinking feeling of shock and devastation when a loved one receives a diagnosis of cancer—too many of us know the unspeakable pain when the fight cannot be won. Each year, colorectal cancer claims more than 50,000 American lives, making it the second leading cause of cancer deaths in our Nation. National Colorectal Cancer Awareness Month is a chance to bring greater attention to this terrible disease and to offer what families living through it need most: hope.

In this battle, hope and awareness are intertwined. Because the risk of death from colorectal cancer drops dramatically when the cancer is caught early, we can save lives by calling attention to risk factors and increasing routine screening. This month is our chance to improve public understanding of colorectal cancer risk, inform people about screening recommendations, and set our sights on broadening prevention strategies, improving treatments, and finding a cure.

Colorectal cancer can afflict anyone, but the risk is higher among some Americans than others. When we lost the trailblazing actor Chadwick Boseman to colon cancer last year after a heroic fight, it served as a reminder that this disease disproportionately impacts communities of color—and is particularly fatal among Black Americans. Age, too, is a factor, as the majority of cases occur in people over 50 years old. People with increased risk for developing the disease include certain racial and ethnic minority populations, as well as individuals with inflammatory bowel disease, a family history of colorectal cancer, or other risk factors such as tobacco use. For more information on risk factors, you can visit www.cancer.gov.

As with so many diseases, the best defense against colorectal cancer is early detection. Symptoms can include blood in the stool; stomach pain, aches, or cramps that do not go away; and weight loss without a known cause. But many cases have no symptoms, especially early in the disease, when colorectal cancer is most curable. A recent Government study estimated that if all 50-year-old adults were screened for colorectal cancer, we could prevent approximately 35,000 deaths. That is why it is so crucial, especially for Americans over 50 or otherwise at increased risk, to receive regular screenings. And although the disease is relatively rare in younger adults, the incidence of colorectal cancer has been rising among this group. No matter your age, every American should take possible colorectal cancer symptoms seriously and bring them to the attention of your health care provider.

I know how hard it is right now to be mindful of preventive care. The COVID–19 pandemic has disrupted so many parts of our lives, including, for far too many, the routine checkups and screenings that are so vital to guarding against disease. I urge every American to take the precautions they need in order to stay vigilant against cancer—don't delay your recommended screenings, doctor's visits, and treatments. You and your healthcare provider can discuss how to balance the risks and benefits of

cancer screening, taking into account medical history, family history, other risk factors, and the time between screenings.

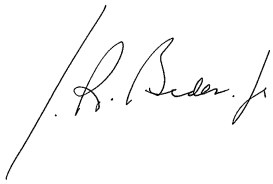
My Administration is strongly committed to improving the prevention and treatment of colorectal cancer, and to giving every American access to quality, affordable health coverage. Because of the Affordable Care Act, most health insurance plans must cover a set of preventive services with no out-of-pocket cost. This includes colorectal cancer screening in adults age 50 and older. In response to the COVID–19 pandemic, my Administration also announced a Special Enrollment Period for the Health Insurance Marketplace now through May 15th, so that millions of uninsured individuals and families can sign up for health coverage and gain these protections. I encourage you to visit www.healthcare.gov to explore your eligibility and get covered.

Above all, I want every family facing this fight—and all those that will in the future—to know that there is hope. As President, I am committed to ending cancer as we know it. That mission motivated me every day when I led the Cancer Moonshot Initiative in 2016 to speed up progress toward prevention, treatment, and cures. Thanks to that effort, researchers, oncologists, care providers, philanthropists, data and tech experts, advocates, patients, and survivors have joined forces to double the rate of progress toward a cure for cancer. One particular program, Accelerating Colorectal Cancer Screening and follow-up through Implementation Science (ACCSIS), has made strides to improve colorectal cancer screening, follow-up, and referral for care among populations that have low screening rates, including communities of color and rural Americans. You can read more about this important work by visiting www.cancer.gov and www.cdc.gov/cancer.

This month, I encourage all Americans to talk to family and friends about getting screened. If we look out for one another, we can reduce suffering, increase the odds of cancer survival, keep more families whole, and win this fight once and for all.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim March 2021 as National Colorectal Cancer Awareness Month. I encourage all citizens, government agencies, private businesses, non-profit organizations, and other groups to join in activities that will increase awareness and prevention of colorectal cancer.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of March, in the year of our Lord two thousand twenty-one, and of the Independence of the United States of America the two hundred and forty-fifth.



[FR Doc. 2021–04644
Filed 3–3–21; 8:45 am]
Billing code 3295–F1–P

Presidential Documents

Proclamation 10153 of March 1, 2021

Women's History Month, 2021

By the President of the United States of America

A Proclamation

Each year, Women's History Month offers an important opportunity for us to shine a light on the extraordinary legacy of trailblazing American women and girls who have built, shaped, and improved upon our Nation.

Throughout American history, women and girls have made vital contributions, often in the face of discrimination and undue hardship. Courageous women marched for and won the right to vote, campaigned against injustice, shattered countless barriers, and expanded the possibilities of American life. Our history is also replete with examples of the unfailing bravery and grit of women in America, particularly in times of crisis and emergency. Women served our Nation during World War II, led organizing and litigation efforts during the Civil Rights movement, and represented the United States on the global stage in the fight for human rights, peace, and security. Far too often, their heroic efforts and their stories have gone untold—especially the millions of Black women, immigrant women, and others from diverse communities who have strengthened America across every generation.

In our current moment of crisis, women continue to lead. From vaccine researchers to public health officials to the countless heroines on the frontlines, women are working around the clock to defeat COVID–19. Women, and particularly women of color, also make up the majority of America's essential workers, including educators and child care providers, grocery store workers, farmworkers, and others who are keeping our families, our communities, and our country afloat. This year has also marked an historic milestone of women's leadership 232 years in the making, with the inauguration of America's first woman Vice President.

As we celebrate the contributions and progress of women and girls, we must also reflect on the extraordinary and unequal burdens they continue to bear today. The COVID–19 pandemic has exacerbated barriers that have held back women—particularly women of color—for generations. Gender and racial disparities in pay continue to fester. A disproportionate share of caregiving continues to fall on the shoulders of women and girls. And now, job losses due to COVID–19 have set women's labor force participation back to its lowest point in more than 30 years—threatening the security and well-being of women and their families and imperiling the economic progress of our entire Nation. The share of mothers who have left the labor force is three times that of fathers; in September 2020 alone, an astonishing 865,000 women dropped out of the American workforce. These trends are even more dire among women of color, with Black and Hispanic women facing disproportionately high rates of unemployment. At the same time, food insecurity has risen dramatically since the pandemic began, particularly in female-headed households with children, as have reports of intimate partner violence.

Since taking office on January 20th, Vice President Kamala Harris and I have made COVID–19 vaccination, relief, and broad-based economic recovery efforts a top priority. Our goal is not to return our economy to where it was before the pandemic struck. Our goal is to build back better—and

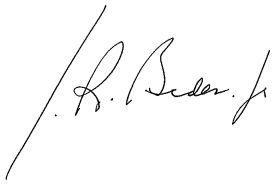
that means creating a strong and durable foundation for the economic opportunity and security of women in America. Our plans include proposals to provide individual payments and tax credits to put money in the hands of families in need; increase housing and food assistance as well as unemployment insurance; lower health costs and expand access to coverage; increase support for and access to child care; and expand existing paid leave policies. We are also committed to making further progress on what, for me, has been a lifelong cause: reducing gender-based violence, and advancing the safety, economic stability, and well-being of survivors.

Sixty years ago, when former First Lady Eleanor Roosevelt confronted President John F. Kennedy about the lack of women in Government, he appointed her as head of a new commission to address the status of women in America and take on discrimination in all of its forms. We have made significant progress in the United States, thanks to the persistence and tireless work of countless women. I am proud that the White House Gender Policy Council will build on those efforts by putting a laser focus on the needs and contributions of women and girls, and ensuring a Government-wide focus on gender equity. Our Administration is also committed to ensuring that women are well-represented at all levels in the executive branch: already, we have selected a record number of women who represent the diversity of America to serve in Cabinet-level positions.

During Women's History Month, let us honor the accomplished and visionary women who have helped build our country, including those whose contributions have not been adequately recognized and celebrated. And let us pay tribute to the trailblazers from the recent and distant past for daring to envision a future for which no past precedent existed, and for building a Nation of endless possibilities for all of its women and girls.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim March 2021 as Women's History Month. I call upon all Americans to observe this month and to celebrate International Women's Day on March 8, 2021, with appropriate programs, ceremonies, and activities. I also invite all Americans to visit www.WomensHistoryMonth.gov to learn more about the vital contribution of women to our Nation's history.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of March, in the year of our Lord two thousand twenty-one, and of the Independence of the United States of America the two hundred and forty-fifth.



[FR Doc. 2021–04645
Filed 3–3–21; 8:45 am]
Billing code 3295–F1–P

Presidential Documents

Proclamation 10154 of March 1, 2021

National Consumer Protection Week, 2021

By the President of the United States of America

A Proclamation

American families are grappling with the devastating challenges of the COVID–19 pandemic and the economic crisis with courage and resilience every day. In this moment of crisis, the last thing any of us should have to contend with are predators in the consumer marketplace seeking to take advantage of us, exploit our personal data, or invade our digital privacy.

Unfortunately, the pandemic has brought a wave of fraud in its wake, with scam artists serving up fake websites and advertisements targeting desperate Americans in search of personal protective equipment. Scammers also saw the distribution of stimulus payments as fertile ground for fraud, offering vulnerable people false promises of help to get their payments more quickly. My Administration has zero tolerance for these and other criminals who take Americans' hard-earned dollars or abuse their personal information.

As Americans rely more and more on digital products—from virtual communication tools helping us stay connected through the pandemic, to apps and smart appliances that bring greater convenience to our lives—our commitment to consumer protection must keep pace with these incredible innovations. Just because we increasingly depend on technology to work, shop, go to school, and see our loved ones doesn't mean that we should sacrifice our safety or privacy.

My Administration will make it a priority to ensure that companies providing these and other services honor consumer expectations regarding their privacy and their data. We will pursue fraudulent actors aggressively, and work to raise the bar on digital security standards as new innovations are introduced. We also recognize the important role that savvy consumers play in keeping the marketplace honest. My Administration will make sure that Americans in every community have access to the educational resources they need to make informed choices online—including resources to help them protect their privacy and recognize, avoid, and report fraudulent schemes.

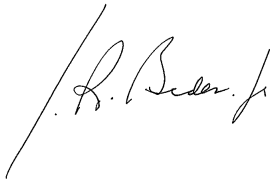
As millions of Americans face continued hardship from the COVID–19 pandemic, we must also prevent abuses that can result in individuals and families losing their homes. My Administration has taken decisive action to help keep people in their homes, and I encourage Americans to visit www.consumerfinance.gov/housing for up-to-date information on their relief options, protections, and key deadlines. As Federal agencies continue working to implement housing assistance for American families, the Consumer Financial Protection Bureau offers this website as a one-stop shop for both homeowners and renters to learn about programs and resources that can help them stay in their homes by reducing the risk of eviction and foreclosure.

The Federal Trade Commission and the Consumer Financial Protection Bureau, our Nation's consumer protection agencies, in coordination with law enforcement across the country, fight predatory practices and privacy violations day in and day out, with investigations, law enforcement actions, and free, actionable, plain-language consumer education resources. National

Consumer Protection Week brings together public and private sector organizations that work to educate and protect the American people from marketplace threats. This week, and all year long, my Administration is dedicated to making sure that every American understands their rights and has access to information that can help protect themselves and their communities. To learn more about these resources, visit www.consumer.ftc.gov. To learn how to get involved with National Consumer Protection Week, visit www.ftc.gov/ncpw.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim February 28 through March 6, 2021, as National Consumer Protection Week. I call upon government officials, industry leaders, and advocates across the Nation to share information about consumer protection and provide our citizens with information about their rights as consumers.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of March, in the year of our Lord two thousand twenty-one, and of the Independence of the United States of America the two hundred and forty-fifth.



[FR Doc. 2021–04646
Filed 3–3–21; 8:45 am]
Billing code 3295–F1–P

Presidential Documents

Proclamation 10155 of March 1, 2021

Read Across America Day, 2021

By the President of the United States of America

A Proclamation

I have always believed that America's children are the kite strings that keep our national ambitions aloft—the more we do today to spark their curiosity, their confidence, and their imaginations, the stronger our country will be tomorrow. The key to developing young learners into engaged, active, and innovative thinkers is instilling in them a love of reading at an early age. Reading is the gateway to countless skills and possibilities—it sets children on the path to a lifetime of discovery. On this Read Across America Day, we celebrate the parents, educators, librarians, and other champions of reading who help launch our Nation's children on that critical path.

Once a passion for reading takes hold in a young person, the benefits extend far beyond the classroom. Reading broadens our perspective, introduces us to new worlds, cultures, and languages, and cultivates our sense of empathy and understanding of other people's experiences and views. Reading informs us, empowers us, and teaches us the lessons of history. It helps us make sense of the world as it is—and inspires us to dream of what it could be. Studies also show that reading improves our memory, helps us become better problem solvers, and even reduces the chance of developing cognitive disorders such as Alzheimer's down the road. And with the right book in hand, reading can nourish not only our minds, but our souls.

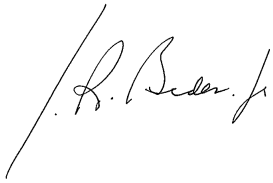
The First Lady often observes that ''any nation that out-educates us will out-compete us.'' She is absolutely correct. Literacy is essential to finding a good-paying job, advancing in your career, and carving out your place in the middle class. Reading proficiency is what makes us a Nation of innovators and entrepreneurs—a Nation capable of building and growing a dynamic 21st century economy. Reading comprehension is also what allows us to discern fact from fiction—a critical skill at all times, and especially so in the midst of a global pandemic, when the health and safety of our loved ones could very well depend on determining the veracity of what we read.

According to Department of Education estimates, more than half of United States adults (54 percent) between 16- and 74-years of age lack proficiency in literacy, reading below the equivalent of a sixth-grade level. Illiteracy incurs a massive economic toll on our economy, and keeps not just individuals, but our entire Nation, from reaching our full potential. By every calculation, reading matters to our shared quality of life.

For countless Americans, the path to literacy begins with story time in their school classroom. That is one of many reasons why my Administration is providing support to States and communities to help them create the conditions for students to return to safe, in-person learning as quickly as possible. We must ensure that all of our children receive the high-quality instruction and essential classroom time they need to learn and grow. It is a national imperative that we minimize the learning loss caused by the pandemic—and address the disproportionate impact that lost time imposes on our most vulnerable students and families.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim March 2, 2021, as Read Across America Day. I call upon children, families, educators, librarians, public officials, and all the people of the United States to observe this day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of March, in the year of our Lord two thousand twenty-one, and of the Independence of the United States of America the two hundred and forty-fifth.



[FR Doc. 2021–04647
Filed 3–3–21; 8:45 am]
Billing code 3295–F1–P

Rules and Regulations

Federal Register
Vol. 86, No. 41
Thursday, March 4, 2021

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

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

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 201216–0348]

RIN 0694–AI36

Addition of Certain Entities to the Entity List; Correction of Existing Entries on the Entity List

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This final rule amends the Export Administration Regulations (EAR) by adding fourteen entities to the Entity List. These fourteen entities have been determined by the U.S. Government to be acting contrary to the national security or foreign policy interests of the United States. These fourteen entities will be listed on the Entity List under the destinations of Germany, Russia, and Switzerland. This rule also corrects six existing entries to the Entity List, one under the destination of Germany and the other five under the destination of China.

DATES: This rule is effective March 4, 2021.

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

SUPPLEMENTARY INFORMATION:

Background

The Entity List (15 CFR, Subchapter C, part 744, Supplement No. 4 of the Export Administration Regulations (EAR)) identifies entities reasonably believed to be involved, or to pose a significant risk of being or becoming involved in, activities contrary to the national security or foreign policy interests of the United States. The EAR impose license requirements on and limit the availability of most license exceptions for exports, reexports, and transfers (in country) involving listed entities. The license review policy for each listed entity is identified in the ''License review policy'' column on the Entity List, and the impact on the availability of license exceptions is described in the relevant **Federal Register** notice adding entities to the Entity List. The Bureau of Industry and Security (BIS) places entities on the Entity List pursuant to part 744 (Control Policy: End-User and End-Use Based) and part 746 (Embargoes and Other Special Controls) of the EAR.

The End-User Review Committee (ERC), composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, where appropriate, the Treasury, makes all decisions regarding additions to, removals from, or other modifications to the Entity List. The ERC makes all decisions to add an entry to the Entity List by majority vote and makes all decisions to remove or modify an entry by unanimous vote.

ERC Entity List Decisions

Additions to the Entity List

This rule implements the decision of the ERC to add fourteen entities to the Entity List. The fourteen entities are located in Germany, Russia, and Switzerland.

The ERC reviewed and applied § 744.11(b) (Criteria for revising the Entity List) in making the determination to add these fourteen entities to the Entity List. Under that paragraph, persons for whom there is reasonable cause to believe, based on specific and articulable facts, that they have been involved, are involved, or pose a significant risk of being or becoming involved in activities that are contrary to the national security or foreign policy interests of the United States, along with those acting on behalf of such persons, may be added to the Entity List. Paragraphs (b)(1) through (b)(5) of § 744.11 provide an illustrative list of activities that could be contrary to the national security or foreign policy interests of the United States. For each of the fourteen entities described below, the ERC made the requisite determination based on the standard set forth in § 744.11(b).

The ERC determined to add the following thirteen entities: Chimmed Group; Chimconnect GmbH; Chimconnect AG; Pharmkontract GmbH; Femteco; Interlab; LabInvest; OOO Analit Products; OOO Intertech Instruments; Pharmcontract GC; Rau Farm; Regionsnab; and Riol-Chemie, to the Entity List based on their proliferation activities in support of Russia's weapons of mass destruction programs. Nine of these entities are located in Russia, three are located in Germany, and one is located in Switzerland. Pursuant to § 744.11 of the EAR, the ERC also determined to add the 27th Scientific Center of the Russian Ministry of Defense (a.k.a., 27th NTs) located in Russia to the Entity List. This entity is a Russian Government Ministry of Defense facility associated with Russia's chemical weapons activities.

Pursuant to § 744.11(b) of the EAR, the ERC determined that the conduct of these fourteen entities raises sufficient concern that prior review of exports, reexports, or transfers (in-country) of all items subject to the EAR involving these entities, and the possible imposition of license conditions or license denials on shipments involving the entities, will enhance BIS's ability to prevent items subject to the EAR from being used in activities contrary to the national security and foreign policy interests of the United States.

For the fourteen entities added to the Entity List in this final rule, BIS imposes a license requirement that applies to all items subject to the EAR. For the 27th Scientific Center of the Russian Ministry of Defense, BIS will review license applications under § 744.4(d) of the EAR, the review policy that applies to items subject to the EAR that are destined for certain chemical and biological weapons end-uses. With respect to the other thirteen entities located in Russia, Germany, and Switzerland, BIS will review license applications under § 744.4(d) of the EAR as well as the policies set forth in § 744.2(d) and § 744.3(d), which apply to items subject to the EAR that are destined for certain nuclear and missile technology end-uses, respectively.

With respect to all fourteen entities, the license requirements apply to any transaction in which items subject to the EAR are to be exported, reexported, or transferred (in country) involving any of the entities in which such entities act as

purchaser, intermediate consignee, ultimate consignee, or end-user as described in § 748.5(c) through (f). In addition, no license exceptions are available for exports, reexports, or transfers (in-country) involving the entities being added to the Entity List in this rule.

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

This final rule adds the following fourteen entities to the Entity List and includes, where appropriate, aliases:

Germany

- Chimconnect Gmbh;
- Pharmcontract Gmbh; *and*
- Riol-Chemie.

Russia

- 27th Scientific Center of the Russian Ministry of Defense;
- Chimmed Group;
- Femteco;
- Interlab;
- LabInvest;
- OOO Analit Products;
- OOO Intertech Instruments;
- Pharmcontract GC;
- Rau Farm; *and*
- Regionsnab.

Switzerland

- Chimconnect AG.

Corrections to the Entity List

This final rule implements corrections to six existing entries on the Entity List. One correction is under the destination of Germany for the entity ''Huawei OpenLab Munich,'' and a second correction is under the destination of China for the entity ''Huawei Cloud Hong Kong.'' Both entities were added to the Entity List on August 20, 2020 (85 FR 51596), and their entries were modified on August 27, 2020 (85 FR 52898). A correction is needed in the **Federal Register** citation column for these two entities because of an error that occurred in the amendatory instruction in the August 27, 2020 rule. This rule corrects the **Federal Register** citation for each entity to conform to the **Federal Register** citations that appear in the August 20, 2020 and August 27, 2020 rules. The third correction is under the destination of China for the entity ''China State Shipbuilding Corporation, Limited (CSSC) 750th Research Institute.'' This entity was added to the EAR on December 18, 2020 (85 FR 83416). This rule corrects the entity's name so that it reads as ''China State Shipbuilding Corporation, Limited (CSSC) 750th Test Center.'' The fourth correction is under the destination of China for the entity ''SMIC Hong Kong International Company Limited.'' This entity was originally added to the EAR in the December 18, 2020 rule and placed under Hong Kong. As part of a December 22, 2020 rule (85 FR 83416), this entry was moved and placed under China. Due to publication-related timing constraints, the December 22, 2020 rule did not include the **Federal Register** citation for the December 18, 2020 rule. This rule corrects the **Federal Register** citation for this entry to insert the citation from the December 18, 2020 rule. The fifth correction is under the destination of China for the entity ''Su Bin.'' This entity was originally added to the EAR under the destination of Hong Kong on August 1, 2014 (79 FR 44680) and moved from Hong Kong to the destination of China on December 23, 2020 (85 FR 83765). A correction is needed in the **Federal Register** citation column for this entity because of an error that double printed the December 23, 2020 **Federal Register** citation. This rule corrects the **Federal Register** citation by deleting the second reference to the citation. The sixth correction is under the destination of China for the entity ''Nanjing FiberHome Starrysky Communication Development -o.'' This rule corrects the name of this entity by replacing the ''Nanjing FiberHome Starrysky Communication Development -o.'' with ''Nanjing FiberHome Starrysky Communication Development Co.''

Savings Clause

Shipments of items removed from eligibility for a License Exception or for 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 March 4, 2021, 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) (50 U.S.C. 4801–4852). ECRA provides the legal basis for BIS's principal authorities and serves as the authority under which BIS issues this rule.

Rulemaking Requirements

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

2. Notwithstanding any other provision of law, no person is required to respond to 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 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. Total burden hours associated with the PRA and OMB control number 0694–0088 are not expected to increase as a result of this rule.

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

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

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

List of Subjects in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

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

PART 744—

■ 1. The authority citation for 15 CFR part 744 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; 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. Amend Supplement No. 4 to part 744 by

■ a. Under CHINA, PEOPLE'S REPUBLIC OF revising the entities ''Huawei Cloud Hong Kong'', Nanjing FiberHome Starrysky Communication Development –o,'' ''SMIC Hong Kong International Company Limited'', and ''Su Bin'';

■ b. Under Germany:

■ i. Adding in alphabetical order the entity ''Chimconnect GmbH'';

■ ii. Revising the entity ''Huawei OpenLab Munich''; and

■ iii. Adding in alphabetical order the entities ''Pharmcontract GmbH,'' and ''Riol-Chemie'':

■ c. Under RUSSIA, by adding in alphabetical order the entities ''27th Scientific Center of the Russian Ministry of Defense,'' ''Chimmed Group,'' ''Femteco,'' ''Interlab,'' ''LabInvest,'' ''OOO Analit Products,'' ''OOO Intertech Instruments,'' ''Pharmcontract GC,'' ''Regionsnab,'' and ''Rau Farm''; and

■ d. Under SWITZERLAND, by adding in alphabetical order the entity ''Chimconnect AG''.

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.	*	*	*	*
	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. 86 FR [INSERT FR PAGE NUMBER] 3/4/21.
	*	*	*	*
	Nanjing FiberHome Starrysky Communication Development Co., a.k.a., the following two aliases: —Nanjing Fenghuo Xingkong Communication Development Co.; and —Fiberhome StarrySky Co., Ltd. 88 Yunlongshan Road, Jianye District, Nanjing China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; case-by-case review for items necessary to detect, identify and treat infectious disease; and presumption of denial for all other items subject to the EAR..	85 FR 34505, 6/5/20. 85 FR 44159, 7/22/20. 86 FR [INSERT FR PAGE NUMBER] 3/4/21.
	*	*	*	*

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 nanometers and below, including extreme ultraviolet technology); Case by case for all other items..	85 FR 83420, 12/22/20. 85 FR 83765, 12/23/2020. 86 FR [INSERT FR PAGE NUMBER] 3/4/21.
	* *	*	* *	*
	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 83768, 12/23/2020. 86 FR [INSERT FR PAGE NUMBER] 3/4/21.
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GERMANY	* *	*	* *	*
	Chimconnect GmbH, Reichenauestrasse 1a, DE–78467, Konstanz, Germany.	For all items subject to the EAR.	See §§ 744.2(d), 744.3(d), and 744.4(d) of this part..	86 FR [INSERT FR PAGE NUMBER] 3/4/21.
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	Huawei OpenLab Munich, a.k.a., the following one alias, —Huawei Munich OpenLab. Huawei Germany Region R&D Centre Riesstr. 22 80992 Munich, Germany; *and* Huawei Germany Region R&D Centre Riesstr. 12 80992 Munich, Germany.	For all items subject to the EAR, see § 736.2(b)(3)(vi),[1] and 744.11 of the EAR, EXCEPT[2] for technology subject to the EAR that is designated as EAR99, or controlled on the Commerce Control List for anti-terrorism reasons only, when released to members of a "standards organization" (see § 772.1) for the purpose of contributing to the revision or development of a "standard" (see § 772.1).	Presumption of denial.	85 FR 51603, 8/20/20, 85 FR 52901, 8/27/20. 86 FR [INSERT FR PAGE NUMBER] 3/4/21.
	* *	*	* *	*
	Pharmcontract GmbH., a.k.a., the following one alias: —Farmkontract GmbH. Goethestrasse 4–8 D–60313 Frankfurt am Main, Germany.	For all items subject to the EAR.	See §§ 744.2(d), 744.3(d), and 744.4(d) of this part.	86 FR [INSERT FR PAGE NUMBER] 3/4/21.
	Riol-Chemie, Gobelstrasse 21, Lilienthal, Germany.	For all items subject to the EAR.	See §§ 744.2(d), 744.3(d), and 744.4(d) of this part..	86 FR [INSERT FR PAGE NUMBER] 3/4/21.
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Country	Entity	License requirement	License review policy	Federal Register citation
RUSSIA	27th Scientific Center of the Russian Ministry of Defense, a.k.a., the following one alias: —27th NTs. Birgadirskiy pereulok 13, 105005, Moscow, Russia.	All items subject to the EAR.	See § 744.4(d) of this part..	86 FR [INSERT FR PAGE NUMBER] 3/4/21.
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	Chimmed Group, a.k.a., the following six aliases: —OOO Khimmed; —Chimmed; —TD Chimmed; —TD Khimmed; —Khimmed; *and* —SPK Khimmed 9/3 Kashirskoe Highway, Moscow, Russia 115230; *and* Runovskiy, D 11/13, Korp 2, Moscow, Russia; *and* Kashirskoe, D 9, Korp 3, Moscow, Russia.	For all items subject to the EAR.	See §§ 744.2(d), 744.3(d), and 744.4(d) of this part..	86 FR [INSERT FR PAGE NUMBER] 3/4/21.
	* *	*	* *	*
	Femteco, 13 3-ya Khoroshevskaya Street, Moscow, Russia 123298; *and* 3298 G. Moskva, Ul. 3-ya Khoroshevskaya, D. 13, K. Russia.	For all items subject to the EAR.	See §§ 744.2(d), 744.3(d), and 744.4(d) of this part..	86 FR [INSERT FR PAGE NUMBER] 3/4/21.
	* *	*	* *	*
	Interlab, a.k.a., the following one alias: —OOO Interlab. Tikhvinsky Per., 11, Building 2, 127055, Moscow, Russia.	For all items subject to the EAR.	See §§ 744.2(d), 744.3(d), and 744.4(d) of this part..	86 FR [INSERT FR PAGE NUMBER] 3/4/21.
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	LabInvest, Remenskoe, Street 100–Y, Svirskoy Division, D 52, 140104, Moscow Oblast, Russia.	For all items subject to the EAR.	See §§ 744.2(d), 744.3(d), and 744.4(d) of this part..	86 FR [INSERT FR PAGE NUMBER] 3/4/21.
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	OOO Analit Products, 26th-line V.O., dom. 15/2 lit. A, office 9.06, St. Petersburg, Russia 199106.	For all items subject to the EAR.	See §§ 744.2(d), 744.3(d), and 744.4(d) of this part..	86 FR [INSERT FR PAGE NUMBER] 3/4/21.
	OOO Intertech Instruments, a.k.a., the following one alias: —Intertek Instruments. 3/2 Novopeschanaya Street, Moscow, Russia 125057.	For all items subject to the EAR.	See §§ 744.2(d), 744.3(d), and 744.4(d) of this part..	86 FR [INSERT FR PAGE NUMBER] 3/4/21.
	* *	*	* *	*
	Pharmcontract GC, a.k.a., the following one alias: —Farmkontract GC. Dubininskaya Street, 57/2, Office 306, 115054, Moscow, Russia.	For all items subject to the EAR.	See §§ 744.2(d), 744.3(d), and 744.4(d) of this part..	86 FR [INSERT FR PAGE NUMBER] 3/4/21.
	* *	*	* *	*
	Rau Farm, a.k.a., the following three aliases: —Raw Farm; —Rau Pharm; *and* —Raw Pharm. Petro-Razumovskaya Alley 18, Moscow, Russia; *and* Ul. Mnevniki 3/1, Moscow, Russia; *and* Denisovsky Pereulok, Bldg 8/14, Moscow, Russia.	For all items subject to the EAR.	See §§ 744.2(d), 744.3(d), and 744.4(d) of this part..	86 FR [INSERT FR PAGE NUMBER] 3/4/21.
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	Regionsnab, 129327 ul. Lenskaya 2/21, Suite III, Moscow, Russia.	For all items subject to the EAR.	See §§ 744.2(d), 744.3(d), and 744.4(d) of this part..	86 FR [INSERT FR PAGE NUMBER] 3/4/21.
*	* *	*	* *	*
SWITZERLAND	* *	*	* *	*
	Chimconnect AG, Langaulistrasse 17, CH–9470 Buschs/SG, Switzerland.	For all items subject to the EAR.	See §§ 744.2(d), 744.3(d), and 744.4(d) of this part..	86 FR [INSERT FR PAGE NUMBER] 3/4/21.

Country	Entity	License requirement	License review policy	**Federal Register** citation
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Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 2021–04505 Filed 3–2–21; 4:15 pm]

BILLING CODE 3510–33–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

19 CFR Chapter I

Arrival Restrictions Applicable to Flights Carrying Persons Who Have Recently Traveled From or Were Otherwise Present Within the Democratic Republic of the Congo or the Republic of Guinea

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Announcement of arrival restrictions.

SUMMARY: This document announces the decision of the Secretary of Homeland Security to direct all flights to the United States carrying persons who have recently traveled from, or were otherwise present within, the Democratic Republic of the Congo or the Republic of Guinea to arrive at one of the U.S. airports where the U.S. government is focusing public health resources to implement enhanced public health measures. For purposes of this document, a person has recently traveled from the Democratic Republic of the Congo or the Republic of Guinea if that person has departed from, or was otherwise present within, the Democratic Republic of the Congo or the Republic of Guinea within 21 days of the date of the person's entry or attempted entry into the United States. Also, for purposes of this document, crew and flights carrying only cargo (*i.e.,* no passengers or non-crew), are excluded from the measures herein.

DATES: The arrival restrictions apply to flights departing after 11:59 p.m. Eastern Standard Time on March 4, 2021. Arrival restrictions continue until cancelled or modified by the Secretary of Homeland Security and notice of such cancellation or modification is published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Alyce Modesto, Office of Field Operations, U.S. Customs and Border Protection at 202–286–8995.

SUPPLEMENTARY INFORMATION:

Background

Ebola Virus Disease (EVD), caused by the virus family *Filoviridae,* is a severe and often fatal disease that can affect humans and non-human primates. Disease transmission occurs via direct contact with bodily fluids (*e.g.,* blood, mucus, vomit, urine). The first known EVD outbreak occurred in 1976. From 2013–2016, the largest EVD outbreak occurred in West Africa, primarily affecting Guinea, Liberia, and Sierra Leone, with cases exported to seven additional countries across three continents. The epidemic demonstrated the potential for EVD to become an international crisis in the absence of early intervention. Further, EVD can have substantial medical, public health, and economic consequences if it spreads to densely populated areas. As such, EVD may present a threat to U.S. health security given the unpredictable nature of outbreaks and the interconnectedness of countries through global travel.

On February 7, 2021, the World Health Organization (WHO) reported the resurgence of EVD, following the laboratory confirmation of one case in North Kivu Province, in the Democratic Republic of the Congo (DRC). As of February 23, 2021, eight confirmed EVD cases, including four deaths, have been reported. Although the source of infection is still under investigation, it is believed this outbreak is linked to the 2018–2020 EVD outbreak in the eastern DRC, the second largest EVD outbreak on record, which was officially declared over on June 25, 2020 by the WHO and the Ministry of Health in the DRC.

On February 14, 2021, the WHO reported a new outbreak of EVD in the southern prefecture of Nzérékoré, Guinea. The prefecture is located near the borders of Liberia and the Ivory Coast. As of February 23, 2021, Guinean officials have reported nine confirmed cases and at least five deaths. The WHO expects additional cases to be confirmed in the coming days and have warned six neighboring countries (Guinea-Bissau, Ivory Coast, Liberia, Mali, Senegal, and Sierra Leone) to be on alert for potential infections.

In order to assist in preventing or limiting the introduction and spread of this communicable disease into the United States, the Departments of Homeland Security and Health and Human Services, including the Centers for Disease Control and Prevention (CDC), and other agencies charged with protecting the homeland and the American public, are currently implementing enhanced public health measures at six U.S. airports that receive the largest number of travelers from the DRC and the Republic of Guinea. To ensure that all travelers with recent presence in the affected countries arrive at one of these airports, DHS is directing all flights to the United States carrying such persons to arrive at the airports where the enhanced public health measures are being implemented. While DHS, in coordination with other applicable federal agencies, anticipates working with the air carriers in an endeavor to identify potential travelers from the affected countries prior to boarding, air carriers will remain obligated to comply with the requirement of this notice, particularly in the event that travelers who have recently traveled from or were otherwise present within, the affected countries are boarded on flights bound for the United States.

Notice of Arrival Restrictions Applicable to All Flights Carrying Persons Who Have Recently Traveled From or Were Otherwise Present Within the Democratic Republic of the Congo or the Republic of Guinea

Pursuant to 6 U.S.C. 112(a), 19 U.S.C. 1433(c), and 19 CFR 122.32, DHS has the authority to limit the location where all flights entering the United States from abroad may land. Under this authority and effective for flights departing after 11:59 p.m. Eastern Standard Time on March 4, 2021, I hereby direct all operators of aircraft to ensure that all flights carrying persons who have recently traveled from, or were otherwise present within, the DRC or the Republic of Guinea only land at one of the following airports:

- John F. Kennedy International Airport (JFK), New York;
- Chicago O'Hare International Airport (ORD), Illinois;
- Hartsfield-Jackson Atlanta International Airport (ATL), Georgia;
- Washington-Dulles International Airport (IAD), Virginia;

• Newark Liberty International Airport (EWR), New Jersey; and

• Los Angeles International Airport (LAX), California.

This direction considers a person to have recently traveled from the DRC or the Republic of Guinea if that person departed from, or was otherwise present within, the DRC or the Republic of Guinea within 21 days of the date of the person's entry or attempted entry into the United States. Also, for purposes of this document, crew and flights carrying only cargo (*i.e.,* no passengers or non-crew), are excluded from the applicable measures set forth in this notification. This direction is subject to any changes to the airport landing destination that may be required for aircraft and/or airspace safety as directed by the Federal Aviation Administration.

This list of designated airports may be modified by the Secretary of Homeland Security in consultation with the Secretary of Health and Human Services and the Secretary of Transportation. This list of designated airports may be modified by an updated publication in the **Federal Register** or by posting an advisory to follow at *www.cbp.gov.* The restrictions will remain in effect until superseded, modified, or revoked by publication in the **Federal Register**.

For purposes of this **Federal Register** document, ''United States'' means the territory of the several States, the District of Columbia, and Puerto Rico.

Alejandro N. Mayorkas,

Secretary, U.S. Department of Homeland Security.

[FR Doc. 2021–04594 Filed 3–2–21; 4:15 pm]

BILLING CODE 9112–FP–P

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Parts 780, 788, and 795

RIN 1235–AA34

Independent Contractor Status Under the Fair Labor Standards Act (FLSA): Delay of Effective Date

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Final rule; delay of effective date.

SUMMARY: Consistent with the Presidential directive as expressed in the memorandum of January 20, 2021, from the Assistant to the President and Chief of Staff, titled ''Regulatory Freeze Pending Review,'' this action finalizes the Department of Labor's proposal to delay until May 7, 2021, the effective date of the rule titled Independent Contractor Status Under the Fair Labor Standards Act (''Independent Contractor Rule'' or ''January 2021 Rule''), which was published in the **Federal Register** on January 7, 2021, to allow the Department to review issues of law, policy, and fact raised by the rule before it takes effect.

DATES: As of March 4, 2021, the effective date of the Independent Contractor Rule published January 7, 2021 at 86 FR 1168 is delayed until May 7, 2021.

FOR FURTHER INFORMATION CONTACT: Amy DeBisschop, Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693–0406 (this is not a toll-free number). Copies of this final rule may be obtained in alternative formats (Large Print, Braille, Audio Tape or Disc), upon request, by calling (202) 693–0675 (this is not a toll-free number). TTY/TDD callers may dial toll-free 1–877–889–5627 to obtain information or request materials in alternative formats. Questions of interpretation or enforcement of the agency's existing regulations may be directed to the nearest Wage and Hour Division (''WHD'') district office. Locate the nearest office by calling the WHD's toll-free help line at (866) 4US–WAGE ((866) 487–9243) between 8 a.m. and 5 p.m. in your local time zone, or log onto WHD's website at *https://www.dol.gov/agencies/whd/contact/local-offices* for a nationwide listing of WHD district and area offices.

SUPPLEMENTARY INFORMATION:

I. Background

On January 7, 2021, the U.S. Department of Labor (''the Department'') published the Independent Contractor Rule in the **Federal Register** with an effective date of March 8, 2021. *See* 86 FR 1168. The Independent Contractor Rule would, among other actions, introduce into title 29 of the Code of Federal Regulations a new part (part 795) titled ''Employee or Independent Contractor Classification Under the Fair Labor Standards Act.'' *See id.* In a memorandum dated January 20, 2021, and titled ''Regulatory Freeze Pending Review,'' published in the **Federal Register** on January 28, 2021 (86 FR 7424) (''Regulatory Freeze Memorandum''), the Assistant to the President and Chief of Staff, on behalf of the President, directed the heads of Executive Departments and Agencies to consider delaying the effective dates of all regulations that had been published in the **Federal Register** but had not yet taken effect. The Independent Contractor Rule fell within this category. The Regulatory Freeze Memorandum states that the purpose of such delays is for agencies to review any questions of fact, law, and policy that the rules may raise, noting certain exceptions that do not apply to the Independent Contractor Rule. On January 20, 2021, the Office of Management and Budget (OMB) also published OMB Memorandum M–21–14, Implementation of Memorandum Concerning Regulatory Freeze Pending Review, which provides guidance regarding the Regulatory Freeze Memorandum. *See* OMB Memorandum M–21–14, Implementation of Memorandum Concerning Regulatory Freeze Pending Review, *https://www.whitehouse.gov/wp-content/uploads/2021/01/M-21-14-Regulatory-Review.pdf* (last visited February 25, 2021). OMB Memorandum M–21–14 explains that pursuant to the Regulatory Freeze Memorandum, agencies ''should consider postponing the effective dates for 60 days and reopening [the] rulemaking processes'' for ''rules that have not yet taken effect and about which questions involving law, fact, or policy have been raised.'' *Id.*

On February 5, 2021, the Department issued a notice of proposed rulemaking (NPRM) in accordance with the Regulatory Freeze Memorandum and OMB Memorandum M–21–14 proposing to delay the effective date of the Independent Contractor Rule to May 7, 2021, which would be 60 days beyond its original effective date. *See* 86 FR 8326.

In the NPRM, the Department explained that delaying the effective date of the Independent Contractor Rule would give the Department additional opportunity to review and consider the Independent Contractor Rule, as the Regulatory Freeze Memorandum and OMB Memorandum M–21–14 contemplate. The Department noted that the Independent Contractor Rule would be its first generally applicable regulation addressing the question of who is an independent contractor and thus not an employee under the FLSA, and would adopt a new legal standard for determining employee and independent contractor status under the FLSA. In light of the significance of this change, the Department proposed to allow itself more time to further review and consider, among other important issues, the legal, policy, and/or enforcement implications of adopting that standard, such as: Whether the January 2021 Rule effectuates the

FLSA's purpose, recognized repeatedly by the Supreme Court, to broadly cover workers as employees; the costs and benefits attributed to the January 2021 Rule, including the assertion that workers as a whole will benefit from the January 2021 Rule; and/or whether the January 2021 Rule's explanation of the standard provides clarity for stakeholders and for the purposes of enforcement, as was intended.[1]

In the NPRM, the Department explained that it believed a 60-day delay would not be disruptive. The Department noted that the Independent Contractor Rule is not yet effective, and the Department has not implemented the Independent Contractor Rule. The Department further explained that its public guidance, including the longstanding Fact Sheet #13, titled ''Employment Relationship Under the Fair Labor Standards Act (FLSA),'' *https://www.dol.gov/agencies/whd/fact-sheets/13-flsa-employment-relationship,* does not contain the Independent Contractor Rule's new standard for determining whether a worker is an employee or independent contractor and will continue to be publicly available. Moreover, the Department explained that federal courts across the country have developed and applied legal analyses for determining employee and independent contractor status under the FLSA. Therefore, employers and workers are already familiar with the legal standard that the Department and courts will apply when determining a worker's employment status under the FLSA during any delay of the January 2021 Rule's effective date.

The Department sought comment on its proposal to delay the effective date of the Independent Contractor Rule. The period for providing comment expired on February 24, 2021.

II. Comments and Decision

The Department received 1,512 comments in response to the NPRM. Many workers and representatives of workers supported delaying the effective date of the Independent Contractor Rule, stating that the delay would allow the Department to further consider whether the Independent Contractor Rule was inconsistent with the intent of the FLSA, as well as relevant case law, and evaluate the extent to which the Independent Contractor Rule may not have fully considered additional costs to workers. For example, numerous commenters, including A Better Balance, the American Federation of State, County and Municipal Employees, the Center for Law and Social Policy, The Leadership Conference on Civil and Human Rights, the National Employment Law Project, NETWORK Lobby for Catholic Social Justice, the Service Employees International Union (SEIU), the Shriver Center on Poverty Law, and the United Brotherhood of Carpenters & Joiners of America, asked the Department to delay the January 2021 Rule to consider, among other issues, the January 2021 Rule's deviation from statutory text and relevant case law as well as the January 2021 Rule's impact on workers. Many of these comments noted that the January 2021 Rule will have a $3.3 billion cost to workers each year, and will cause the most harm to workers of color in low-paying jobs in industries, such as janitorial services, home care, and agriculture, in which independent contractor misclassification is common. The Attorneys General of New York, Pennsylvania, California, Colorado, Connecticut, Delaware, District of Columbia, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, New Mexico, North Carolina, Oregon, Rhode Island, Vermont, Virginia, and Washington also submitted a comment supporting the proposed delay, asserting that the January 2021 Rule would impose costs on states and does not increase clarity regarding the standard for determining who is an employee and who is an independent contractor. The Department agrees with these commenters that allowing more time for consideration of the January 2021 Rule is reasonable given the significant and complex issues the January 2021 Rule raises, including whether the January 2021 Rule is consistent with the statutory intent to broadly cover workers as employees as well as the costs and benefits of the rule, including its effect on workers. Moreover, allowing the Independent Contractor Rule to go into effect while the Department undertakes a further review of the Independent Contractor Rule could lead to confusion and uncertainty among workers and businesses in the event that the Department proposes changes to the Independent Contractor Rule following its review.

Numerous businesses, trade associations, individuals who identified themselves as freelancers or independent contractors, and their representatives opposed the NPRM because they believe the new standard created in the Independent Contractor Rule will provide clarity, and they would like it to take effect on its original effective date. For example, the American Council of Life Insurers, the Center for Workplace Compliance, the Coalition to Promote Independent Entrepreneurs, the National Association of Home Builders, the Harbor Trucking Association and Association of Bi-State Motor Carriers, and the Washington Legal Foundation took this stance; many of these commenters asserted that the Department fully considered the January 2021 Rule during the initial rulemaking process, and others stated that they had undertaken preparations in anticipation of the January 2021 Rule going into effect.[2] The Department also received hundreds of nearly identical comments from individuals who identified themselves as ''a financial professional, small business owner and an independent contractor'' affiliated with LPL Financial, who expressed a desire to be able to continue to choose to be independent contractors. The Department has considered the comments opposing the delay of the effective date of the January 2021 Rule, but does not agree with them. The maintenance of the current state of the law would not be disruptive to current business practices, so the regulated community would not be significantly affected by the continuation of the longstanding status quo for 60 additional days. In addition, individuals who are currently independent contractors will not be affected by a delay of the Independent Contractor Rule, because they are already not employees under the FLSA. Although the Department understands that some commenters favor the January 2021 Rule and may have chosen to prepare to make adjustments to their operations in anticipation of it, the Department does not believe that the delay is significant enough to overcome its interest in carefully considering the January 2021 Rule pursuant to the Regulatory Freeze Memorandum and OMB Memorandum M–21–14.[3]

[1] *See generally* 86 FR 8327.

[2] Commenters such as the Chamber of Commerce and Seyfarth Shaw on behalf of the Coalition for Workforce Innovation also asserted that the Department's fundamental basis for a delay—that the Independent Contractor Rule would create a new standard for determining who is an employee under the FLSA versus an independent contractor, and that this significant change merits further consideration—is incorrect. They note that the Independent Contractor Rule sets forth an economic realities test, which courts have used for decades. Although these commenters are correct that courts and the Department have previously applied an economic realities test for this purpose, the substance of the test in the January 2021 Rule—for example, giving two factors greater weight in the analysis and nearly dispositive weight if they both point toward the same classification—is different in a number of significant ways from the existing analysis.

[3] Some commenters opposed to the proposed delay, including the U.S. Chamber of Commerce

Some commenters raised procedural objections to the Department's proposed delay. The Associated Builders and Contractors, the Financial Services Institute, and Littler Mendelson, P.C.'s Workplace Policy Institute asserted that the 19-day comment period for this rulemaking was insufficient, and critiqued the Department's statement in the NPRM that ''WHD will consider only comments about its proposal to delay the rule's effective date.'' 86 FR 8327. The Department believes that the 19-day comment period did provide a meaningful opportunity to comment on the proposed delay. The Department received over 1,500 comments in response to the NPRM proposing to delay the January 2021 Rule's effective date, comparable to the approximately 1,800 comments it received in response to the substantive notice of proposed rulemaking that it published in September 2020. *See* 85 FR 60600. Moreover, given the Independent Contractor Rule's original March 8, 2021 effective date, it would have been impracticable to afford a longer comment period. Had the Department allowed for a longer comment period, the Independent Contractor Rule would have taken effect before the delay could begin, which would have defeated the purpose of this rule and caused additional confusion for regulated entities. As to the issue of the scope of comments sought in this rulemaking, the Department sought comments about, and considered whether, issues of policy, law, and fact warrant an extension of the Independent Contractor Rule's original effective date by 60 days. If after having had additional time to consider the January 2021 Rule, the Department decides to propose any changes to the January 2021 Rule, it will at that point solicit comments on its substantive proposal.

Other commenters, including Littler Mendelson, P.C. and the National Federation of Independent Business, asserted that any delay to the Independent Contractor Rule's March 8, 2021 effective date must be published at least 30 days before such a delay takes effect. The Department disagrees. Section 553(d) of the Administrative Procedure Act provides that substantive rules should take effect not less than 30 days after the date they are published in the **Federal Register** unless ''otherwise provided by the agency for good cause found.'' 5 U.S.C. 553(d)(3). Even if this provision were to apply, the Department finds that it would have good cause to make this rule effective immediately upon publication. Like allowing for a longer comment period, allowing for a 30-day delay between publication and the effective date of this rulemaking would result in the January 2021 Rule taking effect before the delay begins, which would undermine this rule's fundamental purpose of delaying the effective date before the Independent Contractor Rule takes effect in accord with the Regulatory Freeze Memorandum and result in additional confusion for regulated entities. The Regulatory Freeze Memorandum was issued on January 20, 2021, only 47 days before the rule's original effective date of March 8, 2021. It would not have been practicable to issue an NPRM proposing to delay the Independent Contractor Rule and allow for ample time for public comment on that proposal in time to publish a final rule not less than 30 days before March 8. Moreover, this rulemaking merely implements a 60-day delay of the Independent Contractor Rule, rather than itself imposing any new compliance obligations on the regulated community. Therefore, the Department finds that a lapse between publication and the effective date of this rule delaying the Independent Contractor Rule's effective date is unnecessary. Because allowing for a 30-day period between publication and the effective date of this rulemaking is both unnecessary and impracticable, there is good cause to make this final rule delaying the Independent Contractor Rule's effective date effective immediately upon publication.

After reviewing timely comments submitted, the Department has decided to delay the Independent Contractor Rule's effective date from March 8, 2021, to May 7, 2021, as proposed. This delay will allow the Department additional time to review the multiple issues of law, policy, and fact that warrant additional review and consideration in accordance with the Regulatory Freeze Memorandum before the Independent Contractor Rule goes into effect.

Signed this 2nd day of March, 2021.

Jessica Looman,

Principal Deputy Administrator, Wage and Hour Division.

[FR Doc. 2021–04608 Filed 3–2–21; 4:15 pm]

BILLING CODE 4510–27–P

and Seyfarth Shaw on behalf of the Coalition for Workforce Innovation, argued that the Department had not based its reasons for proposing a delay on those enumerated in OMB Memorandum M–21–14. But the issues the Department indicated it would consider if allowed additional time, including the FLSA's purpose, the costs and benefits of the rule, and the clarity the rule does or does not provide, are among the types of issues referenced in the memorandum. *See* OMB Memorandum M–21–14 (directing agencies to consider in deciding whether delay of a rule's effective date is appropriate, among other things, whether ''the rule reflected proper consideration of all relevant facts,'' ''the rule reflected due consideration of the agency's statutory or other legal obligations,'' ''the rule is based on a reasonable judgment about the legally relevant policy considerations,'' and ''objections to the rule were adequately considered'').

DEPARTMENT OF THE TREASURY

Office of the Secretary of the Treasury

31 CFR Parts 16, 27, and 50

Inflation Adjustment of Civil Monetary Penalties

AGENCY: Departmental Offices Treasury.

ACTION: Final rule; direct final rule.

SUMMARY: The Department of the Treasury (''Department'' or ''Treasury'') publishes this final rule to adjust its civil monetary penalties (''CMPs'') for inflation as mandated by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (collectively referred to herein as ''the Act''). The Department also publishes this direct final rule to implement the inflation adjustment for the civil monetary penalties that may be assessed under 31 CFR part 16 and updates the inflation adjustments through 2021.

DATES: Effective dates: *The final rule amendments to* 31 CFR part 27 and 31 CFR part 50 are effective March 4, 2021.

The direct final rule amendments to 31 CFR part 16 are effective May 3, 2021.

Comments due: Written comments are due on or before April 5, 2021. If the Department receives substantive adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect.

ADDRESSES: You may submit comments on the amendments to 31 CFR part 16 by any of the following methods:

—*Federal eRulemaking Portal: http://www.regulations.gov.*

—*Mail:* Richard Dodson, Senior Counsel, General Law, Ethics, and Regulation, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220.

The *www.regulations.gov* site will accept comments until 11:59 p.m. Eastern Time on the comment due date. Received comments, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comments or supporting materials that you consider confidential or

inappropriate for public disclosure. Properly submitted comments will be available for inspection and downloading at *http://www.regulations.gov.* The Department will consolidate all received comments and make them available without change. Commenters are encouraged to submit comments electronically via *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For information regarding the Terrorism Risk Insurance Program's CMPs, contact Richard Ifft, Senior Insurance Regulatory Policy Analyst, Federal Insurance Office, Room 1410 MT, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220, at (202) 622–2922 (not a toll-free number), or Lindsey Baldwin, Senior Insurance Regulatory Policy Analyst, Federal Insurance Office, at (202) 622–3220 (not a toll free number). Persons who have difficulty hearing or speaking may access these numbers via TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

For information regarding the Treasury-wide CMPs, contact Richard Dodson, Senior Counsel, General Law, Ethics, and Regulation, 202–622–9949.

SUPPLEMENTARY INFORMATION:

I. Background

In order to improve the effectiveness of CMPs and to maintain their deterrent effect, the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note (''the Inflation Adjustment Act''), as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Pub. L. 114–74) (''the 2015 Act''), requires Federal agencies to adjust each CMP provided by law within the jurisdiction of the agency. The 2015 Act requires agencies to adjust the level of CMPs with an initial ''catch-up'' adjustment through an interim final rulemaking and to make subsequent annual adjustments for inflation, without needing to provide notice and the opportunity for public comment required by 5 U.S.C. 553. The Department's initial catch-up adjustment interim final rules were published on December 7, 2016 (Departmental Offices) (81 FR 88600), and for 31 CFR part 27, on February 11, 2019 (84 FR 3105). The Department's 2018 annual adjustment was published on March 19, 2018 (83 FR 11876), the Department's 2019 annual adjustment was published on April 17, 2019 (84 FR 15955), and the Department's 2020 annual adjustment was published on February 21, 2020 (85 FR 10063). This rule constitutes the Department's 2021 annual adjustment. The 2015 Act provides that any increase in a CMP shall apply to CMPs that are assessed after the date the increase takes effect, regardless of whether the underlying violation predated such increase.[1]

This rule also amends regulations that provide civil penalties for false, fictitious, or fraudulent claims or written statements under the Department's Regulations Implementing the Program Fraud Civil Remedies Act of 1986, at 31 CFR part 16. Adjustments to CMPs under that Part were inadvertently omitted from the Department's initial catch-up adjustment and its subsequent annual adjustments. In particular, this rule adjusts for inflation the maximum amount of the civil monetary penalties that may be assessed under 31 CFR part 16, and it updates the inflation adjustments through 2021 in accordance with instructions from the Office of Management and Budget.

Treasury is currently authorized to impose CMPs against persons who make false, fictitious, or fraudulent claims or who make false, fictitious, or fraudulent written statements, pursuant to 31 U.S.C. 3802(a). The maximum CMPs under this statute were established on October 21, 1986, and they have not been adjusted. The maximum CMPs established were $5,000 for each qualifying false claim or false written statement.

II. Method of Calculation

The method of calculating CMP adjustments applied in this final rule is required by the 2015 Act. Under the 2015 Act and the Office of Management and Budget guidance required by the 2015 Act, annual inflation adjustments subsequent to the initial catch-up adjustment are to be based on the percent change between the Consumer Price Index for all Urban Consumers (''CPI–U'') for the October preceding the date of the adjustment and the prior year's October CPI–U. As set forth in Office of Management and Budget Memorandum M–21–10 of December 23, 2020, the adjustment multiplier for 2021 is 1.01182. In order to complete the 2021 annual adjustment, each current CMP is multiplied by the 2021 adjustment multiplier. Under the 2015 Act, any increase in CMP must be rounded to the nearest multiple of $1.

With regard to the CMPs authorized by 31 U.S.C. 3802(a), adjustments had to be made back to 2016. Pursuant to OMB Guidance, the relevant inflation factor is 2.15628 for the initial catch-up adjustment. Because application of the factor would result in an adjustment of greater than 150% for both 31 U.S.C. 3802(a) CMPs, the initial adjustment of these penalties is limited to 150%. The relevant inflation factors for 2017 through 2021 are 1.01636 (2017), 1.02041 (2018), 1.02522 (2019), 1.01764 (2020), and 1.01182 (2021).[2]

With respect to the $5,000 CMPs, applying the initial 150% adjustment would result in a maximum penalty amount of $7,500. Multiplying that amount by the 2017 factor of 1.01636 and rounding to the nearest dollar would yield a maximum penalty amount of $7,623. Multiplying that amount by the 2018 factor of 1.02041 and rounding yields a maximum penalty amount of $7,779. Multiplying that amount by the 2019 factor of 1.02522 and rounding yields a maximum penalty amount of $7,975. Multiplying that amount by the 2020 factor of 1.01764 and rounding yields a maximum penalty amount of $8,116. Finally, applying the 2021 factor of 1.01182 to that amount results in an adjusted maximum penalty of $8,212.

Procedural Matters

1. Administrative Procedure Act

The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Section 701(b)) requires agencies to make annual adjustments for inflation to CMPs, without needing to provide notice and the opportunity for public comment and a delayed effective date required by 5 U.S.C. 553. Additionally, the methodology used for adjusting CMPs for inflation is provided by statute, with no discretion provided to agencies regarding the substance of the adjustments for inflation to CMPs. The Department is charged only with performing ministerial computations to determine the dollar amount of adjustments for inflation to CMPs. Accordingly, prior public notice, an opportunity for public comment, and a delayed effective date are not required for this rule, with the exception of the initial catch-up adjustment to 31 CFR part 16.

2. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

[1] However, the increased CMPs apply only with respect to underlying violations occurring after the date of enactment of the 2015 Act, *i.e.,* after November 2, 2015.

[2] OMB Memoranda regarding the initial catch-up and yearly inflation adjustments include M–16–06 (Feb. 24, 2016), M–17–11 (Dec. 16, 2016), M–18–03 (Dec. 15, 2017), M–19–04 (Dec. 14, 2018), M–20–05 (Dec. 16, 2019), and M–21–10 (Dec. 23, 2020).

3. Executive Order 12866

This rule is not a significant regulatory action as defined in section 3.f of Executive Order 12866.

4. Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this rule because there are no new or revised recordkeeping or reporting requirements.

5. Direct Final Procedures

Treasury is issuing the amendments to 31 CFR part 16 as a direct final rule. The effective date of this rule is May 3, 2021 without further notice, unless Treasury receives written adverse comments before April 5, 2021.

If Treasury receives timely written adverse comments on the amendments to 31 CFR part 16, Treasury will withdraw the regulation before its effective date.

List of Subjects

31 CFR Part 16

Administrative Practice and Procedure, Claims, Fraud, Penalties.

31 CFR Part 27

Administrative Practice and Procedure, Penalties.

31 CFR Part 50

Insurance, Terrorism.

Authority and Issuance

For the reasons set forth in the preamble, parts 16, 27, and 50 of title 31 of the Code of Federal Regulations are amended as follows:

PART 16—REGULATIONS IMPLEMENTING THE PROGRAM FRAUD CIVIL REMEDIES ACT OF 1986

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

Authority: 31 U.S.C. 3801–3812.

■ 2. Effective May 3, 2021 amend § 16.3 by revising paragraphs (a)(1)(iv) and (b)(1)(ii) to read as follows:

§ 16.3 Basis for civil penalties and assessments.

(a) * * *

(1) * * *

(iv) Is for payment for the provision of property or services which the person has not provided as claimed, shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $8,212 for each such claim.

* * * * *

(b) * * * (1) * * *

(ii) Includes or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the content of the statement, shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $8,212 for each such statement.

* * * * *

PART 27—CIVIL PENALTY ASSESSMENT FOR MISUSE OF DEPARTMENT OF THE TREASURY NAMES, SYMBOLS, ETC.

■ 3. The authority citation for part 27 continues to read as follows:

Authority: 31 U.S.C. 321, 333.

■ 4. Amend § 27.3 by revising paragraph (c) to read as follows:

§ 27.3 Assessment of civil penalties.

* * * * *

(c) *Civil Penalty.* An assessing official may impose a civil penalty on any person who violates the provisions of paragraph (a) of this section. The amount of a civil monetary penalty shall not exceed $8,212 for each and every use of any material in violation of paragraph (a), except that such penalty shall not exceed $41,056 for each and every use if such use is in a broadcast or telecast.

* * * * *

PART 50—TERRORISM RISK INSURANCE PROGRAM

■ 5. The authority citation for part 50 is revised to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 321; Title I, Pub. L. 107–297, 116 Stat. 2322, as amended by Pub. L. 109–144, 119 Stat. 2660, Pub. L. 110–160, 121 Stat. 1839, Pub. L. 114–1, 129 Stat. 3, and Pub. L. 116–94, 133 Stat. 2534 (15 U.S.C. 6701 note); Pub. L. 114–74, 129 Stat. 601, Title VII (28 U.S.C. 2461 note).

■ 6. Amend § 50.83 by revising paragraph (a) to read as follows:

§ 50.83 Adjustment of civil monetary penalty amount.

(a) *Inflation Adjustment.* Any penalty under the Act and these regulations may not exceed the greater of $1,436,220 and, in the case of any failure to pay, charge, collect or remit amounts in accordance with the Act or these regulations such amount in dispute.

* * * * *

John T. Norris,

Assistant Secretary for Management (Acting).

[FR Doc. 2021–04377 Filed 3–3–21; 8:45 am]

BILLING CODE 4810–AK–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[USCG–2021–0130]

RIN 1625–AA00

Safety Zone; Atlantic Intracoastal Waterway, Horry County, SC

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing an emergency temporary safety zone that includes all waters of the Waccamaw River from Enterprise Landing at Atlantic Intracoastal Waterway (AICW) statute mile 375 north to Fantasy Harbour Fixed Bridge at AICW statute mile 366. The safety zone is needed to protect persons and property during a period of high water in the area caused by heavy rainfall and runoff. Vessels operating within the zone shall proceed at speeds that do not create a wake. Vessels that desire to transit this zone at speeds that create a wake, shall first seek authorization from the Captain of the Port (COTP) Charleston.

DATES: This rule is effective without actual notice from March 4, 2021 through March 7, 2021. For the purposes of enforcement, actual notice will be used from March 1, 2021 until March 4, 2021.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2021–0130 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule call or email Lieutenant Chad Ray, Sector Charleston Office of Waterways Management, Coast Guard; telephone (843) 740–3184, email *Chad.L.Ray@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because publishing an NPRM would be contrary to public interest due to waters suddenly reaching dangerously high levels. Immediate action is needed to address safety hazards created by transiting vessels' wake, which threatens persons and property in flooded areas. It is impracticable to publish an NPRM because we must establish this safety zone by March 1, 2021.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action is needed to respond to the potential safety hazards associated with this emergent high water event.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Charleston (COTP) has determined that potential hazards associated with the high water conditions are a safety concern for persons and property in this area. Vessels that transit the zone create a wake that exacerbates the safety hazards associated with dangerously high water levels created by recent heavy rainfall and unexpected increases in runoff. This rule is needed to protect personnel and property throughout the duration of the high water conditions.

IV. Discussion of the Rule

This rule establishes a safety zone from March 1, 2021 through March 7, 2021, or until the high water conditions subside, whichever occurs first. The safety zone will cover all waters of the Waccamaw River from Enterprise Landing at Atlantic Intracoastal Waterway (AICW) statute mile 375 north to Fantasy Harbour Fixed Bridge at AICW statute mile 366. The duration of the zone is intended to protect personnel, property, and the marine environment throughout the duration of the high water event. Vessels operating within the zone shall proceed at speeds that do not create a wake. Vessels that desire to transit this zone at speeds that create a wake, shall first seek authorization from the Captain of the Port (COTP) Charleston.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

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

This regulatory action determination is based on the limited duration and scope of the safety zone. The safety zone will be enforced only so long as the duration of the high water conditions, which makes it limited in duration. The safety zone is limited in scope because it only affects those areas immediately impacted by high water levels along identified sections of the Atlantic Intracoastal Waterway. The safety is limited in scope as it allows vessels to enter the zone with the approval of the COTP so long as the vessel transits the zone at speeds that do not create a wake. The Coast Guard will provide actual notification of the zone by on-scene designated representatives and broadcast notice to mariners via VHF–FM marine channel 16, and a marine safety information bulletin.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination

with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting only throughout the high water conditions and will only restrict the speed at which vessels transit the 11 mile section of the Atlantic Intracoastal Waterway. It is categorically excluded from further review under paragraph L60a of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T07–0130 to read as follows:

§ 165.T07–0130 Safety Zone; Atlantic Intracoastal Waterway; Horry County, SC.

(a) *Location.* All waters of the Waccamaw River from Enterprise Landing at Atlantic Intracoastal Waterway (AICW) statute mile 375 north to Fantasy Harbour Fixed Bridge at AICW statute mile 366.

(b) *Definition.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port (COTP) Charleston in the enforcement of the regulated areas.

(c) *Regulations.* (1) All vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the COTP Charleston or a designated representative.

(2) Persons or vessels desiring to enter, transit through, or remain within the regulated area must proceed at speeds that do not create a wake.

(3) Vessels that desire to transit this zone at speeds that create a wake, shall first seek authorization from the COTP Charleston. The COTP Charleston, or a designated representative, can be contacted via telephone at 843–740–7050, or via VHF radio on channel 16, to request authorization. If authorization is granted, all persons and vessels receiving such authorization must comply with the instructions of the COTP Charleston or a designated representative.

(4) The Coast Guard will provide actual notice of the zone by on-scene designated representatives and broadcast notice to mariners via VHF–FM marine channel 16, and a marine safety information bulletin.

(d) *Enforcement period.* This section will be enforced from March 1, 2021 through March 7, 2021, or until the conclusion of the high water conditions, whichever occurs first.

Dated: March 1, 2021.

J.D. Cole,

Captain, U.S. Coast Guard, Captain of the Port Charleston.

[FR Doc. 2021–04475 Filed 3–3–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2021–0071]

RIN 1625–AA00

Safety Zone; Lower Mississippi River, Mile Marker 368 Through 370, Natchez, MS

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all navigable waters of the Lower Mississippi River (LMR), Mile Marker 368 through 370. The safety zone is needed to protect persons, property, and the marine environment from the potential safety hazards associated with line pulling operations in the vicinity of the Natchez, MS. Entry of persons or vessels into this zone is prohibited unless authorized by the Captain of the Port Sector Lower Mississippi River or a designated representative.

DATES: This rule is effective without actual notice from March 4, 2021 until March 15, 2021. For the purposes of enforcement, actual notice will be used from March 1, 2021 until March 4, 2021.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2021–0071 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email MSTC Lindsey Swindle, U.S. Coast Guard; telephone 901–521–4813, email *Lindsey.M.Swindle@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Sector Lower Mississippi River
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. Immediate action is needed to protect persons and property from the potential safety hazards associated with line pulling operations. The NPRM process would delay the establishment of the safety zone until after the date of the event and compromise public safety. We must establish this temporary safety zone immediately and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to the public interest because immediate action is needed to respond to the potential safety hazards associated with the line pulling operations in the vicinity of Natchez, MS.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Sector Lower Mississippi River (COTP) has determined that potential hazards associated with the line pulling operations, would be a safety concern for all persons and vessels on the Lower Mississippi River between MM 368 and MM 370 in the vicinity of Natchez, MS. This rule is needed to protect persons, property, infrastructure, and the marine environment in all waters of the LMR within the safety zone while line pulling operations are being conducted.

IV. Discussion of the Rule

This rule establishes a temporary safety zone from March 1, 2021 through March 15, 2021. The safety zone will cover all navigable waters of the LMR from MM 368 through MM 370 in the vicinity of Natchez, MS. The duration of this safety zone is intended to ensure the safety of waterway users on these navigable waters during USACE operations.

Entry of persons or vessels into this safety zone is prohibited unless authorized by the COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Lower Mississippi River. Persons or vessels seeking to enter the safety zones must request permission from the COTP or a designated representative on VHF–FM channel 16 or by telephone at 901–521–4822. If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative. The COTP or a designated representative will inform the public of the enforcement times and date for this safety zone through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs), as appropriate.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, and duration of the safety zone. This emergency safety zone will temporarily restrict navigation on the LMR at MM 368 through 370 in the vicinity of Natchez, MS., from March 1, 2021 through March 15, 2021. Moreover, The Coast Guard will issue Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs), as appropriate. The rule allows vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the temporary safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of

power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a temporary safety zone on the LMR at MM 368 through 370 in the vicinity of Natchez, MS, that will prohibit entry into this zone. The safety zone will only be enforced while operations preclude the safe navigation of the established channel. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T08–0071 to read as follows:

§ 165.T08–0071 Safety Zone; Lower Mississippi River, Mile Marker 368 through 370, Natchez, MS.

(a) *Location.* The following area is a safety zone: All navigable waters of the Lower Mississippi River at Mile Marker (MM) 368 through 370 in the vicinity of Natchez, MS.

(b) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the Captain of the Port Sector Lower Mississippi River (COTP) or the COTP's designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Lower Mississippi River.

(2) To seek permission to enter, contact the COTP or the COTP's representative via VHF–FM channel 16 or by telephone at 901–521–4822. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(c) *Effective period.* This section is effective from March 1, 2021, until March 15, 2021.

(d) *Information broadcasts.* The COTP or a designated representative will inform the public of the enforcement times and date for this safety zone through Broadcast Notices to Mariners, Local Notices to Mariners, and/or Safety Marine Information Broadcasts, as appropriate.

Dated: February 26, 2021.

R.S. Rhodes,

Captain, U.S. Coast Guard, Captain of the Port Sector Lower Mississippi River.

[FR Doc. 2021–04451 Filed 3–3–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2021–0125]

RIN 1625–AA00

Safety Zone; Red River, Mile Marker 59, Moncla, LA

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all navigable waters of the Red River (RR), Mile Marker 58 through 60. The safety zone is needed to protect persons, property, and the marine environment from the potential safety hazards associated with line pulling operations in the vicinity of Moncla, LA. Entry of persons or vessels into this zone is prohibited unless authorized by the Captain of the Port Sector Lower Mississippi River or a designated representative.

DATES: This rule is effective without actual notice from March 4, 2021 until March 10, 2021. For the purposes of enforcement, actual notice will be used from March 3, 2021 until March 4, 2021.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2021–0125 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email MSTC Lindsey Swindle, U.S. Coast Guard; telephone 901–521–4813, email *Lindsey.M.Swindle@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Sector Lower Mississippi River
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. Immediate action is needed to protect persons and property from the potential safety hazards associated with line pulling operations. The NPRM process would delay the establishment of the safety zone until after the date of the event and compromise public safety. We must establish this temporary safety zone immediately and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to the public interest because immediate action is needed to respond to the potential safety hazards associated with the line pulling operations in the vicinity of Moncla, LA.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Sector Lower Mississippi River (COTP) has determined that potential hazards associated with the line pulling operations, would be a safety concern for all persons and vessels on the Red River between MM 58 and MM 60 in the vicinity of Moncla, LA. This rule is needed to protect persons, property, infrastructure, and the marine environment in all waters of the RR within the safety zone while line pulling operations are being conducted.

IV. Discussion of the Rule

This rule establishes a temporary safety zone from March 3, 2021 through March 10, 2021. The safety zone will cover all navigable waters of the RR from MM 58 through MM 60 in the vicinity of Moncla, LA. The duration of this safety zone is intended to ensure the safety of waterway users on these navigable waters during line pulling operations.

Entry of persons or vessels into this safety zone is prohibited unless authorized by the COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Lower Mississippi River. Persons or vessels seeking to enter the safety zones must request permission from the COTP or a designated representative on VHF–FM channel 16 or by telephone at 901–521–4822. If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative. The COTP or a designated representative will inform the public of the enforcement times and date for this safety zone through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs), as appropriate.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, and duration of the safety zone. This emergency safety zone will temporarily restrict navigation on the RR at MM 58 through 60 in the vicinity of Moncla, LA, from March 3, 2021 through March 10, 2021. Moreover, The Coast Guard will issue Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs), as appropriate. The rule allows vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the temporary safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that order and have determined that it is consistent

with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a temporary safety zone on the RR at MM 58 through 60 in the vicinity of Moncla, LA, that will prohibit entry into this zone. The safety zone will only be enforced while operations preclude the safe navigation of the established channel. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T08–0125 to read as follows:

§ 165.T08–0125 Safety Zone; Red River, Mile Marker 59, Moncla, LA.

(a) *Location.* The following area is a safety zone: All navigable waters of the Red River at Mile Marker (MM) 58 through 60 in the vicinity of Moncla, LA.

(b) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the Captain of the Port Sector Lower Mississippi River (COTP) or the COTP's designated representative. A *designated representative* is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Lower Mississippi River.

(2) To seek permission to enter, contact the COTP or the COTP's representative via VHF–FM channel 16 or by telephone at 901–521–4822. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(c) *Eforcement period.* This section will be enforced from March 3, 2021 until March 10, 2021.

(d) *Information broadcasts.* The COTP or a designated representative will inform the public of the enforcement times and date for this safety zone through Broadcast Notices to Mariners, Local Notices to Mariners, and/or Safety Marine Information Broadcasts, as appropriate.

Dated: February 26, 2021.

R.S. Rhodes,

Captain, U.S. Coast Guard, Captain of the Port Sector Lower Mississippi River.

[FR Doc. 2021–04471 Filed 3–3–21; 8:45 am]

BILLING CODE 9110–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 1

[GN Docket No. 21–16; FCC 21–17; FRS 17471]

Delegations of Authority To Act on Applications for Review

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) amends its organizational rules to codify a uniformly applicable standard for the exercise of delegated authority by staff Bureaus and Offices to dismiss procedurally defective Applications for Review. Bureaus and Offices will have clear authority to dismiss such applications that do not comply with procedural requirements.

DATES: Effective April 5, 2021.

FOR FURTHER INFORMATION CONTACT: David Konczal, Office of General Counsel, at *David.Konczal@fcc.gov* or (202) 418–1700.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order in GN Docket No. 21–16; FCC 21–17, adopted on January 13, 2021, and released on January 14, 2021. The complete text of this document can be located on the FCC website at *https://docs.fcc.gov/public/attachments/FCC-21-17A1.pdf.*

Synopsis

1. By this Order, we amend parts 0 and 1 of the Commission's rules to codify a uniformly applicable standard for the exercise of delegated authority by various Bureaus and Offices to dismiss Applications for Review that do not comply with the procedural requirements of 47 CFR 1.115(a), (b), (d), or (f). Our current rules delegating authority to the various Bureaus and Offices are inconsistent on this issue. The rules delegating authority to certain Bureaus and Offices provide them with authority to dismiss procedurally defective Applications for Review.[1] The rules delegating authority to the other

[1] *See* 47 CFR 0.271(c), 0.331(c), 0.261(b)(3).

Bureaus and Offices do not expressly provide this authority.[2]

2. To remove this inconsistency, we hereby amend our rules to delegate authority to various Bureaus and Offices to dismiss any Application for Review that does not contain any statement required under 47 CFR 1.115(a) or (b),[3] or does not comply with the filing requirements of 47 CFR 1.115(d) or (f). We conclude that this action will eliminate confusion on this issue for the benefit of parties seeking Commission review of staff actions and parties opposing such challenges. In addition, this action will aid in the expeditious dismissal of procedurally defective Applications for Review. These amendments to the rules will apply to all Applications for Review filed on or after the effective date of the amendments set forth below.

3. We also take this opportunity to correct a typographical error in the rules describing the functions of the Wireline Competition Bureau. As codified, § 0.91(m) specifies that one of the functions of the Wireline Competition Bureau is to ''[c]arry out the functions of the Commission under the Communications Act of 1934, as amended, except as reserved to the Commission under § 0.331.'' [4] The reference to § 0.331 is an error, as that is the provision of our rules that delegates authority to the Wireless Telecommunications Bureau. Instead the limitation should refer to § 0.291 of our rules, which delegates authority to the Wireline Competition Bureau.

4. We hereby amend § 0.91 to correct that typographical error. We conclude that this action will eliminate confusion on this issue for the benefit of parties seeking to determine the scope of authority delegated to the Wireline Competition Bureau.

5. Finally, we make a minor correction to § 0.392(j) of the delegated authority rules for the Public Safety and Homeland Security Bureau, which states that the chief of that bureau has authority to administer the 911 communications reliability and redundancy rules and policies ''contained in part 12 of this chapter.'' The reference to part 12 is no longer correct because in 2019, the Commission moved the part 12 rules to part 9 as part of its general consolidation of 911 rules in the *Kari's Law/RAY BAUM'S Act* proceeding.[5] Therefore, we amend § 0.392(j) to replace the references to ''part 12'' with ''part 9.''

6. *No Notice and Comment Required.* We have determined that the changes we adopt here are rules of agency organization, procedure, or practice, and are therefore exempt from the notice and comment requirements of the Administrative Procedure Act, 5 U.S.C. 553(b)(A).

7. *Regulatory Flexibility Act, Paperwork Reduction Act, and Congressional Review Act.* Section 603 of the Regulatory Flexibility Act, as amended, 5 U.S.C. 603(a), requires a regulatory flexibility analysis in notice and comment rulemaking proceedings. As we are adopting these rules without notice and comment, no regulatory flexibility analysis is required. This document does not contain any new or modified information collection(s) subject to the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. In addition, therefore, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, 44 U.S.C. 3506(c)(4). The Commission will not send a copy of this Order pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A), because the adopted rules are rules of agency organization, procedure, or practice that do not ''substantially affect the rights or obligations of non-agency parties,'' 5 U.S.C. 804(3)(C).

8. Accordingly, *it is ordered* that pursuant to sections 4(i), 4(j), and 5 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 155, and 47 CFR 0.201(d), this *order* is hereby *adopted* and the rules set forth below are hereby *amended* effective 30 days after publication in the **Federal Register**.

List of Subjects

47 CFR Part 0

Authority delegations, Organization and functions.

47 CFR Part 1

Administrative practice and procedure, Penalties.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 0 and 1 as follows:

PART 0—COMMISSION ORGANIZATION

■ 1. The authority citation for part 0 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, and 409, unless otherwise noted.

■ 2. Amend § 0.91 by revising paragraph (m) to read as follows:

§ 0.91 Functions of the Bureau.

* * * * *

(m) Carry out the functions of the Commission under the Communications Act of 1934, as amended, except as reserved to the Commission under § 0.291.

* * * * *

■ 3. Amend § 0.212 by revising paragraph (b)(3) to read as follows:

§ 0.212 Board of Commissioners.

* * * * *

(b) * * *

(3) Applications for review of actions taken pursuant to delegated authority, except that the Board may dismiss any such application that does not contain any statement required under § 1.115(a) or (b) of this chapter, or does not comply with the filing requirements of § 1.115(d) or (f) of this chapter.

* * * * *

■ 4. Amend § 0.241 by revising paragraphs (a) introductory text and (a)(2) to read as follows:

§ 0.241 Authority delegated.

(a) The performance of functions and activities described in § 0.31 is delegated to the Chief of the Office of Engineering and Technology: Provided that the following matters shall be referred to the Commission en banc for disposition:

* * * * *

(2) Applications for review of actions taken pursuant to delegated authority, except that the Chief of the Office of Engineering and Technology may dismiss any such application that does not contain any statement required under § 1.115(a) or (b) of this chapter, or does not comply with the filing requirements of § 1.115(d) or (f) of this chapter.

* * * * *

[2] *See* 47 CFR 0.212(b)(3), 0.241(a)(2), 0.283(b), 0.291(d), 0.311(a)(2), 0.361(b), 0.392(b).

[3] The Bureaus' authority extends to those applications where such statements are missing entirely.

[4] 47 CFR 0.91(m).

[5] *Implementing Kari's Law and Section 506 of RAY BAUM'S Act; Inquiry Concerning 911 Access, Routing, and Location in Enterprise Communications Systems; Amending the Definition of Interconnected VoIP Service in Section 9.3 of the Commission's Rules,* Report and Order, 84 FR 66716 (Dec. 5, 2019), 34 FCC Rcd 6607 (2019). The former part 12 rules are now contained in 47 CFR part 9.

■ 5. Amend § 0.261 by revising paragraph (b)(3) to read as follows:

§ 0.261 Authority delegated.

* * * * *

(b) * * *

(3) To act upon any application for review of actions taken by the Chief, International Bureau, pursuant to delegated authority, except that the Chief of the International Bureau may dismiss any such application that does not contain any statement required under § 1.115(a) or (b) of this chapter, or does not comply with the filing requirements of § 1.115(d) or (f) of this chapter;

* * * * *

■ 6. Amend § 0.271 by revising paragraph (c) to read as follows:

§ 0.271 Authority delegated.

* * * * *

(c) The Chief, Office of Economics and Analytics, shall not have authority to act on any applications for review of actions taken by the Chief of the Office of Economics and Analytics pursuant to delegated authority, except that the Chief may dismiss any such application that does not contain any statement required under § 1.115(a) or (b) of this chapter, or does not comply with the filing requirements of § 1.115(d) or (f) of this chapter.

* * * * *

■ 7. Amend § 0.283 by revising paragraph (b) to read as follows:

§ 0.283 Authority delegated.

* * * * *

(b) Application for review of actions taken pursuant to delegated authority, except that the Chief of the Media Bureau may dismiss any such application that does not contain any statement required under § 1.115(a) or (b) of this chapter, or does not comply with the filing requirements of § 1.115(d) or (f) of this chapter.

* * * * *

■ 8. Amend § 0.291 by revising paragraph (d) to read as follows:

§ 0.291 Authority delegated.

* * * * *

(d) *Authority concerning applications for review.* The Chief, Wireline Competition Bureau, shall not have authority to act upon any applications for review of actions taken by the Chief, Wireline Competition Bureau, pursuant to any delegated authority, except that the Chief of the Wireline Competition Bureau may dismiss any such application that does not contain any statement required under § 1.115(a) or (b) of this chapter, or does not comply with the filing requirements of § 1.115(d) or (f) of this chapter.

* * * * *

■ 9. Amend § 0.311 by revising paragraph (a)(2) to read as follows:

§ 0.311 Authority delegated.

* * * * *

(a) * * *

(2) Applications for review of actions taken pursuant to delegated authority, except that the Chief of the Enforcement Bureau may dismiss any such application that does not contain any statement required under § 1.115(a) or (b) of this chapter, or does not comply with the filing requirements of § 1.115(d) or (f) of this chapter.

* * * * *

■ 10. Amend § 0.331 by revising paragraph (c) to read as follows:

§ 0.331 Authority delegated.

* * * * *

(c) *Authority concerning applications for review.* The Chief, Wireless Telecommunications Bureau, shall not have authority to act upon any applications for review of actions taken by the Chief of the Wireless Telecommunications Bureau pursuant to any delegated authority, except that the Chief may dismiss any such application that does not contain any statement required under § 1.115(a) or (b) of this chapter, or does not comply with the filing requirements of § 1.115 (d) or (f) of this chapter.

* * * * *

■ 11. Amend § 0.361 by revising paragraph (b) to read as follows:

§ 0.361 Authority delegated.

* * * * *

(b) Application for review of actions taken pursuant to delegated authority, except that the Chief of Consumer and Governmental Affairs Bureau may dismiss any such application that does not contain any statement required under § 1.115(a) or (b) of this chapter, or does not comply with the filing requirements of § 1.115(d) or (f) of this chapter.

* * * * *

■ 12. Amend § 0.392 by revising paragraphs (b) and (j) to read as follows:

§ 0.392 Authority delegated.

* * * * *

(b) The Public Safety and Homeland Security Bureau shall not have authority to act upon any applications for review of actions taken by the Chief, Public Safety and Homeland Security Bureau, pursuant to any delegated authority, except that the Chief of the Public Safety and Homeland Security Bureau may dismiss any such application that does not contain any statement required under § 1.115(a) or (b) of this chapter, or does not comply with the filing requirements of § 1.115(d) or (f) of this chapter.

* * * * *

(j) The Chief of the Public Safety and Homeland Security Bureau is delegated authority to administer the communications reliability and redundancy rules and policies contained in part 9, subpart H, of this chapter, develop and revise forms and procedures as may be required for the administration of part 9, subpart H, of this chapter, review certifications filed in connection therewith, and order remedial action on a case-by-case basis to ensure the reliability of 911 service in accordance with such rules and policies.

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461 note, unless otherwise noted.

■ 14. Amend § 1.104 by:

■ a. Revising paragraph (b); and

■ b. Removing the note following paragraph (d) and the parenthetical authority citation at the end of the section.

The revision reads as follows:

§ 1.104 Preserving the right of review; deferred consideration of application for review.

* * * * *

(b) Any person desiring Commission consideration of a final action taken pursuant to delegated authority shall file either a petition for reconsideration or an application for review (but not both) within 30 days from the date of public notice of such action, as that date is defined in § 1.4(b). The petition for reconsideration will be acted on by the designated authority or referred by such authority to the Commission: Provided that a petition for reconsideration of an order designating a matter for hearing will in all cases be referred to the Commission. The application for review will be acted upon by the Commission, except in those cases where a Bureau or Office has been delegated authority to dismiss an application for review.

* * * * *

[FR Doc. 2021–03699 Filed 3–3–21; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 180117042–8884–02; RTID 0648–XA819]

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

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

ACTION: Temporary rule.

SUMMARY: NMFS closes the southern area Angling category fishery for large medium and giant (''trophy'' (*i.e.,* measuring 73 inches (185 cm) curved fork length or greater)) Atlantic bluefin tuna (BFT). This action is being taken to prevent further overharvest of the Angling category southern area trophy BFT subquota.

DATES: Effective 11:30 p.m., local time, March 1, 2021, through December 31, 2021.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin, *sarah.mclaughlin@noaa.gov,* 978–281–9260, Nicholas Velseboer, *nicholas.velseboer@noaa.gov,* 978–675–2168, or Larry Redd, Jr., *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) among the various domestic fishing categories, per the allocations established in the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP) (71 FR 58058, October 2, 2006) and amendments, and in accordance with implementing regulations.

Under § 635.28(a)(1), NMFS files a closure notice with the Office of the Federal Register for publication when a BFT quota (or subquota) is reached or is projected to be reached. Retaining, possessing, or landing BFT under that quota category is prohibited on and after the effective date and time of a closure notice for that category, for the remainder of the fishing year, until the opening of the subsequent quota period or until such date as specified.

Angling Category Large Medium and Giant Southern ''Trophy'' Fishery Closure

The 2021 BFT fishing year, which is managed on a calendar-year basis and subject to an annual calendar-year quota, began January 1, 2021. The Angling category season opened January 1, 2021, and continues through December 31, 2021. The currently codified Angling category quota is 232.4 metric tons (mt), of which 5.3 mt is allocated for the harvest of large medium and giant (trophy) BFT by vessels fishing under the Angling category quota, with 1.8 mt allocated for each of the following areas: North of 39°18′ N lat. (off Great Egg Inlet, NJ); south of 39°18′ N lat. and outside the Gulf of Mexico (the ''southern area''); and in the Gulf of Mexico. Trophy BFT measure 73 inches (185 cm) curved fork length or greater.

Based on reported landings from the NMFS Automated Catch Reporting System and the North Carolina Tagging Program, NMFS has determined that the codified Angling category southern area trophy BFT subquota of 1.8 mt has been reached and exceeded and that a closure of the southern area trophy BFT fishery is warranted. Therefore, retaining, possessing, or landing large medium or giant BFT south of 39°18′ N lat. and outside the Gulf of Mexico by persons aboard vessels permitted in the HMS Angling category and the HMS Charter/Headboat category (when fishing recreationally) must cease at 11:30 p.m. local time on March 1, 2021. This closure will remain effective through December 31, 2021. This action is intended to prevent further overharvest of the Angling category southern area trophy BFT subquota, and is taken consistent with the regulations at § 635.28(a)(1).

If needed, subsequent Angling category adjustments will be published in the **Federal Register**. Information regarding the Angling category fishery for Atlantic tunas, including daily retention limits for BFT measuring 27 inches (68.5 cm) to less than 73 inches (185 cm) and any further Angling category adjustments, is available at *hmspermits.noaa.gov* or by calling (978) 281–9260. HMS Angling and HMS Charter/Headboat category permit holders may catch and release (or tag and release) BFT of all sizes, subject to the requirements of the catch-and-release and tag-and-release programs at § 635.26. Anglers are also reminded that all BFT that are released must be handled in a manner that will maximize survival, and without removing the fish from the water, consistent with requirements at § 635.21(a)(1). For additional information on safe handling, see the ''Careful Catch and Release'' brochure available at *https://www.fisheries.noaa.gov/resource/outreach-and-education/careful-catch-and-release-brochure/.*

HMS Charter/Headboat and Angling 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,* using the HMS Catch Reporting app, or calling (888) 872–8862 (Monday through Friday from 8 a.m. until 4:30 p.m.).

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 retention limit adjustments and fishery closures 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. The closure of the southern area Angling category trophy fishery is necessary to prevent any further overharvest of the southern area trophy fishery subquota. NMFS provides notification of closures by publishing the notice in the **Federal Register**, emailing individuals who have subscribed to the Atlantic HMS News electronic newsletter, and updating the information posted on the Atlantic Tunas Information Line and on *hmspermits.noaa.gov.*

These fisheries are currently underway and delaying this action would be contrary to the public interest as it could result in excessive trophy BFT landings that may result in future potential quota reductions for the Angling category, depending on the magnitude of a potential Angling category overharvest. NMFS must close the southern area trophy BFT fishery before additional landings of these sizes of BFT occur. Therefore, the AA finds

good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. 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: March 1, 2021.

Jennifer M. Wallace,

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

[FR Doc. 2021–04480 Filed 3–1–21; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 86, No. 41
Thursday, March 4, 2021

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0106; Project Identifier AD–2020–00708–R]

RIN 2120–AA64

Airworthiness Directives; Sikorsky Aircraft Corporation Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for Sikorsky Aircraft Corporation (Sikorsky) Model S–92A helicopters. This proposed AD was prompted by an incident of a side facing utility seat detaching from wall attachment points. This proposed AD would require modifying certain side facing utility seats and observer seats. This proposed AD would also prohibit installing those seats unless the modification has been accomplished. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by April 19, 2021.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact your local Sikorsky Field Representative or Sikorsky's Service Engineering Group at Sikorsky Aircraft Corporation, Mailstop K100, 124 Quarry Road, Trumbull, CT 06611; telephone 1–800–946–4337 (1–800–Winged–S); email *wcs_cust_service_eng.gr-sik@lmco.com*. Operators may also log on to the Sikorsky 360 website at *https://www.sikorsky360.com*. You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0106; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Dorie Resnik, Aerospace Engineer, Aviation Safety Section, Boston ACO Branch, FAA, 1200 District Ave., Burlington, MA 01803; phone: (781) 238–7693; email: *dorie.resnik@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2021–0106; Project Identifier AD–2020–00708–R'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *https://www.regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Dorie Resnik, Aerospace Engineer, Aviation Safety Section, Boston ACO Branch, FAA, 1200 District Ave., Burlington, MA 01803; phone: (781) 238–7693; email: *dorie.resnik@faa.gov*. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA proposes to adopt a new AD for Sikorsky Model S–92A helicopters with certain Martin-Baker side facing utility seats and observer seats installed. This proposed AD was prompted by an incident of a side facing utility seat detaching from wall attachment points during dynamic testing. The root cause has been identified as a change in the finishing process of the main back tube. Due to design similarity, certain observer seats are also subject to this unsafe condition.

Accordingly, this proposed AD would require replacing the main back tube assembly in affected side facing utility seats and observer seats. This proposed AD would also prohibit installing those seats unless the main back tube assembly has been replaced. This condition, if not addressed, could result in increased surface friction in the direction of the seat attenuation, failure of proper utility seat attenuation during a crash event, excessive lumbar loads in an observer seat during a crash event, and subsequent excessive or fatal occupant injury.

FAA's Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Martin-Baker Special Information Leaflet (SIL) No. 831, dated July 10, 2019 (SIL 831), for side facing utility seat supplier part number (P/N) MBCS12410AA001, and Martin-Baker SIL No. 833, dated July 11, 2019 (SIL 833), for observer seat supplier P/N MBCS12200 and MBCS7301–2. This service information specifies procedures for disassembling the seat, inspecting components, replacing the main back tube assembly (tube assembly, back main), and reassembling, testing, and marking the seat. SIL 831 and SIL 833 are attached to Sikorsky S–92A Helicopter Alert Service Bulletin 92–25–026, dated March 5, 2020 (ASB 92–25–026).

The FAA also reviewed ASB 92–25–026, which specifies procedures for preparing the helicopter for replacing the main back tube assembly by following SIL 831 or SIL 833, as applicable to your seat. This service information specifies removing existing placards, complying with the applicable SIL, reinstalling the removed placards, inspecting for foreign object debris (FOD), and cleaning.

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 **ADDRESSES**.

Proposed AD Requirements in This NPRM

This proposed AD would require, within 125 hours time-in-service (TIS) or six months after the effective date of this AD, whichever occurs first, removing certain placards, accomplishing the actions specified in SIL 831 or SIL 833 already described, and reinstalling the previously removed placards.

Differences Between This Proposed AD and the Service Information

ASB 92–25–026 specifies a compliance time of no later than March 5, 2021; where this proposed AD specifies a compliance time of within 125 hours TIS or six months after the effective date of this AD, whichever occurs first. ASB 92–25–026 specifies inspecting for FOD and cleaning; whereas this proposed AD does not. SIL 831 and SIL 833 specify destroying and disposing removed main back tube assemblies and discarding removed split pins and tie down straps; whereas this proposed AD would require removing those parts from service instead. The service information specifies recording compliance; whereas this proposed AD does not.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 9 helicopters of U.S. Registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this proposed AD.

Replacing a main back tube assembly would take about 2 work-hours and parts would cost about $11,217, for an estimated cost of about $11,387 per seat. Each helicopter could have up to 19 affected seats, which would take up to 38 work-hours and parts would cost up to about $213,123, for an estimated cost of up to about $216,353 per helicopter and $1,947,177 for the U.S. fleet.

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected operators.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Sikorsky Aircraft Corporation: Docket No. FAA–2021–0106; Project Identifier AD–2020–00708–R.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by April 19, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Sikorsky Aircraft Corporation Model S–92A helicopters, certificated in any category, with the following installed:

(1) A Martin-Baker side facing utility seat supplier part number (P/N) MBCS12410AA001 with a serial number (S/N) identified in Table 2 of Martin-Baker Special Information Leaflet (SIL) No. 831, dated July 10, 2019 (SIL 831), that is not marked with ''SIL831 incorporated;'' or

(2) A Martin-Baker observer seat supplier P/N MBCS12200 or MBCS7301–2 with an S/N identified in Table 2 of Martin-Baker SIL No. 833, dated July 11, 2019 (SIL 833), that is not marked with ''SIL833 incorporated.''

Note 1 to paragraph (c): SIL 831 and SIL 833 are attached to Sikorsky S–92A Helicopter Alert Service Bulletin 92–25–026, dated March 5, 2020 (ASB 92–25–026).

Note 2 to paragraph (c): Section 3., the Accomplishment Instructions, Tables 1 and 2 of ASB 92–25–026, specify cross references

of Martin-Baker supplier P/Ns with Sikorsky P/Ns and kit P/Ns.

Note 3 to paragraph (c): The marking ''SIL831 incorporated'' or ''SIL833 incorporated,'' as applicable, could be located adjacent to identification labels on the underside of the sitting platform assembly P/N MBCS4111.

(d) Subject

Joint Aircraft System Component (JASC) Code: 2500, Cabin Equipment/Furnishings; and 2520, Passenger Compartment Equipment.

(e) Unsafe Condition

This AD was prompted by an incident of a side facing utility seat detaching from wall attachment points during dynamic testing. The FAA is issuing this AD to detect and address a main back tube, a component of the main back tube assembly, which does not meet design requirements. The unsafe condition, if not addressed, could result in increased surface friction in the direction of the seat attenuation, failure of proper utility seat attenuation during a crash event, excessive lumbar loads in an observer seat during a crash event, and subsequent excessive or fatal occupant injury.

(f) Compliance

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

(g) Required Actions

(1) Within 125 hours time-in-service or six months after the effective date of this AD, whichever occurs first, replace each main back tube assembly by following Section 3., Accomplishment Instructions, paragraphs C. through E., of ASB 92–25–026; except where the service information referenced in ASB 92–25–026 specifies destroying and disposing of parts or discarding parts, this AD requires removing those parts from service instead.

Note 4 to paragraph (g)(1): SIL 831 and SIL 833, referred to in ASB 92–25–026, refer to main back tube assembly as tube assembly, back main.

(2) As of the effective date of this AD, do not install a Martin-Baker side facing utility seat identified in paragraph (c)(1) of this AD or a Martin-Baker observer seat identified in paragraph (c)(2) of this AD unless the actions in paragraph (g)(1) have been accomplished.

(h) Alternative Methods of Compliance (AMOCs)

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

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

(i) Related Information

(1) For more information about this AD, contact Dorie Resnik, Aerospace Engineer, Aviation Safety Section, Boston ACO Branch, FAA, 1200 District Ave., Burlington, MA 01803; phone: (781) 238–7693; email: *dorie.resnik@faa.gov*.

(2) For service information identified in this AD, contact your local Sikorsky Field Representative or Sikorsky's Service Engineering Group at Sikorsky Aircraft Corporation, Mailstop K100, 124 Quarry Road, Trumbull, CT 06611; telephone 1–800–946–4337 (1–800–Winged–S); email *wcs_cust_service_eng.gr-sik@lmco.com*. Operators may also log on to the Sikorsky 360 website at *https://www.sikorsky360.com*. You may view this referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

Issued on February 19, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–03950 Filed 3–3–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2020–1053; Airspace Docket No. 20–ANM–32]

RIN 2120–AA66

Proposed Amendment of Restricted Area R–7001C and Establishment of Restricted Areas R–7001D, R–7002A, R–7002B, and R–7002C; Guernsey, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend restricted area R–7001C and establish three restricted areas, R–7001D, R–7002A, R–7002B, and R–7002C at Guernsey, WY. The Wyoming Army National Guard (WYARNG) requested the establishment of the new restricted areas to support its air-to-ground firing from helicopters and longer range artillery training. This additional airspace allows for the segregation of hazardous activities from non-participating air traffic. The FAA is also proposing to amend R–7001C to correct an inadvertent error to ensure proper vertical separation.

DATES: Comments must be received on or before April 19, 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 20590–0001; telephone: 1 (800) 647–5527, or (202) 366–9826. You must identify FAA Docket Number FAA–2020–0153; Airspace Docket No. 20–ANM–32 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Christopher McMullin, 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 (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 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 amend and establish restricted area airspace at Guernsey, WY, to contain activities deemed hazardous to nonparticipating aircraft.

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 Number FAA–2020–0153; Airspace Docket No. 20–ANM–32) 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 FAA–2020–0153; Airspace Docket No. 20–ANM–32.'' 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 NPRM's

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 Western Service Center, Operations Support Group, Federal Aviation Administration, 2200 South 216th St., Des Moines, WA 98198.

Background

In a final rule published on February 14, 1962, the FAA established restricted area R–7001 (27 FR 1355) at Guernsey, WY, in order to provide special use airspace for the hazardous artillery firing conducted by Army National Guard (Army) units during its annual summer training periods. Since R–7001 was established, the Army's activities and technologies have changed, requiring amendments to R–7001 and the establishment of new restricted areas to ensure non-participating aircraft are protected from hazardous activity in the National Airspace System (NAS). Currently, the restricted areas at Guernsey, WY, are designated as R–7001A, R–7001B, and R–7001C. In August 1979, the FAA divided R–7001 vertically into R–7001A and R–7001B (44 FR 34114; June 14, 1979) to provide greater flexibility for military training and divide the airspace vertically to allow non-participating aircraft access to unused portions of the airspace, when not in use. The FAA established R–7001C in February 1985 (50 FR 6156; February 14, 1985) to protect the NAS from the high angle fire of various weapons and permit maximum firing capability of these weapons.

In order to address the advances in weapons systems capabilities and provide the United States Army the ability to conduct longer range artillery training, several Controlled Firing Areas (CFA) were established for use in the same location as R–7002A, R–7002 B, and R–7002C. The current configuration of restricted areas and CFAs can no longer support the full capability of the artillery in part, due to the operational limitations of the CFAs. Camp Guernsey Joint Training Center hosts several exercises throughout the year. During these exercises, 155mm artillery, M270 Multiple Launch Rocket System (MLRS), and M142 High Mobility Artillery Rocket System (HIMARS) are fired. Additionally, Guernsey, WY is the closest restricted area complex to F.E. Warren Air Force Base, WY. The development of these new restricted areas would accommodate the United States Air Force's activities and provide for its ability to train locally for air-to-ground firing from helicopters, and the associated Weapon Danger Zones (WDZ).

Finally, while conducting the evaluation of the restricted areas at Guernsey, WY, the FAA noted that R–7001B and R–7001C were inadvertently overlapping airspace. The ceiling of R–7001B stops at 23,500 feet mean sea level (MSL) and the floor of R–7001C starts at 23,500 feet MSL. This is an error and the proposed amendment would provide the necessary vertical separation between the two restricted airspace areas.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 73 to amend restricted area R–7001C and establish R–7001D, R–7002A, R–7002B, and R–7002C at Guernsey, WY. The FAA is proposing this action at the request of the WYARNG activities and due to correct an inadvertent error. Full legal descriptions are in the ''The Proposed Amendment'' section of this NPRM.

The proposed restricted areas are described below.

R–7001C: R–7001C would retain the current boundaries, but the floor of the restricted area would begin at 23,501 feet MSL. No other changes would be made to the legal description.

R–7001D: R–7001D would be established above R–7001C and would have the same boundaries as the existing restricted area. The altitudes would be from 30,001 to 45,000 feet MSL. Operations would be limited to 20 days a year.

R–7002A: R–7002A would be established north of, and sharing its southern boundary with R–7001A, R–7001B, and R–7001C. The altitudes would be from the surface to 23,500 feet MSL. Operations would be limited to 20 days a year.

R–7002B: R–7002B would be established on the southeast border, and sharing its northern boundary with R–7001A, R–7001B, and R–7001C. The altitudes would be from the surface to 23,500 feet MSL. Operations would be limited to 20 days a year.

R–7002C: R–7002C would be established west of, and sharing its eastern border with R–7001A, R–7001B, and R–7001C. The altitudes would be from the surface to 23,500 feet MSL. Operations would be limited to 20 days a year.

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 73

Airspace, Prohibited areas, Restricted areas.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

■ 1. The authority citation for part 73 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.

§ 73.70 Wyoming [Amended]

■ 2. § 73.70 is amended as follows:

* * * * *

R–7001C Guernsey, WY [Amended]

Boundaries: Beginning at lat. 42°27′30″ N, long. 104°52′32″ W; to lat. 42°27′30″ N, long. 104°42′32″ W; to lat. 42°22′30″ N, long. 104°42′32″ W; to lat. 42°20′00″ N, long. 104°52′32″ W; to the point of beginning.

Designated altitudes: 23,501 feet MSL to 30,000 feet MSL.

Time of designation: Intermittent, 24 hours in advance by NOTAM.

Controlling agency: FAA, Denver ARTCC.

Using agency: Adjutant General, State of Wyoming.

R–7001D Guernsey, WY [New]

Boundaries: Beginning at lat. 42°27′30″ N, long. 104°52′32″ W; to lat. 42°27′30″ N, long. 104°42′32″ W; to lat. 42°22′30″ N, long. 104°42′32″ W; to lat. 42°20′00″ N, long. 104°52′32″ W; to the point of beginning.

Designated Altitudes: 30,001 feet MSL to 45,000 feet MSL.

Time of Designation: By NOTAM, at least 24 hours in advance.

Controlling Agency: FAA, Denver ARTCC.

Using Agency: Adjutant General, State of Wyoming.

R–7002A Guernsey, WY [New]

Boundaries: Beginning at lat. 42°27′55″ N, long. 104°52′33″ W; to lat. 42°27′55″ N, long. 104°51′46″ W; to lat. 42°28′21″ N, long. 104°51′45″ W; to lat. 42°28′21″ N, long. 104°48′46″ W; to lat. 42°27′56″ N, long. 104°48′46″ W; to lat. 42°27′55″ N, long. 104°47′28″ W; to lat. 42°27′30″ N, long. 104°46′43″ W; to lat. 42°27′30″ N, long. 104°52′32″ W; to the point of beginning.

Designated Altitudes: Surface to 23,500 feet MSL.

Time of Designation: By NOTAM, at least 24 hours in advance.

Controlling Agency: FAA, Denver ARTCC.

Using Agency: Adjutant General, State of Wyoming.

R–7002B Guernsey, WY [New]

Boundaries: Beginning at lat. 42°22′24″ N, long. 104°42′54″ W; to lat. 42°21′41″ N, long. 104°42′52″ W; to lat. 42°21′11″ N, long. 04°43′17″ W; to lat. 42°21′12″ N, long. 104°47′16″ W; to lat. 42°21′19″ N, long. 104°47′16″ W; to the point of beginning.

Designated Altitudes: Surface to 23,500 feet MSL.

Time of Designation: By NOTAM, at least 24 hours in advance.

Controlling Agency: FAA, Denver ARTCC.

Using Agency: Adjutant General, State of Wyoming.

R–7002C Guernsey, WY [New]

Boundaries: Beginning at lat. 42°27′03″ N; long. 104°53′54″ W; to lat. 42°27′03″ N; long. 104°52′32″ W; to lat. 42°20′00″ N; long. 104°52′32″ W; to lat. 42°20′18″ N; long. 104°51′19″ W; to lat. 42°19′42″ N; long. 104°51′17″ W; to lat. 42°19′43″ N; long. 104°53′03″ W; to lat. 42°20′49″ N; long. 104°54′38″ W; to lat. 42°22′43″ N; long. 104°54′38″ W; to lat. 42°22′48″ N; long. 104°53′22″ W; to lat. 42°23′39″ N; long. 104°53′23″ W; to lat. 42°23′40″ N; long. 104°53′58″ W; to the point of beginning; excluding that airspace 500 feet AGL and below ¼ mile either side of the BNSF railroad.

Designated Altitudes: Surface to 23,500 feet MSL.

Time of Designation: By NOTAM, at least 24 hours in advance.

Controlling Agency: FAA, Denver ARTCC.

Using Agency: Adjutant General, State of Wyoming.

* * * * *

Issued in Washington, DC, on January 11, 2021.

George Gonzalez,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2021–00748 Filed 3–3–21; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2020–0500; FRL–10018–04—Region 4]

Air Plan Approval; KY; Removal of Asbestos Requirements From Jefferson County Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to correct the erroneous incorporation of asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP) requirements into the Jefferson County portion of the Kentucky State Implementation Plan (SIP). The continued presence of the asbestos requirements in the Jefferson County portion of the Kentucky SIP is inappropriate and potentially confusing and thus problematic for affected sources, the Commonwealth, local agencies, and EPA. EPA is proposing to remove the asbestos requirements because these requirements are not related to the attainment and maintenance of the national ambient air quality standards (NAAQS) and are therefore unrelated to the Clean Air Act (CAA or ''Act'') requirements for SIPs.

DATES: Comments must be received on or before April 5, 2021.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2020–0500 at *www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. 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. 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 *www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Brad Akers, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9089. Mr. Akers can also be reached via electronic mail at *akers.brad@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 110 of the CAA requires states to develop and submit to EPA a SIP to ensure that state air quality meets the NAAQS. These ambient air quality standards currently address six criteria pollutants: Carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide. Each federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin through air pollution regulations and control strategies. EPA-approved SIP regulations and control strategies are federally enforceable.

On October 23, 2001 (66 FR 53658), EPA approved revisions to the Jefferson County portion of the Kentucky SIP,[1]

[1] In 2003, the City of Louisville and Jefferson County governments merged and the ''Jefferson

which included miscellaneous rule revisions and the recodification of Air Pollution Control District (APCD) of Jefferson County regulations. These revisions were submitted to EPA on May 21, 1999, by the Commonwealth of Kentucky on behalf of Jefferson County. Among these revisions were requirements for permitting the demolition and renovation of facilities with asbestos, in accordance with 40 CFR part 61, subpart M, ''*National Emission Standard for Asbestos.*'' The asbestos requirements were adopted by Jefferson County in paragraphs 1.3, 5.3, and 5.6 of Regulation 2.03 ''*Permit Requirements, Non-Title V Construction and Operating Permits and Demolition/Renovation Permits,*'' and this regulation was part of the recodified rules included in the May 21, 1999 submittal. In the October 23, 2001, final rule, EPA inadvertently incorporated the asbestos requirements in Regulation 2.03 ''*Permit Requirements, Non-Title V Construction and Operating Permits and Demolition/Renovation Permits*'' into the Jefferson County portion of the Kentucky SIP. The version of the rules incorporated into the SIP were effective in Jefferson County on December 15, 1993.

Section 110(k)(6) of the CAA provides EPA with the authority to make corrections to prior SIP actions that are subsequently found to be in error in the same manner as the prior action, and to do so without requiring any further submission from the State.[2] While section 110(k)(6) provides EPA with the authority to correct its own ''error,'' nowhere does this provision or any other provision in the CAA define what qualifies as ''error.'' Thus, EPA believes that the term should be given its plain language, everyday meaning, which includes all unintentional, incorrect or wrong actions or mistakes.

The May 21, 1999, submission contained changes to Regulation 2.03 ''*Permit Requirements, Non-Title V Construction and Operating Permits and Demolition/Renovation Permits*'' that contain asbestos requirements in paragraphs 1.3, 5.3 and 5.6. EPA's October 23, 2001, approval of these requirements into the Jefferson County portion of the Kentucky SIP was in error. These paragraphs are appropriate for state and local agencies to adopt and implement, but it is not necessary or appropriate to incorporate them into the applicable SIP because asbestos requirements are not related to the attainment and maintenance of the NAAQS. EPA is therefore proposing to remove these paragraphs from the SIP.

II. Incorporation by Reference

In this document, EPA is proposing to amend regulatory text that includes incorporation by reference. Specifically, EPA is proposing to remove sections 1.3, 5.3, and 5.6 (asbestos requirements) of Regulation 2.03 ''*Permit Requirements, Non-Title V Construction and Operating Permits and Demolition/Renovation Permits*'' from the Jefferson County portion of the Kentucky SIP, which is incorporated by reference in accordance with requirements of 1 CFR 51.5. The remainder of Regulation 2.03 ''*Permit Requirements, Non-Title V Construction and Operating Permits and Demolition/Renovation Permits*'' will remain incorporated in the Jefferson County portion of the Kentucky SIP. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 4 office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

III. Proposed Action

EPA is proposing to remove paragraphs 1.3, 5.3, and 5.6 of APCD Regulation 2.03 ''*Permit Requirements, Non-Title V Construction and Operating Permits and Demolition/Renovation Permits*'' from the Jefferson County portion of the SIP because they are not related to the attainment and maintenance of the NAAQS.

IV. 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. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This proposed action merely corrects errors in a previous rulemaking approving a SIP submission 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);
- 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 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 as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Particulate matter, Reporting

County Air Pollution Control District'' was renamed the ''Louisville Metro Air Pollution Control District.'' *See* The History of Air Pollution Control in Louisville, available at *https://louisvilleky.gov/government/air-pollution-control-district/history-air-pollution-control-louisville.* However, each of the regulations in the Jefferson County portion of the Kentucky SIP still has the subheading ''Air Pollution Control District of Jefferson County.'' Thus, to be consistent with the terminology used in the SIP, EPA refers throughout this notice to regulations contained in the Jefferson County portion of the Kentucky SIP as the ''Jefferson County'' regulations.

[2] Section 110(k)(6) states that ''Whenever the Administrator determines that the Administrator's action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification, or reclassification was in error, the Administrator may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the State. Such determination and the basis thereof shall be provided to the State and public.''

and recordkeeping requirements and Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: February 23, 2021.

John Blevins,

Acting Regional Administrator, Region 4.

[FR Doc. 2021–04060 Filed 3–3–21; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 73

[AU Docket No. 21–39; DA 21–131; FR ID 17492]

Auction of AM and FM Broadcast Construction Permits Scheduled for July 27, 2021; Comment Sought on Competitive Bidding Procedures for Auction 109

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; proposed auction procedures.

SUMMARY: The Office of Economics and Analytics (OEA), in conjunction with the Media Bureau (MB), announces an auction of certain AM and FM broadcast construction permits. This document seeks comment on minimum opening bid amounts and the procedures to be used in Auction 109.

DATES: Comments are due on or before March 15, 2021, and reply comments are due on or before March 22, 2021. Bidding in this auction is scheduled to begin July 27, 2021.

ADDRESSES: Interested parties may file comments or reply comments in AU Docket No. 21–39. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. All filings in response to the *Auction 109 Comment Public Notice* must refer to AU Docket No. 21–39. The Commission strongly encourages interested parties to file comments electronically.

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS at *https://www.fcc.gov/ecfs/.* Follow the instructions for submitting comments.
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.
- Filings in response to the Auction 109 Comment Public Notice can be sent by commercial courier or by the U.S. Postal Service. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Commercial deliveries (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Dr., Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, or Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.
- Until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals and to mitigate the transmission of COVID–19.
- *Email:* OMB and MB also request that a copy of all comments and reply comments be submitted electronically to the following address: *auction109@fcc.gov.*

FOR FURTHER INFORMATION CONTACT:

Auction legal questions: Lynne Milne or Lyndsey Grunewald at 202–418–0660.

General auction questions: Auctions Hotline at 717–338–2868.

AM/FM service questions: James Bradshaw or Lisa Scanlan or Tom Nessinger at (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction 109 Comment Public Notice,* AU Docket No. 21–39, DA 21–131, released on February 8, 2021. The complete text of the *Auction 109 Comment Public Notice,* including its attachment, is available on the Commission's website at *www.fcc.gov/auction/109* or by using the search function for AU Docket No. 21–39 on the Commission's ECFS web page at *www.fcc.gov/ecfs.* Alternative formats are available to persons with disabilities by sending an email to *FCC504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

I. Introduction

1. By the *Auction 109 Comment Public Notice,* the Commission announces an auction of four AM construction permits and 136 FM construction permits, with bidding to start on July 27, 2021, and seeks comment on the procedures to be used to conduct Auction 109, as well as upon minimum opening bids for the permits.

2. Auction 109 will offer all of the FM radio permits that were previously included in the inventory for Auction 106, as well as six additional FM permits. Auction 106 was postponed on March 25, 2020, with no appointed date for resumption, due to the Covid–19 pandemic. That auction is now canceled; applications submitted by entities seeking to participate in Auction 106 have been dismissed. All applicants wishing to participate in Auction 109, regardless of whether they may have previously filed a short-form application (FCC Form 175) for Auction 106, will be required to file a new short-form application to participate in Auction 109. A window for filing short-form applications to participate in Auction 109 will be announced in a subsequent public notice in this proceeding.

II. Construction Permits

3. Auction 109 will offer four AM construction permits and 136 FM construction permits. Attachment A to the *Auction 109 Comment Public Notice* lists each permit to be offered. Under the policies established in the *Broadcast Competitive Bidding Order,* 63 FR 48615, September 11, 1998, an applicant may apply for any AM construction permit or vacant FM allotment listed in Attachment A to the *Auction 109 Comment Public Notice.* If two or more short-form applications (FCC Form 175) specify the same AM permit or FM allotment, they will be considered mutually exclusive, mutual exclusivity exists for auction purposes, and the construction permit will be awarded by competitive bidding procedures. Once mutual exclusivity exists for auction purposes, even if only one applicant is qualified to bid for a particular construction permit in Auction 109, that applicant is required to submit a bid in order to obtain the construction permit.

4. *AM Construction Permits.* Auction 109 will offer four construction permits in the AM broadcast service. Attachment A to the *Auction 109 Comment Public Notice* lists the community of license, channel, class, and coordinates for each AM permit being offered.

5. The construction permits to be auction are for four previously licensed AM stations, listed in Attachment A to the Auction 109 Comment Public Notice, the license renewals of which were dismissed with prejudice in a hearing before the Commission's Administrative Law Judge and the call signs deleted.

6. To facilitate the auction of the four AM permits, the four AM facilities will be treated as existing allotments, using the coordinates, AM station frequency and class, and community of license of the respective AM facility as listed in Attachment A to the *Auction 109 Comment Public Notice.* The Media Bureau has protected these four AM stations by freezing the filing of any minor modification applications that would be mutually exclusive with the

facilities of the four AM stations. Because protections extend to the previously licensed facility parameters, applicants will be limited in their opportunities to modify these AM permits.

7. *FM Construction Permits.* Auction 109 will also offer 136 construction permits in the FM broadcast service. The construction permits to be auctioned include all of the 130 FM allotments that had previously been listed in the inventory for Auction 106 as well as six additional FM allotments. The FM allotments offered in Auction 109 include 34 construction permits that were offered but not sold or were defaulted upon in prior auctions. Attachment A identifies those previously offered permits and the auctions in which they were offered.

8. Attachment A to the *Auction 109 Comment Public Notice* lists the specific vacant FM allotments for which the Commission will offer construction permits in this auction, along with the reference coordinates for each vacant FM allotment. These comprise FM channels added to the Table of FM Allotments, 47 CFR 73.202(b), pursuant to the Commission's established rulemaking procedures and assigned at the indicated communities.

9. Each applicant in the FM service has the opportunity to submit a set of preferred site coordinates as an alternative to the reference coordinates for the vacant FM allotment upon which the applicant intends to bid. A future public notice announcing the procedures for Auction 109 will provide guidelines for completing FCC Form 175 and exhibits, including detailed instructions for specifying preferred site coordinates.

III. Proposed Bidding Procedures

10. *Simultaneous Multiple-Round Auction Design.* OEA and MB propose to use the Commission's simultaneous multiple-round auction format for Auction 109. As described further below, this type of auction offers every construction permit for bid at the same time and consists of successive bidding rounds in which qualified bidders may place bids on individual construction permits. Typically, bidding remains open on all construction permits until bidding stops on every construction permit. OEA and MB invite comment on this proposal.

11. *Bidding Rounds.* The Commission will conduct Auction 109 over the internet using the FCC auction bidding system. A bidder will also have the option of placing bids by telephone through a dedicated auction bidder line.

12. Under this proposal, Auction 109 will consist of sequential bidding rounds, each of which would be followed by the release of round results. The initial bidding schedule will be announced in a public notice to be released at least one week before the start of bidding.

13. OEA and MB propose that the initial bidding schedule may be adjusted in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. Under this proposal, such changes may include the amount of time for the bidding rounds, the amount of time between rounds, or the number of rounds per day, depending upon bidding activity and other factors. OEA and MB request comment on this proposal. Commenters on this issue should address the role of the bidding schedule in managing the pace of the auction, specifically discussing the tradeoffs in managing auction pace by bidding schedule changes, by changing the activity requirement(s) or bid amount parameters, or by using other means.

14. *Stopping Rule.* In accordance with 47 CFR 1.2104(e), stopping rules are established before or during multiple round auctions in order to complete the auction within a reasonable time. For Auction 109, OEA and MB propose to employ a simultaneous stopping rule approach, which means all construction permits remain available for bidding until bidding stops on every construction permit. Specifically, bidding will close on all construction permits after the first round in which no bidder submits any new bid, applies a proactive activity rule waiver, or withdraws any provisionally winning bid (if bid withdrawals are permitted in this auction). Thus, under the proposed simultaneous stopping rule, bidding would remain open on all construction permits until bidding stops on every construction permit. Consequently, under this approach, it is not possible to determine in advance how long the bidding in this auction will last.

15. Further, OEA and MB propose to retain the discretion to exercise any of the following stopping options during Auction 109: (1) The auction would close for all construction permits after the first round in which no bidder applies a waiver, no bidder withdraws a provisionally winning bid (if withdrawals are permitted in this auction), or no bidder places any new bid on a construction permit for which it is not the provisionally winning bidder. Absent any other bidding activity, a bidder placing a new bid on a construction permit for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule. (2) The auction would close for all construction permits after the first round in which no bidder applies a waiver, no bidder withdraws a provisionally winning bid (if withdrawals are permitted in this auction), or no bidder places any new bid on a construction permit that already has a provisionally winning bid. Absent any other bidding activity, a bidder placing a new bid on an FCC-held construction permit (a construction permit that does not already have a provisionally winning bid) would not keep the auction open under this modified stopping rule. (3) The auction would close using a modified version of the simultaneous stopping rule that combines (1) and (2) above. (4) The auction would close after a specified number of additional rounds (special stopping rule) to be announced in advance in the FCC auction bidding system. If this special stopping rule is invoked, bids will be accepted in the specified final round(s), after which the auction will close. (5) The auction would remain open even if no bidder places any new bid, applies a waiver, or withdraws any provisionally winning bid (if withdrawals are permitted in this auction). In this event, the effect will be the same as if a bidder had applied a waiver. The activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use a waiver.

16. OEA and MB propose to exercise these options only in certain circumstances, for example, where the auction is proceeding unusually slowly or quickly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time or will close prematurely. Before exercising these options, OEA and MB will likely attempt to change the pace of the auction by changing the number of bidding rounds per day or the minimum acceptable bids, for example. OEA and MB propose to retain the discretion to exercise any of these options with or without prior announcement during the auction. OEA and MB request comment on these proposals. Commenters should provide specific reasons for supporting or objecting to these proposals.

17. *Auction Delay, Suspension, or Cancellation.* Pursuant to 47 CFR 1.2104(i), OEA and MB may delay, suspend, or cancel bidding in the auction, at any time before or during the bidding process of Auction 109, in the event of a natural disaster, technical obstacle, network interruption,

administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. Notification of any such delay, suspension, or cancellation will be provided by public notice or through the FCC auction bidding system's messages function. If bidding is delayed or suspended, the auction may resume starting from the beginning of the current round or from some previous round, or the auction may be cancelled in its entirety. This authority will be exercised solely at the discretion of OEA and MB, and not as a substitute for situations in which bidders may wish to apply activity rule waivers. OEA and MB seek comment on this proposal.

18. *Upfront Payments and Bidding Eligibility.* In keeping with the usual practice in spectrum auctions, OEA and MB propose that applicants be required to submit upfront payments in accordance with 47 CFR 1.2106 as a prerequisite to becoming qualified to bid. As described below, the upfront payment is a refundable deposit made by an applicant to establish its eligibility to bid on construction permits. Upfront payments that are related to the specific construction permits being auctioned protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of the bidding. As required by 47 CFR 1.2106(a), a former defaulter must submit an upfront payment equal to 50 percent more than the amount that would otherwise be required.

19. OEA and MB seek comment on an appropriate upfront payment for each construction permit being auctioned, taking into account such factors as the efficiency of the auction process and the potential value of similar construction permits. With these considerations in mind, upfront payments are specified in Attachment A to the *Auction 109 Comment Public Notice.* OEA and MB seek comment on those proposed upfront payment amounts.

20. It is proposed also that the amount of the upfront payment submitted by a bidder will determine its initial bidding eligibility in bidding units, which are a measure of bidder eligibility and bidding activity. OEA and MB propose to assign each construction permit a specific number of bidding units, equal to one bidding unit per dollar of the upfront payment amount listed in Attachment A to the *Auction 109 Comment Public Notice.* The number of bidding units for a given construction permit is fixed and does not change during the auction as prices change. If an applicant is found to be qualified to bid on more than one permit being offered in Auction 109, such bidder may place bids on multiple construction permits, provided that the total number of bidding units associated with those construction permits does not exceed that bidder's current eligibility. A bidder cannot increase its eligibility during the auction; it can only maintain its eligibility or decrease its eligibility. In calculating its upfront payment amount and hence its initial bidding eligibility, an applicant must determine the maximum number of bidding units on which it may wish to bid (or hold provisionally winning bids) in any single round and submit an upfront payment amount covering that total number of bidding units. OEA and MB request comment on these proposals.

21. Any applicant that submits a short-form application, but fails to timely submit an upfront payment, will retain its status as an applicant in Auction 109 and will remain subject to the rules prohibiting certain communications but, having purchased no bidding eligibility, will not be eligible to bid. An applicant that fails to become a qualified bidder for any other reason also will retain its status as an Auction 109 applicant and will remain subject to the rules prohibiting certain communications.

22. *Activity Rule.* To ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. For purposes of the activity rule, the FCC auction bidding system calculates a bidder's activity in a round as the sum of the bidding units associated with any construction permits upon which it places bids during the current round and the bidding units associated with any construction permits for which it holds provisionally winning bids. See 47 CFR 1.2104(f). Bidders are required to be active on a specific percentage of their current bidding eligibility during each round of the auction. OEA and MB propose a single-stage auction with the following activity requirement: In each bidding round, a bidder desiring to maintain its current bidding eligibility is required to be active on 100% of its bidding eligibility. Thus, the activity requirement would be satisfied when a bidder has bidding activity on construction permits with bidding units that total 100% of its current eligibility in the round. If the activity rule is met, then the bidder's eligibility does not change in the next round. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's eligibility for the next round of bidding, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction. OEA and MB seek comment on these activity requirements. Commenters that oppose a 100% activity requirement should explain their reasons with specificity.

23. *Activity Rule Waivers and Reducing Eligibility.* Pursuant to the proposed simultaneous multiple round auction format, when a bidder's activity in the current round is below the required minimum level, it may preserve its current level of eligibility through an activity rule waiver, if available. An activity rule waiver applies to an entire round of bidding, not to a particular construction permit. Activity rule waivers can be either proactive or automatic. Activity rule waivers are primarily a mechanism for a bidder to avoid the loss of bidding eligibility in the event that exigent circumstances prevent it from bidding in a particular round.

24. The FCC auction bidding system will assume that a bidder that does not meet the activity requirement would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver at the end of any bidding round in which a bidder's activity level is below the minimum required unless: (1) The bidder has no activity rule waiver remaining; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the activity requirement. If a bidder has no waivers remaining and does not satisfy the required activity level, the bidder's current eligibility will be permanently reduced, possibly curtailing or eliminating the ability to place additional bids in the auction.

25. A bidder with insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding round by using the reduce eligibility function in the FCC auction bidding system. In this case, the bidder's eligibility would be permanently reduced to bring it into compliance with the activity rule described above. Reducing eligibility is an irreversible action; once eligibility has been reduced, a bidder cannot regain its lost bidding eligibility.

26. Under the proposed simultaneous stopping rule, a bidder would be permitted to apply an activity rule waiver proactively as a means to keep

the auction open without placing a bid. If a bidder proactively applies an activity rule waiver (using the proactive waiver function in the FCC auction bidding system) during a bidding round in which no bid is placed or withdrawn (if bid withdrawals are permitted in this auction), the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver applied by the FCC auction bidding system in a round in which there is no new bid, no bid withdrawal (if bid withdrawals are permitted in this auction), or no proactive waiver would not keep the auction open.

27. Consistent with prior Commission auctions of broadcast construction permits, OEA and MB propose that each bidder in Auction 109 be provided with three activity rule waivers that may be used as set forth above at the bidder's discretion during the course of the auction. Comment is sought on this proposal of three activity rule waivers.

28. *Reserve Price or Minimum Opening Bids.* Pursuant to 47 U.S.C. 309(j)(4)(F) and 47 CFR 1.2104(c), (d), OEA and MB seek comment on the use of a minimum opening bid amount and a reserve price prior to the start of bidding in this auction. Normally, a reserve price is an absolute minimum price below which a construction permit or license will not be sold in a given auction. A minimum opening bid, on the other hand, is the minimum bid price set at the beginning of the auction below which no bids are accepted. It is generally used to accelerate the competitive bidding process.

29. OEA and MB propose not to establish separate reserve prices for the construction permits offered in this auction. OEA and MB propose to establish minimum opening bid amounts for Auction 109. Based on experience in past broadcast auctions, setting a minimum opening bid amount judiciously is an effective bidding tool for accelerating the competitive bidding process.

30. For Auction 109, proposed minimum opening bid amounts were determined by taking into account the type of service and class of facility offered, market size, population covered by the proposed broadcast facility, and recent broadcast transaction data, to the extent such information is available. Attachment A to the *Auction 109 Comment Public Notice* lists a proposed minimum opening bid amount for each construction permit available in Auction 109. OEA and MB seek comment on the minimum opening bid amounts specified in Attachment A to the *Auction 109 Comment Public Notice.*

31. If commenters believe that these minimum opening bid amounts will result in unsold construction permits, are not reasonable amounts at which to start bidding, or should instead operate as reserve prices, they should explain why this is so and comment on the desirability of an alternative approach. Commenters should support their claims with valuation analyses and suggested amounts or formulas for reserve prices or minimum opening bids. In establishing the minimum opening bid amounts, OEA and MB seek comment particularly on factors that could reasonably have an impact on bidders' valuation of the broadcast spectrum, including the type of service and class of facility offered, market size, population covered by the proposed AM or FM broadcast facility and any other relevant factors. Commenters also may wish to address the general role of minimum opening bids in managing the pace of the auction. For example, commenters could compare using minimum opening bids—*e.g.,* by setting higher minimum opening bids to reduce the number of rounds it takes for construction permits to reach their final prices—to other means of controlling auction pace, such as changes to bidding schedules, percentage increments, or activity requirements.

32. *Bid Amounts.* OEA and MB propose that if a qualified bidder has sufficient eligibility to place a bid on a particular construction permit, in each round, the bidder will be able to place a bid on the given construction permit in any of up to nine different amounts: The minimum acceptable bid amount or one of the additional bid amounts.

33. *Minimum Acceptable Bid Amounts.* The first of the acceptable bid amounts is called the minimum acceptable bid amount. The minimum acceptable bid amount for a construction permit will be equal to its minimum opening bid amount until there is a provisionally winning bid for the construction permit. Once there is a provisionally winning bid for a construction permit, the minimum acceptable bid amount for that construction permit will be equal to the amount of the provisionally winning bid plus a specified percentage of that bid amount. The percentage used for this calculation, the minimum acceptable bid increment percentage, is multiplied by the provisionally winning bid amount, and the resulting amount is added to the provisionally winning bid amount. If, for example, the minimum acceptable bid increment percentage is 10%, then the provisionally winning bid amount is multiplied by 10%. The result of that calculation is added to the provisionally winning bid amount, and that sum is rounded using the Commission's standard rounding procedure for auctions as described in the public notice. If bid withdrawals are permitted in this auction, in the case of a construction permit for which the provisionally winning bid has been withdrawn, the minimum acceptable bid amount will equal the second highest bid received for the construction permit.

34. *Additional Bid Amounts.* Under this proposal, the FCC auction bidding system will calculate the eight additional bid amounts using the minimum acceptable bid amount and an additional bid increment percentage. The minimum acceptable bid amount is multiplied by the additional bid increment percentage. The result then will be rounded using the Commission's standard rounding procedures for auctions as described in the public notice. That result is the additional increment amount. The first additional acceptable bid amount equals the minimum acceptable bid amount plus the additional increment amount. The second additional acceptable bid amount equals the minimum acceptable bid amount plus two times the additional increment amount; the third additional acceptable bid amount is the minimum acceptable bid amount plus three times the additional increment amount; etc. If, for example, the additional bid increment percentage is 5%, then the calculation of the additional increment amount would be (minimum acceptable bid amount) * (0.05), rounded. The first additional acceptable bid amount equals (minimum acceptable bid amount) + (additional increment amount); the second additional acceptable bid amount equals (minimum acceptable bid amount) + (2*(additional increment amount)); the third additional acceptable bid amount equals (minimum acceptable bid amount) + (3*(additional increment amount)); etc.

35. For Auction 109, a minimum acceptable bid increment percentage of 10% is proposed. This means that the minimum acceptable bid amount for a construction permit will be approximately 10% greater than the provisionally winning bid amount for the construction permit. To calculate the additional acceptable bid amounts, a bid increment percentage of 5% is proposed. OEA and MB request comment on these proposals.

36. *Bid Amount Changes.* Consistent with past practice, OEA and MB propose to retain the discretion to change the minimum acceptable bid amounts, the minimum acceptable bid

percentage, the additional bid increment percentage, and the number of acceptable bid amounts if circumstances so dictate. See 47 CFR 1.2104(d). OEA and MB propose to retain the discretion to do so on a construction permit-by-construction permit basis. OEA and MB propose also to retain the discretion to limit (a) the amount by which a minimum acceptable bid for a construction permit may increase compared with the corresponding provisionally winning bid, and (b) the amount by which an additional bid amount may increase compared with the immediately preceding acceptable bid amount. For example, a $1,000 limit could be set on increases in minimum acceptable bid amounts over provisionally winning bids. In this example, if calculating a minimum acceptable bid using the minimum acceptable bid increment percentage results in a minimum acceptable bid amount that is $1,200 higher than the provisionally winning bid on a construction permit, the minimum acceptable bid amount would instead be capped at $1,000 above the provisionally winning bid. OEA and MB also seek comment on the circumstances under which such a limit should be employed, factors to consider when determining the dollar amount of the limit, and the tradeoffs in setting such a limit or changing other parameters, such as changing the minimum acceptable bid percentage, the bid increment percentage, or the number of acceptable bid amounts. Bidders would be notified by announcement in the FCC auction bidding system during the auction if this discretion is exercised.

37. OEA and MB seek comment on these proposals. If commenters disagree with the proposal to begin the auction with nine acceptable bid amounts per construction permit, they should suggest an alternative number of acceptable bid amounts to use. Commenters may wish to address the role of the minimum acceptable bids and the number of acceptable bid amounts in managing the pace of the auction and the tradeoffs in managing auction pace by changing the bidding schedule, activity requirement, bid amounts, or by using other means.

38. *Provisionally Winning Bids.* The FCC auction bidding system will determine provisionally winning bids consistent with practice in past auctions. At the end of a bidding round, the bidding system will determine a provisionally winning bid for each construction permit based on the highest bid amount received for that permit. The FCC auction bidding system will advise bidders of the status of their bids when round results are released. A provisionally winning bid will remain the provisionally winning bid until there is a higher bid on the same construction permit at the close of a subsequent round, unless the provisionally winning bid is withdrawn (if bid withdrawals are permitted in this auction). Provisionally winning bids at the end of the auction become the winning bids. As a reminder, provisionally winning bids count toward activity for purposes of the activity rule.

39. The FCC auction bidding system assigns a pseudo-random number generated by an algorithm to each bid when the bid is entered. If identical high bid amounts are submitted on a construction permit in any given round (*i.e.,* tied bids), the FCC auction bidding system will use a pseudo-random number generator to select a single provisionally winning bid from among the tied bids. The tied bid with the highest pseudo-random number wins the tiebreaker and becomes the provisionally winning bid. The remaining bidders, as well as the provisionally winning bidder, can submit higher bids in subsequent rounds. However, if the auction were to end with no other bids being placed, the winning bidder would be the one that placed the provisionally winning bid. If the construction permit receives any bids in a subsequent round, the provisionally winning bid again will be determined by the highest bid amount received for the construction permit.

40. *Bid Removal.* The FCC auction bidding system allows each bidder to remove any of the bids it placed in a round before the close of that round. By removing a bid placed within a round, a bidder effectively unsubmits the bid. In contrast to the bid withdrawal provisions described below, a bidder removing a bid placed in the same round is not subject to a withdrawal payment. Once a round closes, a bidder may no longer remove a bid. Consistent with the design of the bidding system, bidders in Auction 109 would be permitted to remove bids placed in a round before the close of that round.

41. *Bid Withdrawal.* OEA and MB propose not to permit bidders in Auction 109 to withdraw bids. When permitted in an auction, bid withdrawals provide a bidder with the option of withdrawing bids placed in prior rounds that have become provisionally winning bids. A bidder would be able to withdraw its provisionally winning bids using the withdraw function in the FCC auction bidding system. A bidder that withdraws its provisionally winning bid(s), if permitted, is subject to the bid withdrawal payment provisions of 47 CFR 1.2104(g), 1.2109.

42. The Commission has recognized that bid withdrawals may be a helpful tool for bidders seeking to efficiently aggregate licenses or implement backup strategies in certain auctions. The Commission has also acknowledged that allowing bid withdrawals may encourage insincere bidding or increased opportunities for undesirable strategic bidding in certain circumstances. The Commission stated that this discretion should be exercised assertively, with consideration of limiting the number of rounds in which bidders may withdraw bids and preventing bidders from bidding on a particular market if a bidder is abusing the Commission's bid withdrawal procedures. In managing the auction, therefore, OEA and MB have discretion to limit the number of withdrawals to prevent bidding abuses.

43. Based on this guidance and on experience with past auctions of broadcast construction permits, the public notice proposes to prohibit bidders from withdrawing any bid after the close of the round in which that bid was placed. In light of the site-specific nature and wide geographic dispersion of the permits available in this auction, which suggests that potential applicants for this auction may have fewer incentives to aggregate permits through the auction process (as compared with bidders in many auctions of wireless licenses), it is unlikely that bidders will have a need to withdraw bids in this auction. Further, bid withdrawals, particularly if they were made late in this auction, could result in delays in licensing new broadcast stations and attendant delays in the offering of new broadcast service to the public. OEA and MB seek comment on this proposal to prohibit bid withdrawals in Auction 109. Commenters advocating alternative approaches should support their arguments by taking into account the construction permits offered, the impact of auction dynamics and the pricing mechanism, and the effects on the bidding strategies of other bidders.

44. *Post Auction Payment: Interim Withdrawal Payment Percentage.* In the event bid withdrawals are permitted in Auction 109, OEA and MB propose that the interim bid withdrawal payment be 20% of the withdrawn bid. As required by 47 CFR 1.2104(g)(1), a bidder that withdraws a provisionally winning bid during an auction is subject to a withdrawal payment equal to the difference between the amount of the withdrawn bid and the amount of the winning bid in the same or a subsequent

auction. However, if a construction permit for which a bid has been withdrawn does not receive a subsequent higher bid or winning bid in the same auction, the Commission cannot calculate the final withdrawal payment until that construction permit receives a higher bid or winning bid in a subsequent auction. In such cases, when that final withdrawal payment cannot yet be calculated, the Commission imposes on the bidder responsible for the withdrawn bid an interim bid withdrawal payment, which will be applied toward any final bid withdrawal payment that is ultimately assessed.

45. The percentage amount of the interim bid withdrawal payment is established in advance of bidding in each auction and may range from 3% to 20% of the withdrawn bid amount. The Commission has determined that the level of interim withdrawal payment in a particular auction will be based on the nature of the service and the inventory of the licenses being offered. The Commission noted specifically that a higher interim withdrawal payment percentage is warranted to deter the anti-competitive use of withdrawals when, for example, bidders will not need to aggregate the licenses being offered in the auction or when there are few synergies to be captured by combining licenses. In light of these considerations with respect to the construction permits being offered in this auction, OEA and MB propose to use the maximum interim bid withdrawal payment percentage permitted by 47 CFR 1.2104(g)(1) in the event bid withdrawals are allowed in this auction. OEA and MB request comment on using 20% for calculating an interim bid withdrawal payment amount in Auction 109. Commenters advocating the use of bid withdrawals should also address the percentage of the interim bid withdrawal payment.

46. *Post Auction Payment: Additional Default Payment Percentage.* Any winning bidder that defaults or is disqualified after the close of an auction (*i.e.,* fails to remit the required down payment by the specified deadline, fails to make full and timely final payment, fails to submit a timely long-form application, or whose long-form application is not granted for any reason, or is otherwise disqualified) is liable for a default payment under 47 CFR 1.2104(g)(2). As required by 47 CFR 1.2109, this payment consists of a deficiency payment, equal to the difference between the amount of the Auction 109 bidder's winning bid and the amount of the winning bid the next time a construction permit covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less.

47. In advance of each auction, a percentage between 3% and 20% of the applicable winning bid is set pursuant to 47 CFR 1.2104(g)(2) to be assessed as an additional default payment. As the Commission has indicated, the level of this additional payment in each auction will be based on the nature of the service and the construction permits being offered.

48. Consistent with the percentage in prior auctions of broadcast construction permits, OEA and MB propose for Auction 109 to establish an additional default payment of 20%. As the Commission has noted, defaults weaken the integrity of the auction process and may impede the deployment of service to the public, and an additional 20% default payment will be more effective in deterring defaults than the 3% used in some earlier auctions. In light of these considerations, for Auction 109 an additional default payment of 20% of the relevant bid is proposed. OEA and MB seek comment on this proposal.

IV. Procedural Matters

49. *Paperwork Reduction Act.* The Office of Management and Budget (OMB) has approved the information collections in the Application to Participate in an FCC Auction, FCC Form 175. OMB Control No. 3060–0600. The *Auction 109 Comment Public Notice* does not propose new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. Therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198. See 44 U.S.C. 3506(c)(4).

50. *Ex Parte Rules.* This proceeding has been designated as a permit but disclose proceeding in accordance with the ex parte rules. Participants in this proceeding should familiarize themselves with the Commission's ex parte rules, especially 47 CFR 1.1200(a) and 1.1206.

IV. Supplemental Initial Regulatory Flexibility Analysis

51. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), 5 U.S.C. 601—612, the Commission prepared Initial Regulatory Flexibility Analyses (IRFAs) in connection with the *Broadcast Competitive Bidding Notice of Proposed Rulemaking* (NPRM), 62 FR 65392, December 12, 1997, and other Commission NPRMs (collectively, Competitive Bidding NPRMs) pursuant to which Auction 109 will be conducted. Final Regulatory Flexibility Analyses (FRFAs) likewise were prepared in the *Broadcast Competitive Bidding Order,* 63 FR 48615, September 11, 1998, and other Commission rulemaking orders (collectively, Competitive Bidding Orders) pursuant to which Auction 109 will be conducted. The Office of Economics and Analytics (OEA), in conjunction with the Media Bureau (MB), has prepared this Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) of the possible significant economic impact on small entities of the policies and rules addressed in the *Auction 109 Comment Public Notice,* to supplement the Commission's Initial and Final Regulatory Flexibility Analyses completed in the *Competitive Bidding NPRMs* and the *Competitive Bidding Orders* pursuant to which Auction 109 will be conducted. Written public comments are requested on this Supplemental IRFA. Comments must be identified as responses to the Supplemental IRFA and must be filed by the same filing deadlines for comments specified on the first page of the *Auction 109 Comment Public Notice.* Pursuant to 5 U.S.C. 603(a), the Commission will send a copy of the *Auction 109 Comment Public Notice,* including this Supplemental IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

52. *Need for, and Objectives of, the Public Notice.* The proposed procedures for the conduct of Auction 109 as described in the *Auction 109 Comment Public Notice* would constitute the more specific implementation of the competitive bidding rules contemplated by Parts 1 and 73 of the Commission's rules, adopted by the Commission in multiple notice-and-comment rulemaking proceedings, including the Commission's establishing in the underlying rulemaking orders additional procedures to be used on delegated authority. More specifically, the *Auction 109 Comment Public Notice* seeks comment on proposed procedures, terms and conditions governing Auction 109, and the post-auction application and payment processes, as well as seeking comment on the minimum opening bid amounts for the specified construction permits, and is fully consistent with the underlying rulemaking orders, including the *Broadcast Competitive Bidding Order*

and other relevant competitive bidding orders.

53. The *Auction 109 Comment Public Notice* provides notice of proposed auction procedures and adequate time for Auction 109 applicants to comment on those proposed procedures. See 47 U.S.C. 309(j)(3)(E)(i). To promote the efficient and fair administration of the competitive bidding process for all Auction 109 participants, including small businesses, the *Auction 109 Comment Public Notice* seeks comment on the following proposed procedures: Use of a simultaneous multiple-round auction format, consisting of sequential bidding rounds with a simultaneous stopping rule (with discretion to exercise alternative stopping rules under certain circumstances); a specific minimum opening bid amount for each construction permit to be offered in this auction; a specific number of bidding units for each construction permit; a specific upfront payment amount for each construction permit; establishment of a bidder's initial bidding eligibility in bidding units based on that bidder's upfront payment through assignment of a specific number of bidding units for each construction permit; use of an activity requirement so that bidders must bid actively during the auction rather than waiting until late in the auction before participating; a single-stage auction in which a bidder is required to be active on 100% of its bidding eligibility in each bidding round; provision of three activity waivers for each bidder to allow it to preserve eligibility during the course of the auction; use of minimum acceptable bid amounts and additional bid increments, along with a proposed methodology for calculating such amounts, while retaining discretion to change the methodology if circumstances dictate; a procedure for breaking ties if identical high bid amounts are submitted on a construction permit in a given round; whether to permit use of bid withdrawals; establishment of an interim bid withdrawal percentage of 20% of the withdrawn bid in the event bid withdrawals are allowed in Auction 109; and establishment of an additional default payment of 20% under 47 CFR 1.2104(g)(2) in the event that a winning bidder defaults or is disqualified after the auction closes.

54. *Legal Basis.* The Commission's statutory obligations to small businesses participating in a spectrum auction are found in 47 U.S.C. 309(j)(3)(B) and 309(j)(4)(D). The statutory basis for the Commission's competitive bidding rules is found in 47 U.S.C. 154(i), 301, 303(e), 303(f), 303(r), 304, 307, and 309(j). The Commission has established a framework of competitive bidding rules pursuant to which it has conducted auctions since the inception of the auction program in 1994 and would conduct Auction 109, including 47 CFR part 1, subpart Q. See 47 CFR 73.5000, 73.5002–73.5003, 73.5005–73.5009. In promulgating those rules, the Commission conducted numerous Initial Regulatory Flexibility Act Analyses (IRFAs) to consider the possible impact of those rules on small businesses that might seek to participate in Commission auctions. In addition, multiple Final Regulatory Flexibility Analyses (FRFAs) were included in the rulemaking orders which adopted or amended rule provisions relevant to *Auction 109 Comment Public Notice.* The Commission has directed that OEA, in conjunction with MB, under delegated authority, seek comment on a variety of auction-specific procedures prior to the start of bidding in each auction. See 47 CFR 1.2104(c), (d), (e), (f), (g), (i).

55. *Description and Estimate of the Number of Small Entities to Which the Proposed Procedures Will Apply.* The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed procedures, if adopted. 5 U.S.C. 603(b)(3). The RFA generally defines the term small entity as having the same meaning as the terms small business, small organization, and small government jurisdiction. 5 U.S.C. 601(6). In addition, the term small business has the same meaning as the term small business concern under the Small Business Act. See 5 U.S.C. 601(3) (adopting by reference the definition of small business concern in the Small Business Act, 15 U.S.C. 632). A small business concern is one which: (1) Is independently owned and operated, (2) is not dominant in its field of operation, and (3) satisfies any additional criteria established by the SBA. See 15 U.S.C. 632.

56. The specific procedures and minimum opening bid amounts on which comment is sought in the *Auction 109 Comment Public Notice* will directly affect all applicants participating in Auction 109. The number of entities that may apply to participate in Auction 109 is unknown. Based on the number of applicants in prior FM auctions, OEA and MB estimate that the number of applicants for Auction 109 may range from approximately 130 to 260. This estimate is based on the number of applicants who filed short-form applications to participate in previous open auctions of FM construction permits held to date, an average of 1.8 short-form applications were filed per construction permit offered, with a median of 1.2 applications per permit. The actual number of applicants for Auction 109 could vary significantly as any individual's or entity's decision to participate may be affected by a number of factors beyond the Commission's control.

57. *Radio Stations.* This U.S. Economic Census category comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources. According to the most recent *Report and Order,* 85 FR 37364, June 22, 2020, to assess annual regulatory fees, Commission staff identified from the Media Bureau's licensing databases 9,636 licensed radio facilities subject to annual regulatory fees as of October 1, 2019, excluding from this count radio stations exempt from required annual regulatory fees.

58. In 13 CFR 121.201, the SBA established a small business size standard for this category, NAICS code 515112, as firms having $41.5 million or less in annual receipts. Economic Census data from 2012 shows that 2,849 radio station firms operated during that year. Of that number, 2,806 firms operated with annual receipts of less than $25 million per year, 17 with annual receipts between $25 million and $49,999,999, and 26 with annual receipts of $50 million or more. Therefore, based on the SBA's size standard, the majority of such entities are small entities.

59. According to Commission staff review of the BIA/Kelsey, LLC's Media Access Pro Radio Database (BIA) as of January 26, 2021, nearly all AM and FM full-service radio stations (approximately 15,478 of 15,483 total stations, or 99.97%) had revenues of $41.5 million or less and thus qualify as small entities under the SBA definition. The SBA size standard data, however, does not enable a meaningful estimate of the number of small entities who may participate in Auction 109.

60. Also, in assessing whether a business entity qualifies as small under the SBA definition, 13 CFR 121.103(a)(1), business control affiliations must be included. Business concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both. The estimate therefore likely overstates the number of small entities that might be affected by

this auction because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. Moreover, the definition of small business also requires that an entity not be dominant in its field of operation and that the entity be independently owned and operated. The estimate of small businesses to which the proposed competitive bidding rules may apply does not exclude any radio station from the definition of a small business on these bases and is therefore over-inclusive to that extent. Furthermore, it is not possible at this time to define or quantify the criteria that would establish whether a specific radio station is dominant in its field of operation. In addition, it is difficult to assess these criteria in the context of media entities and therefore estimates of small businesses to which they apply may be over-inclusive to this extent.

61. Further, it is not possible to accurately develop an estimate of how many of the entities in this auction would be small businesses based on the number of small entities that applied to participate in prior broadcast auctions, because that information is not collected from applicants for broadcast auctions in which bidding credits are not based on an applicant's size (as is the case in auctions of licenses for wireless services).

62. In 2013, the Commission estimated that 97% of radio broadcasters met the SBA's prior definition of small business concern, based on annual revenues of $7 million. The SBA has since increased in NAICS code 515112 of 13 CFR 121.201 that revenue threshold to $41.5 million, which suggests that an even greater percentage of radio broadcasters would fall within the SBA's definition. The Commission has estimated the number of licensed commercial AM radio stations to be 4,347 and the number of commercial FM radio stations to be 6,699 for a total number of 11,046. As of January 2021, 4,347 AM stations and 6,694 FM stations had revenues of $41.5 million or less, according to Commission staff review of the BIA Database. Accordingly, based on this data, OEA and MB estimate that the majority of Auction 109 applicants would likely meet the SBA's definition of a small business concern.

63. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities.* In the *Auction 109 Comment Public Notice,* no new reporting, recordkeeping, or other compliance requirements for small entities or other auction applicants are proposed. The Commission designed the auction application process itself to minimize reporting and compliance requirements for applicants, including small business applicants. To participate in this auction, parties will file streamlined, short-form applications in which they certify under penalty of perjury as to their qualifications. Eligibility to participate in bidding is based on an applicant's short-form application and certifications, as well as its upfront payment. In the second phase of the auction process, there are additional compliance requirements for winning bidders. Thus, a small business that fails to become a winning bidder does not need to file a long-form application and provide the additional showings and more detailed demonstrations required of a winning bidder.

64. *Steps Taken to Minimize the Significant Economic Impact of Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities. 5 U.S.C. 603(c)(1)–(4).

65. OEA and MB intend that the proposals of the *Auction 109 Comment Public Notice* to facilitate participation in Auction 109 will result in both operational and administrative cost savings for small entities and other auction participants. In light of the numerous resources that will be available from the Commission at no cost, the processes and procedures proposed in the *Auction 109 Comment Public Notice* should result in minimal economic impact on small entities. For example, prior to the start of bidding, the Commission will hold a mock auction to allow qualified bidders the opportunity to familiarize themselves with both the bidding processes and systems that will be used in Auction 109. During the auction, participants will be able to access and participate in bidding via the internet using a web-based system, or telephonically, providing two cost-effective methods of participation and avoiding the cost of travel for in-person participation. Further, small entities as well as other auction participants will be able to avail themselves of a telephone hotline for assistance with auction processes and procedures as well as a telephone technical support hotline to assist with issues such as access to or navigation within the electronic FCC Form 175 and use of the FCC's auction system. In addition, all auction participants, including small business entities, will have access to various other sources of information and databases through the Commission that will aid in both their understanding of and participation in the process. These mechanisms are made available to facilitate participation by all qualified bidders and may result in significant cost savings for small business entities that utilize these mechanisms. These steps, coupled with the advance description of the bidding procedures, should ensure that the auction will be administered efficiently and fairly, thus providing certainty for small entities, as well as other auction participants.

66. *Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules.* None.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2021–04033 Filed 3–1–21; 4:15 pm]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2020–0130; FF09E21000 FXES11110900000 212]

RIN 1018–BF21

Endangered and Threatened Wildlife and Plants; Endangered Species Status for Arizona Eryngo and Designation of Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list the Arizona eryngo (*Eryngium sparganophyllum*), a plant species native to Arizona and New Mexico in the United States, and to Sonora and Chihuahua in Mexico, as an endangered species and to designate critical habitat in Arizona under the Endangered Species Act of 1973, as amended (Act). After a review of the best available scientific and commercial information,

we find that listing the species is warranted. Accordingly, we propose to list the Arizona eryngo as an endangered species under the Act. If we finalize this rule as proposed, it would add this species to the List of Endangered and Threatened Plants and extend the Act's protections to the species. We also propose to designate critical habitat for the Arizona eryngo under the Act. In total, approximately 13.0 acres (5.3 hectares) in Pima and Cochise Counties, Arizona, fall within the boundaries of the proposed critical habitat designation. We also announce the availability of a draft economic analysis (DEA) of the proposed designation of critical habitat for the Arizona eryngo.

DATES: We will accept comments received or postmarked on or before May 3, 2021. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for a public hearing, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by April 19, 2021.

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

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

http://www.regulations.gov. In the Search box, enter FWS–R2–ES–2020–0130, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on ''Comment Now!''

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS–R2–ES–2020–0130, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

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

Availability of supporting materials: For the critical habitat designation, the coordinates or plot points or both from which the maps are generated are included in the administrative record and are available at *https://www.fws.gov/southwest/es/arizona/,* at *http://www.regulations.gov* under Docket No. FWS–R2–ES–2020–0130. Any additional tools or supporting information that we may develop for the critical habitat designation will also be available at the Service website set out above and may also be included in the preamble and/or at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Jeff Humphrey, Arizona Ecological Services Field Office, 9828 North 31st Ave. C3, Phoenix, AZ 85051–2517; telephone 602–242–0210. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, if we determine that a species is an endangered or threatened species throughout all or a significant portion of its range, we are required to promptly publish a proposal in the **Federal Register** and make a determination on our proposal within 1 year. To the maximum extent prudent and determinable, we must designate critical habitat for any species that we determine to be an endangered or threatened species under the Act. Listing a species as an endangered or threatened species and designation of critical habitat can only be completed by issuing a rule.

What this document does. We propose to list the Arizona eryngo as an endangered species under the Act, and we propose the designation of critical habitat for the species.

The basis for our action. Under the Act, we may determine that a species is an endangered or threatened species because of any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We have determined that the Arizona eryngo is primarily at risk of extinction due to habitat changes: Physical alteration of cienegas, water loss, and changes in co-occurring vegetation, all of which are exacerbated by the effects of climate change.

Section 4(a)(3) of the Act requires the Secretary of the Interior (Secretary) to designate critical habitat concurrent with listing to the maximum extent prudent and determinable. Section 3(5)(A) of the Act defines critical habitat as (i) the specific areas within the geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protections; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species. Section 4(b)(2) of the Act states that the Secretary must make the designation on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impacts of specifying any particular area as critical habitat.

Peer review. In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we sought the expert opinions of eight appropriate specialists regarding the species status assessment report used to inform this proposed rule. We received responses from four specialists, which informed this proposed rule. The purpose of peer review is to ensure that our listing determinations and critical habitat designations are based on scientifically sound data, assumptions, and analyses. The peer reviewers have expertise in the biology, habitat, and threats to the species.

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other concerned governmental agencies, Native American tribes, the scientific community, industry, or any other interested parties concerning this proposed rule.

We particularly seek comments concerning:

(1) The species' biology, range, and population trends, including:

(a) Biological or ecological requirements of the species, including habitat requirements for nutrition, reproduction, or pollination;

(b) Genetics and taxonomy;

(c) Historical and current range, including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species, its habitat, or both.

(2) Factors that may affect the continued existence of the species, which may include habitat modification or destruction, overutilization, disease, predation, the inadequacy of existing regulatory mechanisms, or other natural or manmade factors.

(3) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species and existing regulations that may be addressing those threats.

(4) Additional information concerning the historical and current status, range, distribution, and population size of this species, including the locations of any additional populations of this species.

(5) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including information to inform the following factors that the regulations identify as reasons why designation of critical habitat may be not prudent:

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

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

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

(d) No areas meet the definition of critical habitat.

(6) Specific information on:

(a) The amount and distribution of Arizona eryngo habitat;

(b) What areas, that were occupied at the time of listing and that contain the physical or biological features essential to the conservation of the species, should be included in the designation and why;

(c) Special management considerations or protection that may be needed in critical habitat areas we are proposing, including managing for the potential effects of climate change; and

(d) What areas not occupied at the time of listing are essential for the conservation of the species. We particularly seek comments:

(i) Regarding whether occupied areas are adequate for the conservation of the species; and

(ii) Providing specific information regarding whether or not unoccupied areas would, with reasonable certainty, contribute to the conservation of the species and contain at least one physical or biological feature essential to the conservation of the species.

(7) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(8) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation, and the related benefits of including or excluding specific areas.

(9) Information on the extent to which the description of probable economic impacts in the draft economic analysis is a reasonable estimate of the likely economic impacts.

(10) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act.

(11) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or a threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov.*

Because we will consider all comments and information we receive during the comment period, our final determinations may differ from this proposal. Based on the new information we receive (and any comments on that new information), we may conclude that the species is threatened instead of endangered, or we may conclude that the species does not warrant listing as either an endangered species or a threatened species. For critical habitat, our final designation may not include all areas proposed, may include some additional areas that meet the definition of critical habitat, and may exclude some areas if we find the benefits of exclusion outweigh the benefits of inclusion.

Public Hearing

Section 4(b)(5) of the Act provides for a public hearing on this proposal, if requested. Requests must be received by the date specified in **DATES**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule a public hearing on this proposal, if requested, and announce the date, time, and place of the hearing, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing. For the immediate future, we will provide these public hearings using webinars that will be announced on the Service's website, in addition to the **Federal Register**. The use of these virtual public hearings is consistent with our regulations at 50 CFR 424.16(c)(3).

Previous Federal Actions

On April 9, 2018, we received a petition from the Center for Biological Diversity, requesting that the Arizona eryngo be listed as endangered or threatened and critical habitat be designated for this species under the Act. On April 26, 2019, we published our 90-day finding that the petition presented substantial scientific information indicating that listing the Arizona eryngo under the Act may be warranted (84 FR 17768). This document constitutes our 12-month

warranted petition finding for the Arizona eryngo.

Supporting Documents

A species status assessment (SSA) team prepared an SSA report for the Arizona eryngo. The SSA team was composed of Service biologists, in consultation with other species experts. The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species. The Service sent the SSA report to eight independent peer reviewers and received four responses. The Service also sent the SSA report to 16 partners, including scientists with expertise in wetland management and conservation and plant ecology, for review. We received review from eight partners (Federal, State, and County governments, and universities).

I. Proposed Listing Determination

Background

A thorough review of the taxonomy, life history, and ecology of the Arizona eryngo (*Eryngium sparganophyllum*) is presented in the SSA report (Service 2020). The Arizona eryngo is an herbaceous perennial flowering plant in the Apiaceae (carrot) family that is native to Arizona and New Mexico in the United States, and to Sonora and Chihuahua in Mexico. The species requires moist, organic alkali soils found in spring-fed cienegas (aridland wetlands) supported by adequate groundwater.

Arizona eryngo grows to a height of about 1.5 meters (m) (~5 feet (ft)) with long, linear, parallel-veined leaves that emerge from a basal rosette. The plant is conspicuous when flowering in June through September (Stromberg *et al.* 2019, p. 8; New Mexico Rare Plants 2013, p. 1). The flowers are cream-colored and clustered in dense heads. Dry fruits ripen in September and October. The species is believed to live well over 10 years, and many pollinators have been documented interacting with the species. Arizona eryngo reproduces through pollination, creating genetically unique individuals, as well as vegetatively via rhizomes (underground stems) producing clones, which are genetically identical (Stromberg *et al.* 2019, p. 8).

The Arizona eryngo only occurs in spring-fed cienega wetlands and grows best in full sun in areas with few nonnative plant species, limited woody vegetation, or other vegetation that may shade or otherwise outcompete them. The species has been found in conditions from standing water up to 2 centimeters (cm) (0.8 inches (in)) deep to soil that is dry at the surface but is moist to saturated several cm into the soil (Stromberg *et al.* 2019, pp. 6, 8). It is hypothesized that flowering is determined, in part, by soil moisture availability (*i.e.,* plants do not flower in drier conditions when the plants are more stressed) and that ramets (clones) are produced during drier periods (Li 2019, p. 8; Stromberg *et al.* 2019, p. 8). Spatial distribution of Arizona eryngo within cienegas appears to be associated with water availability; drier conditions favor the growth of trees that outcompete the species, and very wet conditions (*i.e.,* perennially standing water) favor the growth of bulrush (*Schoenoplectus americanus*) that similarly outcompetes Arizona eryngo (Li 2019, p. 4). Soils inhabited by Arizona eryngo are high in organic matter, saline, alkaline, and have salts on soil surfaces in the seasonally dry periphery (Stromberg *et al.* 2019, pp. 6, 14).

The Arizona eryngo is known historically from six sites: Three sites in Arizona and one in New Mexico in the United States, and one site in Sonora and one site in Chihuahua in Mexico (Sánchez Escalante *et al.* 2019, pp. 16–17; Stromberg *et al.* 2019, pp. 3–8). Given the historical distribution of functional aridland cienegas (greater than 95 percent of the historical area of cienegas is now dry (Cole and Cole 2015, p. 36)), it is likely that Arizona eryngo populations were historically more abundant, occurred closer to one another, and were more connected (through pollination) than they are currently. The species has been extirpated from one site in Arizona and one site in New Mexico but remains extant at the other four sites (two in Arizona; one in Sonora, Mexico; and one in Chihuahua, Mexico). Additionally, efforts are underway to reintroduce the species to the historical site in Arizona from which it was extirpated (Agua Caliente) and to introduce the species to a new site (Historic Canoa Ranch in Pima County, Arizona) within its general historical range. A handful of plants now exist at these reintroduction sites, but these efforts have not yet been successful at establishing viable populations. With the exception of the reintroduced plants at Agua Caliente, which is about 6 kilometers (km) (3.7 miles (mi)) from the La Cebadilla population, other populations are about 90 to 335 km (56 to 208 mi) apart from one another.

Reports of the species farther south in the Mexican states of Durango, Jalisco, Nayarit, Zacatecas, Michoacán, and Guerrero are likely not valid because the herbarium specimen from Durango, Mexico, is morphologically different from northern specimens (Stomberg *et al.* 2019, p. 7). Additionally, a report of the species occurring in Zacatecas, Nayarit, and Jalisco lacks supporting herbaria records (Stromberg *et al.* 2019, p. 7), and specimens collected from Michoacán and Guerrero appear to be a distinct taxon due to differences in flower color, habitat, elevation, and flowering time (Stromberg *et al.* 2019, p. 8). Because the species is obvious (tall with conspicuous flowers and locally abundant) and most cienegas, particularly ones still extant in Arizona and New Mexico, have been surveyed (AGFD 2019, p. 7), it is unlikely that new populations will be found. The six historical and current populations are discussed in greater detail below:

Las Playas, New Mexico, United States (Extirpated)—The species historically occurred at Playas or Las Playas Springs in the Playas Basin, east of the Animas Mountains in Hidalgo County, but it has not been found since 1851 and is believed to be extirpated (Sivinski 2018, p. 21; Stromberg *et al.* 2019, p. 4). The springs were diminished and Las Playas was found primarily dry by the mid to late 1950s (Sivinski 2018, p. 27; Stromberg *et al.* 2019, p. 5). The cienega at Las Playas is now considered dead (Sivinski 2018, p. 8) due to agricultural and industrial (*i.e.,* copper mining) dewatering (Stromberg *et al.* 2019, p. 5). ''Dead cienegas'' are historical cienegas that no longer have groundwater at or near the ground surface and likely have water tables so severely depleted that restoration, given today's techniques and economics, is not feasible (Sivinksi 2019, p. 14).

Agua Caliente, Arizona, United States (Extirpated)—Arizona eryngo historically occurred at the Agua Caliente Ranch east of Tucson in Pima County, Arizona, within the Santa Cruz River Basin (Stromberg *et al.* 2019, p. 5). This population was extirpated likely due to multiple manipulations of the site, including spring modification (Stromberg *et al.,* p. 5; SWCA 2002, pp. 1–2) and pond impoundment. Two springs (a hot spring and a cold spring) were blasted with explosives in the 1930s, and again in the 1960s, to increase water flow for resort development. Instead, the blasting significantly reduced water flow (Friends of Agua Caliente 2020, entire). The flow rate from the springs has varied from as high as 500 gallons per minute historically, to an immeasurable seep in recent years (Pima County 2020, entire).

The property is now owned by Pima County Natural Resources, Parks and Recreation and is managed as a regional park (Friends of Agua Caliente 2020, entire). Restoration of one of the ponds (Pond 1) began in 2019, and was completed in 2020 (Pima County 2020, entire). This pond is maintained by pumped groundwater, but soil sealant was used to reduce seepage and conserve water. As part of the restoration, select palm trees (*Phoenix* spp.) and invasive cattails (*Typha* spp.) were removed to encourage growth of native species, and a small wetland on the northwest side of Pond 1 was created (Pima County 2020, entire).

Experimental reintroductions of Arizona eryngo began in 2017, using plants grown in a nursery with seeds collected from La Cebadilla (Fonseca 2018, entire; Stromberg *et al.* 2019, pp. 5, 10). The initial reintroduction effort in 2017 of 20 plants had limited success due to javelina (*Tayassu tajacu*) damage, as well as placement of the plants at sites where they experienced water stress (Fonseca 2018, entire). The second effort in 2018 of 15 plants had improved success, but a number of plants were eaten by gophers (*Thomomys bottae*) (Li 2019, p. 6) or died of other causes. More recent reintroductions have resulted in the establishment of additional plants, including in the small wetland and wildlife island of Pond 1; however, efforts have not yet resulted in the establishment of a self-sustaining Arizona eryngo population.

La Cebadilla, Arizona, United States (Extant)—Arizona eryngo occurs in the La Cebadilla Cienega adjacent to the Tanque Verde Wash east of Tucson in Pima County, Arizona, within the Santa Cruz River basin (Stromberg *et al.* 2019, p. 5). The cienega is located on lands owned by La Cebadilla Estates and the Pima County Regional Flood Control District; the majority of plants occur on the privately owned portion of the cienega. In 2019, Arizona eryngo was documented in a number of colonies with a total spatial extent of 0.4 hectares (1.11 acres) (Li 2020a, p. 1). Some colony boundaries are defined by the presence of bulrush and tree canopy (Li 2019, p. 1).

The Arizona eryngo population at La Cebadilla is estimated to be about 30,000 aggregates—groups of clones, which are genetically identical individuals that result from vegetative reproduction (Li 2020b, p. 1). Each clone has a unique basal stem, and multiple clones can form a clustered aggregate that resembles an individual plant (Li 2020a, p. 2). While this is the largest of the four extant populations, the plants occur in a very confined space.

The homeowners association of La Cebadilla Estates manages the cienega (the portion not owned by the Pima County Regional Flood Control District) and nearby La Cebadilla Lake (also referred to as a pond, to the west of the cienega). The homeowners association has enacted covenants that prevent development of the cienega or sale to private developers (La Cebadilla Estates 2005, entire). The spring is located on the western edge of the cienega and a concrete spring box diverts some water to sustain the lake (Fonseca 2019, p. 2; Stromberg *et al.* 2019, p. 5).

Lewis Springs, Arizona, United States (Extant)—Arizona eryngo occurs in the Lewis Springs Cienega just to the east of the San Pedro River in Cochise County, within the San Pedro River Basin (Stromberg *et al.* 2019, p. 5). The cienega is located within the San Pedro Riparian National Conservation Area (SPRNCA) managed by the Bureau of Land Management (BLM). The San Pedro riparian area, containing about 64 km (40 mi) of the upper San Pedro River, was designated by Congress as a National Conservation Area in 1988. The primary purpose for the designation is to conserve, protect, and enhance the desert riparian ecosystem, a rare remnant of what was once an extensive network of similar riparian systems throughout the Southwest.

The Lewis Springs Complex currently has five groundwater outflows and is comprised of multiple elongated wetlands generally oriented northwest-southeast along a slope, totaling 1.2 hectares (3 acres) (Radke 2013, entire; Simms 2019, entire; Stromberg *et al.* 2019, p. 6; Li 2020a, p. 2). As of September 2019, four of the eight wetlands support Arizona eryngo (Simms 2019, entire). Within these four wetlands, Arizona eryngo occurs in six colonies with discrete boundaries, the spatial extent of which was about 0.04 hectares (0.1 acres) in 2019 (Li 2020a, p. 1). The population has had recent estimates of over 1,000 plants (Stromberg *et al.* 2019, p. 6; Li 2020a, p. 1; Li 2020b, p. 1).

BLM has conducted some removal of the nonnative Johnsongrass (*Sorghum halepense*) at Lewis Springs and is planning for additional removal of the species. BLM is also planning experimental removal of the native upland plant baccharis (*Baccharis* spp.) at Lewis Springs, as well as establishment of additional populations and/or subpopulations of Arizona eryngo at suitable sites within Lewis Springs and the SPRNCA.

Rancho Agua Caliente, Sonora, Mexico (Extant)—Arizona eryngo occurs in the Agua Caliente Cienega on the privately owned Rancho Agua Caliente east of Esqueda in the municipality of Nacozari de García (Sánchez Escalante *et al.* 2019, p. 16; Stromberg *et al.* 2019, p. 7). Rancho Agua Caliente is an active cattle ranch. Based on aerial photographs, the cienega appears to be about 5 hectares (12.3 acres) (Stromberg *et al.* 2019, p. 7); however, it may only be about 1.5 hectares (3.7 acres) (Sánchez Escalante 2019, pers. comm.).

This cienega is the only known site for Arizona eryngo in Sonora. In 2018, hundreds of Arizona eryngo, including juveniles, occurred along the marsh near the spring within a nearly 1-hectare (2.5-acres) area (Sánchez Escalante *et al.* 2019, p. 16; Sánchez Escalante 2019, pers. comm.). The estimated area occupied by Arizona eryngo is larger than the other sites, while the population estimate is quite low, thus indicating the population is more sparse or patchy than La Cebadilla or Lewis Springs. Based on photography of the site, it appears that Rancho Agua Caliente currently supports areas with a range of soil moisture (from standing water to dry soils) and open sun conditions.

Ojo Vareleño, Chihuahua, Mexico (Extant)—Arizona eryngo occurs at a privately owned hot springs spa, El Ojo Vareleño, located northwest of the municipality of Casas Grandes in Chihuahua (Sánchez Escalante *et al.* 2019, p. 9; Stromberg *et al.* 2019, pp. 6–7). The site is within the San Miguel River Basin at the base of the Piedras Verdes Mountains (Stromberg *et al.* 2019, p. 6). The extent of the cienega is currently about 1 hectare (2.5 acres) and supports about 56 adult plants (Sánchez Escalante *et al.* 2019, p. 17) that occupy an area of about 0.075 hectares (0.2 acres) (Sánchez Escalante 2019, pers. comm.). No juveniles were documented.

Based on photography of the site, it appears that Ojo Vareleño currently supports areas with a range of soil moisture (from standing water to dry soils) and sunlight conditions (from open sun to highly shaded). The nonnative giant reed (*Arundo donax*) invasion at the site is creating conditions with high amounts of shade and little to no space for other plants. Springflow is collected in concrete spa ponds (Sánchez Escalante *et al.* 2019, p. 28), which likely affects the natural hydrology of the site.

Regulatory and Analytical Framework

Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species is an endangered species or a threatened species. The Act defines an endangered species as a species that is ''in danger of extinction throughout all or a significant portion of its range,'' and a threatened species as a species that is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The Act requires that we determine whether any species is an endangered species or a threatened species because of any of the following factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term ''threat'' to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an ''endangered species'' or a ''threatened species.'' In determining whether a species meets either definition, we must evaluate all identified threats by considering the expected response by the species, and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species, such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an ''endangered species'' or a ''threatened species'' only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

The Act does not define the term ''foreseeable future,'' which appears in the statutory definition of ''threatened species.'' Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis. The term ''foreseeable future'' extends only so far into the future as the Services can reasonably determine that both the future threats and the species' responses to those threats are likely. In other words, the foreseeable future is the period of time in which we can make reliable predictions. ''Reliable'' does not mean ''certain''; it means sufficient to provide a reasonable degree of confidence in the prediction. Thus, a prediction is reliable if it is reasonable to depend on it when making decisions.

It is not always possible or necessary to define foreseeable future as a particular number of years. Analysis of the foreseeable future uses the best scientific and commercial data available and should consider the timeframes applicable to the relevant threats and to the species' likely responses to those threats in view of its life-history characteristics. Data that are typically relevant to assessing the species' biological response include species-specific factors such as lifespan, reproductive rates or productivity, certain behaviors, and other demographic factors.

Analytical Framework

The SSA report documents the results of our comprehensive biological review of the best scientific and commercial data regarding the status of the species, including an assessment of the potential threats to the species. The SSA report does not represent a decision by the Service on whether the species should be proposed for listing as an endangered or threatened species under the Act. It does, however, provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its implementing regulations and policies. The following is a summary of the key results and conclusions from the SSA report; the full SSA report can be found at Docket No. FWS–R2–ES–2020–0130 on *http://www.regulations.gov* and at *https://www.fws.gov/southwest/es/arizona/*.

To assess viability of the Arizona eryngo, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency supports the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years), redundancy supports the ability of the species to withstand catastrophic events (for example, droughts, large pollution events), and representation supports the ability of the species to adapt over time to long-term changes in the environment (for example, climate changes). In general, the more resilient and redundant a species is and the more representation it has, the more likely it is to sustain populations over time, even under changing environmental conditions. Using these principles, we identified the species' ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the species' viability.

The SSA process can be categorized into three sequential stages. During the first stage, we evaluated the individual species' life history needs. The next stage involved an assessment of the historical and current condition of the species' demographics and habitat characteristics, including an explanation of how the species arrived at its current condition. The final stage of the SSA involved making predictions about the species' responses to positive and negative environmental and anthropogenic influences. Throughout all of these stages, we used the best available information to characterize viability as the ability of a species to sustain populations in the wild over time. We use this information to inform our regulatory decision.

Summary of Biological Status and Threats

In this discussion, we review the biological condition of the species and its resources, and the threats that influence the species' current and future condition, in order to assess the species' overall viability and the risks to that viability.

Using various timeframes and the current and projected future resiliency,

redundancy, and representation, we describe the species' levels of viability over time. For the Arizona eryngo to maintain viability, its populations or some portion thereof must be resilient. A number of factors influence the resiliency of Arizona eryngo populations, including occupied area, abundance, and recruitment. Elements of the species' habitat that determine whether Arizona eryngo populations can grow to maximize habitat occupancy influence those factors, thereby influencing the resiliency of populations. These resiliency factors and habitat elements are discussed in detail in the SSA report and summarized here.

Species Needs

Abundance

Larger plant populations have a lower risk of extinction than smaller populations (Menges 2000, p. 78). Small populations are less resilient and more vulnerable to the effects of demographic, environmental, and genetic stochasticity and have a higher risk of extinction than larger populations (Matthies *et al.* 2004, pp. 481, 485). Small populations may experience increased inbreeding, loss of genetic variation, and ultimately a decreased potential to adapt to environmental change (Matthies *et al.* 2004, p. 481). When rare plant populations are very small (fewer than 100 individuals), they may suffer from inbreeding depression (Maschinski and Albrecht 2017, p. 392). Furthermore, fewer pollinators visit plants in small and isolated populations, which may lead to reduced pollination and lowered fecundity (Matthies *et al.* 2004, p. 482).

For populations of Arizona eryngo to be resilient, abundance should be high enough that local stochastic events do not eliminate all individuals, allowing the overall population to recover from any one event. A greater number of individuals in a population increases the chance that a portion of the population will survive. The necessary abundance or minimum viable population (MVP) size for Arizona eryngo is unknown; however, estimations can be attained from literature. For example, Pavlik (1996, p. 137) recommends MVP sizes ranging from 50 individuals to 2,500 individuals for the conservation of rare plants, depending on various life history characteristics of the taxon. Some of the Arizona eryngo's life history characteristics indicate that an MVP may require higher abundance, while other characteristics indicate that lower abundances may be sufficient. For example, the species is a perennial and commonly produces ramets, which means that fewer individuals are needed to achieve an MVP. Conversely, it is an herbaceous plant, which means that an MVP may require higher abundance. The other characteristics are unknown for this species. Based on our current understanding of the species' life history, we conclude that an initial MVP in the middle of the spectrum provided by Pavlik (1996, p. 137) is appropriate. Therefore, a population size of 1,225 may be needed to achieve high resiliency for the Arizona eryngo.

Determinations of MVP usually take into account the effective population size, rather than total number of individuals; 10 genetically identical individuals (for example, clones or ramets) would have an effective population size of one. In the case of the Arizona eryngo, we have estimates of abundance of individuals for each population, but we do not know the ratio of ramets to genetically unique individuals, although evidence indicates the species is highly clonal. In cases like this, Tependino (2012, p. 946) suggests adjusting the stem counts of rare clonal species to adjust for the inflated population size from the inclusion of ramets. Therefore, to account for the clonal nature of the Arizona eryngo, to estimate our final MVP we added 50 percent to the estimated MVP, which resulted in a total of about 1,840 plants needed to be a highly resilient population.

Recruitment

Arizona eryngo populations must also reproduce and produce sufficient amounts of seedlings and ramets such that recruitment equals or exceeds mortality. Ideally, we would know key demographic parameters of the plant (*i.e.,* survival, life expectancy, lifespan, the ratio of ramets to genetically unique individuals) to estimate the percentage of juveniles required in a population to achieve population stability or growth. Because we currently do not know any of these parameters, we are using the presence of juveniles as an important demographic factor influencing resiliency.

Current population size and abundance reflects previous influences on the population and habitat, while reproduction and recruitment reflect population trends that may be stable, increasing, or decreasing in the future. For example, a large, dense population of Arizona eryngo that contains mostly old individuals may be able to withstand a single stochastic event over the short term, but it is not likely to remain large and dense into the future, as there are few young individuals to sustain the population over time. A population that is less dense but has many young individuals may be likely to grow denser in the future, or such a population may be lost if a single stochastic event affects many seedlings at once. Therefore, the presence of young individuals is an important indicator of population resiliency into the future.

Occupied Area

Highly resilient Arizona eryngo populations must occupy cienegas large enough such that stochastic events and environmental fluctuations that affect individual plants or colonies do not eliminate the entire population. Repopulation through seed dispersal and germination and ramet production within the cienega can allow the population to recover from these events.

Larger functional cienegas are likely to support larger populations of Arizona eryngo and are more likely to provide patches of suitable habitat when small stochastic events and environmental fluctuations occur. For example, during drought years, areas closer to spring seeps and possibly areas with natural depressions (*i.e.,* topographic variation) may retain more moisture throughout the year than areas farther away from seeps and slightly higher in elevation. Conversely, during years with heavy rainfall, slightly higher elevation areas may retain moist soils that are not inundated year round, providing suitable habitat for the species.

Areas currently occupied by Arizona eryngo range from about 0.04 hectares (0.1 acre) to 0.9 hectares (2.2 acres). Based on historical and current estimates of cienega size and area occupied by Arizona eryngo, we approximate that a resilient Arizona eryngo population should occupy greater than 1 hectare (2.5 acres) within a functional cienega.

Soil Moisture

Resilient Arizona eryngo populations need moist to saturated soils year round. Arizona eryngo has been documented in standing water up to two centimeters to soil that is dry at the surface but saturated several centimeters into the soil (Stromberg *et al.* 2019, pp. 6, 8). It is hypothesized that flowering is determined, in part, by soil moisture availability (*i.e.,* plants do not flower in drier conditions when the plants are more stressed) and that ramets are produced during drier periods (Li 2019, p. 8; Stromberg *et al.* 2019, p. 8). Seedling recruitment may be episodic, with greater recruitment success in wetter years. Soils must remain

sufficiently moist for successful seedling recruitment, particularly in the hottest/driest time of the year (normally May/June). If soils become too dry, other more drought-tolerant species are likely to encroach and outcompete the Arizona eryngo (Simms 2019, p. 6; Li 2019, p. 1), or if or if it becomes very dry such that the roots are not in moist soil, the plant is likely to die. If the soil is inundated with water (such that there is standing water on the surface) for too long, other species that grow more aggressively in mesic conditions are likely to outcompete the Arizona eryngo (Li 2020, p. 2).

Sunlight

Highly resilient Arizona eryngo populations require full sun. Under canopy cover, the species grows less densely, and flowering is reduced. Tall native and nonnative vegetation appears to outcompete and suppress growth of the Arizona eryngo. While these species may compete for sunlight, water, and nutrients, lack of sunlight may be a primary factor driving the absence or decreased abundance of the Arizona eryngo.

Risk Factors for the Arizona Eryngo

We reviewed the potential risk factors (*i.e.,* threats, stressors) that could be affecting the Arizona eryngo now and in the future. In this proposed rule, we will discuss only those factors in detail that could meaningfully impact the status of the species. Those risks that are not known to have effects on Arizona eryngo populations, such as overutilization for commercial and scientific purposes and disease, are not discussed here but are evaluated in the SSA report. The primary risk factors affecting the status of the Arizona eryngo are: (1) Physical alteration of cienegas (Factor A), (2) water loss (Factor A), and (3) changes in co-occurring vegetation (Factor A). These factors are exacerbated by the ongoing and expected effects of climate change. Direct harm or mortality due to herbivory or trampling (Factor C) may also affect individuals and the seedbank, but not at levels likely to affect species viability.

Physical Loss and Alteration of Cienega Habitat

Historically, cienegas were more common and larger than they are today. Greater than 95 percent of the historical area of cienegas in the southwestern United States and northwestern Mexico is now dry (Cole and Cole 2015, p. 36). Functional cienegas were much more common prior to the late 1800s, as evidenced by pollen and fire records, General Land Office survey notes, and early trapper and settler diaries (Hendrickson and Minckley 1985, p. 131; Fonseca 1998, p. 111; Cole and Cole 2015, p. 36; Brunelle *et al.* 2018, p. 2). Estimates of cienega abundance in the International Four Corners Region of the Southwest (Arizona, Sonora, New Mexico, and Chihuahua) vary from hundreds to thousands (Cole and Cole 2015, p. 36; Sivinski 2018, entire). Of the 155 cienegas that Cole and Cole (2015, p. 36) identified in the International Four Corners Region, 87 (56 percent) are either dead or so severely compromised that there is no prospect for their restoration. In addition to the reduced abundance of cienegas in the International Four Corners Region, the remaining cienegas are greatly reduced in size, and due to many being severely incised, they are more similar to creeks than marshes (Cole and Cole 2015, p. 36).

A number of complex factors, many of which are interrelated, led to the historical loss and degradation of cienegas and continue to contribute to this loss today. The primary factors include intensive grazing of domestic livestock, the removal of beavers (*Castor canadensis*) from regional streams and rivers, and agricultural recontouring (Minckley *et al.* 2013a, p. 214; Cole and Cole 2015, p. 32). Intensive overgrazing by sheep and cattle from the late 1500s to the late 1800s led to barren soil, erosion, headcutting (erosional feature in a stream that contributes to lowering the water table of the surrounding system), and increased frequency of or intensity of destructive floods, all leading to the alteration or complete destruction (complete loss of ecological function) of cienegas (Minckley *et al.* 2013a, p. 214; Cole and Cole 2015, p. 32). Beaver dams, once numerous within the range of the Arizona eryngo, slowed water and created pools and wetlands along water courses, and enhanced groundwater recharge; however, high levels of beaver trapping in the 1800s resulted in increased erosion and channel cutting of these once complex, shallow wetlands (Gibson and Olden 2014, p. 395; Cole and Cole 2015, p. 32). Additionally, early settlers recontoured (*e.g.,* diverted, dammed, channelized) cienegas for agricultural, mining, disease control, and other purposes; this resulted in further channelization and concentrated flow, greatly reducing the size of cienegas and further lowering the water table (Cole and Cole 2015, p. 32; Minckley *et al.* 2013b, p. 78).

We expect that Arizona eryngo populations were more widespread and occurred at historical cienegas that have lost their ecological function due to physical alteration, such that populations were more abundant, occurred closer to one another, and were more connected (through pollination and seed dispersal) than they are currently. As a result of these lost cienegas, the four extant Arizona eryngo populations are now disjunct.

Although grazing was one cause of the loss of historical cienega habitat, grazing and trampling by livestock occur only occasionally at Arizona eryngo populations. No grazing is authorized at Lewis Springs, and we are not aware of any grazing occurring at La Cebadilla and Ojo Vareleño. Trespass livestock could enter Lewis Springs and affect habitat in the cienega; although there was no evidence of cattle in 2018 or 2019, there was evidence (*i.e.,* scat and light trailing) of a trespass horse in the area when Service biologists visited the site in 2019. Cattle are present at Rancho Agua Caliente, Sonora, and the habitat is somewhat disturbed by cattle (Sánchez Escalante *et al.* 2019, p. 16). Livestock (*e.g.,* livestock trailing and gathering) can trample vegetation and expose and compact soil, resulting in habitat erosion and altered hydrological function, but the effects of livestock are dependent on many factors such as the intensity, duration, and timing of grazing. In the absence of other forms of disturbance (*e.g.,* fire), it is possible that selective, well-managed livestock grazing in the winter or spring could create habitat disturbance and open sun conditions favoring Arizona eryngo seedling establishment.

Other physical alterations that occurred in the past likely continue to affect extant populations of Arizona eryngo through changes in the natural hydrology of cienegas supporting the species. For example, a berm that has been present at La Cebadilla since at least 1941, as well as various houses and roads adjacent and near the cienega, all affect the natural hydrology of the site. Similarly, the railroad that runs parallel to Lewis Springs likely affects the hydrology of the cienega. Unlike the historical physical alterations that severely degraded cienegas, these alterations (berm, railroad, houses, etc.) have not destroyed cienega function.

Water Loss

Water loss in cienegas poses a significant threat to the Arizona eryngo. Causes of water loss are complex, but the primary causes at cienegas historically or currently supporting Arizona eryngo are: (1) Groundwater pumping/withdrawal, (2) spring modification, (3) water diversion, and (4) drought. These stressors are all

exacerbated by climate change. Groundwater pumping or withdrawal leads to aquifer depletion and no or reduced outflow from springheads. Modification of springheads reduces or eliminates springflow. Water diverted from springheads reduces or eliminates the amount of water supporting the cienega. Drought and warming also reduce springflow and the amount of water in cienegas. Reduction in winter rain particularly leads to reduced aquifer recharge. Climate change is expected to exacerbate drought conditions, increase surface temperatures and evapotranspiration, and reduce winter precipitation, all of which may lead to a reduction in aquifer recharge and increased cienega drying.

Water loss in cienegas reduces the quantity and quality of habitat for the Arizona eryngo. The species requires very moist to saturated soils and possibly some standing water for seed germination. As water is lost from cienegas, soils become drier, reducing habitat quality and allowing woody and/or invasive vegetation to establish, further reducing available habitat.

Water loss from cienegas caused the extirpation of the species at two of the six cienegas known to historically support the Arizona eryngo (Las Playas in New Mexico, and Agua Caliente in Arizona), and all populations continue to be exposed to water loss. The sources of water loss are discussed further below.

Groundwater withdrawal—The population at Las Playas was extirpated primarily due to groundwater pumping for agriculture and the Playas Smelter that caused the desiccation of the spring (Sivinski 2018, p. 27; Stromberg *et al.* 2019, p. 5). Groundwater withdrawal is also occurring near Lewis Springs, La Cebadilla, and Agua Caliente. The use of groundwater for agriculture, industry, and urban and rural development has enabled significant human population growth in the arid Southwest. Increased groundwater withdrawal can reduce or eliminate springflow, thereby eliminating wetlands altogether (Johnson *et al.* 2016, p. 52).

The largest municipalities in the Sierra Vista subwatershed, within which Lewis Springs occurs, are Sierra Vista, Bisbee, Tombstone, and Huachuca City. Within these areas, the human population is increasing, as is development distributed in rural parts of the subwatershed (Leake *et al.* 2008, p. 1). This growing population is dependent on groundwater to meet its water consumption needs. Water outflow from the subwatershed, including water withdrawn by pumping, exceeds natural inflow to the regional aquifer within the subwatershed (Leake *et al.* 2008, p. 2). As a result, groundwater levels in parts of the subwatershed are declining, and groundwater storage is being depleted (*i.e.,* a negative water budget).

Groundwater pumping in the area of Lewis Springs, up to several kilometers away, may be affecting the regional groundwater flow to the wetlands along the San Pedro River, including Lewis Springs (Stromberg *et al.* 2019, p. 9). The continued decline of groundwater levels upgradient from perennial river reaches will eventually diminish the base flow of the San Pedro River and impact the riparian ecosystem within the SPRNCA (Leake *et al.* 2008, p. 2). This groundwater use over the past century has been so profound that the effects of pumping over the past century will eventually capture and eliminate surface flow from the river, even if all groundwater pumping were to stop (Gungle *et al.* 2016, p. 29). Models show the area of Lewis Springs as being one of the areas of greatest groundwater loss in the basin (Leake *et al.* 2008, p. 14).

The aquifer supporting the La Cebadilla springs could be reduced from numerous private wells (including the Tanque Verde Guest Ranch) producing water from the aquifer that feeds the springs (Eastoe and Fonseca 2019, pers. comm.). It is unknown how quickly pumping a mile or two away from the springs might affect the springs themselves (Eastoe and Fonseca 2019, pers. comm.).

We do not have information on the source of water supplying the springs or about the amount of groundwater use at Rancho Agua Caliente or Ojo Vareleño, both in Mexico.

Spring modification—The Arizona eryngo population at Agua Caliente was extirpated due to a number of manipulations, including spring modification (*i.e.,* the springs were blasted in the 1930s and again in the 1960s) that significantly decreased the water flow (Stromberg *et al.* 2019, p. 5; Friends of Agua Caliente 2020, entire) and pond impoundment.

Water diversion—The Arizona eryngo population at La Cebadilla has been exposed to water diversion for many decades; this diversion may have led to a reduction in the size of the cienega, but enough water still flows to maintain the cienega and support the largest documented population (Fonseca 2019, p. 2; Stromberg *et al.* 2019, p. 5). Pond impoundment diverts water from the cienega at Agua Caliente; this was pronounced in the 1960s during subdivision construction and has continued since.

Less is known about water loss associated with the cienegas supporting the Arizona eryngo in Mexico, but we are aware that the municipality of Casas Grandes is interested in installing a pipeline from the spring at El Ojo Vareleño to supply water to the Universidad Tecnológica de Casas Grandes. Currently at Ojo Vareleño, springflow is collected in concrete spa ponds, which likely affects the natural hydrology of the site.

Drought and warming—All Arizona eryngo populations are exposed to drought, as well as warming temperatures from climate change. Decreased precipitation and increased temperatures due to climate change will exacerbate declines in surface and groundwater levels, which will cause further drying of cienega habitat required by the Arizona eryngo.

Climate change has already begun, and continued greenhouse gas emissions at or above current rates will cause further warming. Climate models indicate that the transition to a more arid climate is already underway and predict that in this century the arid regions of the southwestern United States will become drier (*i.e.,* decreased precipitation) and warmer (*i.e.,* increased surface temperatures), and have fewer frost days, decreased snow pack, increased frequency of extreme weather events (heat waves, droughts, and floods), declines in river flow and soil moisture, and greater water demand by plants, animals, and humans (Archer and Predick 2008, p. 23; Garfin *et al.* 2013, pp. 5–6). Increasing dryness in the southwestern United States and northern Mexico is predicted to occur as early as 2021–2040 (Seager *et al.* 2007, p. 1181). Climate modeling of the southwestern United States shows consistent projections of drying, primarily due to a decrease in winter precipitation (Collins *et al.* 2013, p. 1080). For both Pima and Cochise Counties, where the La Cebadilla and Lewis Springs populations occur, the average daily maximum temperature, under both lower (*i.e.* RCP 4.5) and higher (*i.e.,* RCP 8.5) emissions scenarios, will increase by mid-century (Climate Explorer 2020).

Climate change over the 21st century is projected to reduce renewable surface water and groundwater resources in most dry subtropical regions (IPCC 2014, p. 69). Over the next 100 years, groundwater recharge in the San Pedro basin is expected to decrease 17 to 30 percent, depending on the climate scenario considered (Serrat-Capdevila *et al.* 2007, p. 63), and average annual base flow will be half the base flow in 2000. As the area gets drier, the San Pedro

aquifer groundwater overdraft will become more severe as recharge declines and groundwater pumping increases (Meixner *et al.* 2016, p. 135). For the purposes of our analysis, we chose two Representative Concentration Pathways, RCP 4.5 and RCP 8.5 (IPCC 2014, p. 8) to assess future condition of the Arizona eryngo. These climate scenarios were incorporated into our future scenarios of the status of the Arizona eryngo in the SSA report.

Summary of water loss—In summary, water loss has caused the extirpation of two of six known populations of the Arizona eryngo and has affected the current viability of all extant populations. Both extant U.S. populations are exposed to water loss through groundwater withdrawal, and one of these (La Cebadilla) is also exposed to spring diversion. Groundwater withdrawal, particularly when exacerbated by climate change, is a primary threat to the survival of the Arizona eryngo at Lewis Springs and La Cebadilla. Less is known about water loss associated with the two populations in Mexico, but spring diversion is proposed at one site supporting the Arizona eryngo, and it is likely that the species is vulnerable to groundwater withdrawal. Drought and warming as a result of climate change affects all populations, particularly when combined with groundwater withdrawal and diversion.

Change in Vegetation at Cienegas

The invasion of vegetation that reduces full sun conditions poses a threat to the Arizona eryngo. Changes in vegetation at cienegas are primarily from fire suppression, introduction of nonnative plant species, decreased flood events, and changes in hydrology and climate. Prior to the arrival of European settlers, burning of cienegas by indigenous people was frequent enough to exclude most woody plants (*e.g.,* hackberry (*Celtis* spp.), buttonbush (*Cephalanthus* spp.), cottonwood (*Populus* spp.), ash (*Fraxinus* spp.), and willow (*Salix* spp.)) and suppress bulrush from cienegas and to promote growth of native grasses (Davis *et al.* 2002, p. 1; Cole and Cole 2015, p. 32). Extant cienegas now have less diversity of annual and disturbance-adapted native understory species and an increase in native woody, clonal, and nonnative plants (Stromberg *et al.* 2017, p. 10). As water levels in cienegas decrease, woody plants invade without regular disturbance (*e.g.,* fires, floods) to the system (Huxman and Scott 2007, p. 1). Shifts from herbaceous wetland vegetation to more deeply rooted riparian trees have been well documented at wetlands with lowered water tables (Stromberg *et al.* 2019, p. 9). These woody plants shade out Arizona eryngo and cause water level declines in cienegas through increased evapotranspiration, particularly in the summer (Johnson *et al.* 2016, p. 83).

Invasive, nonnative plants (*e.g.,* giant reed, Johnsongrass) are of concern because they often quickly colonize an area and aggressively compete with native species such as the Arizona eryngo for sunlight, water, and nutrients. Giant reed is a fast-growing, tall (up to 6 meters (m) (~20 feet (ft)), perennial, hydrophytic (water-loving) grass that grows in riparian areas, streams, irrigation ditches, and wetlands. It is an aggressive invader that rapidly spreads into a thick monoculture that outcompetes and shades out other vegetation (Frandsen 1997, p. 245; DiPietro 2002, p. 9). Giant reed is fire-adapted and resprouts from extensive underground rhizomes even after very hot fires that kill native vegetation (DiPietro 2002, p. 9). Additionally, it uses large amounts of water, thereby reducing the amount of water available for native vegetation (DiPietro 2002, p. 10).

Johnsongrass is a fast-growing, tall, invasive perennial grass that thrives in a variety of environments and climates (Peerzada *et al.* 2017, p. 2). It mostly grows at moist sites (*e.g.,* irrigation canals, cultivated fields, field edges, pastures), and in Arizona, it is known as a riparian weed in the Sonoran and Chihuahuan Deserts. Johnsongrass impacts the growth of native plants; it is difficult to control and has become resistant to herbicides, particularly glyphosate (Peerzada *et al.* 2017, p. 2).

At three of four cienegas supporting the Arizona eryngo (Lewis Springs, La Cebadilla, and Ojo Vareleño), an increase in woody vegetation and nonnative plant species has been documented. This vegetation is outcompeting the Arizona eryngo for sunlight and space, likely causing a decrease in population size and extent at these sites. At Lewis Springs, Johnsongrass is aggressively invading and appears to be suppressing Arizona eryngo, particularly in the drier areas of the wetlands (Li 2019, entire; Simms 2019, entire). Johnsongrass has been present at this site since at least 2009. In the drier areas of the wetlands, baccharis is encroaching and appears to be suppressing Arizona eryngo; no Arizona eryngo plants have been found growing in the understory of baccharis (Li 2019, entire; Simms 2019, entire). At La Cebadilla, aerial imagery indicates that mesquite (*Prosopis* spp.) is invading the cienega, and cottonwood also appears to be shading out Arizona eryngo (Fonseca 2019, entire). Arizona ash (*Fraxinus velutina*) trees are invading the cienega and shading out Arizona eryngo as well (Li 2020b, p. 3). At Ojo Vareleño, many nonnative plant species also occur, with a particularly aggressive invasion of giant reed (Sánchez Escalante *et al.* 2019, pp. 9–10).

In summary, nonnative Johnsongrass and giant reed are likely to continue to aggressively invade Lewis Springs and Ojo Vareleño. These nonnative plant species may contribute to the near-term extirpation of Arizona eryngo populations at these sites. Woody vegetation encroachment at La Cebadilla and Lewis Springs is also likely to continue, further degrading habitat conditions.

Direct Harm and Mortality

Livestock, such as cattle and horses, and native herbivores (both invertebrate and vertebrate) may cause harm or mortality to Arizona eryngo plants through trampling, herbivory, or uprooting. Because mature plants have large, fibrous leaves, cattle are more likely to consume young plants at an early growth stage. As discussed above, cattle are present at Rancho Agua Caliente, and trespass cattle and horses could enter Lewis Springs and trample, consume flowers, and reduce the seedbank of the Arizona eryngo. To our knowledge, no livestock are present at La Cebadilla or Ojo Vareleño. At the Agua Caliente reintroduction site in Arizona, javelina uprooted and killed young plants, and gophers ate young reintroduced plants (Fonseca 2018, p. 1; Li 2019, p. 6).

Many invertebrates have been observed on Arizona eryngo plants at La Cebadilla and Lewis Springs (Stromberg *et al.* 2019, p. 8; Li 2019, p. 2; Simms 2019, p. 1). Some of these invertebrates may be floral herbivores, but they do not appear to be of concern for the species' viability.

In summary, while herbivory and trampling may harm individual Arizona eryngo plants and the seedbank, they are not significant threats to the species.

Summary

Our analysis of the past, current, and future influences on the needs of the Arizona eryngo for long-term viability revealed that there are two that pose the greatest risk to future viability: Water loss (groundwater withdrawal and water diversion) and invasion of nonnative and woody plant species, both of which are exacerbated by drought and warming caused by climate change. Water loss reduces the availability of

moist soils, and nonnative and woody plant species outcompete Arizona eryngo for sunlight, space, and water, thereby reducing the quantity and quality of habitat.

Species Condition

Here we discuss the current condition of the Arizona eryngo, taking into account the risks to those populations that are currently occurring. We consider climate change to be currently occurring and exacerbating effects of drought, warming, groundwater withdrawal, diversion, and invasion of nonnative and woody plant species. In the SSA report, for each population, we developed and assigned condition categories for three population factors and two habitat factors that are important for viability of the Arizona eryngo. The condition scores for each factor were then used to determine an overall condition of each population: high, moderate, low, or functionally extirpated. These overall conditions translate to our presumed probability of persistence of each population, with populations in high condition having the highest presumed probability of persistence over 30 years (greater than 90 percent), populations in moderate condition having a presumed probability of persistence that falls between 60 and 90 percent, and populations in low condition having the lowest probability of persistence (between 10 and 60 percent). Functionally extirpated populations are not expected to persist over 30 years or are already extirpated.

Overall, there are four remaining populations of Arizona eryngo, all restricted to small cienegas in the Sonoran and Chihuahuan Deserts in Arizona and Mexico. Historically, Arizona eryngo populations were likely connected to one another, but today they are small and isolated due to cienega loss throughout the region. Repopulation of extirpated locations is extremely unlikely without human assistance. Two populations are currently in moderate condition and two are in low condition, and two have been extirpated.

La Cebadilla

La Cebadilla contains the largest population of the Arizona eryngo, with a population estimate of over 30,000 individuals. However, this population occurs in a very small area; the occupied area is approximately 0.04 hectares (1.1 acres), and the population depends on stable groundwater to maintain springflow into the cienega. The cienega has been altered by increased presence of trees, bank erosion, pasture grading, utility construction, and subdivision development (Fonseca 2019, p. 3). Historical images indicate that the cienega was more extensive in 1941, with fewer trees on some margins of the cienega and no forest on the southern margin of the cienega (Fonseca 2019, p. 1). Due to the encroachment of woody vegetation, this site has varied sunlight conditions, with more shade currently than in the past.

The cienega has been shrinking, indicating the aquifer is being depleted (Fonseca 2019, pers. comm.). The aquifer supporting the La Cebadilla springs supports numerous private wells (including the Tanque Verde Guest Ranch) (Eastoe and Fonseca 2019, pers. comm.). In addition to groundwater use, aquifer depletion could also result from increased evapotranspiration of tree cover and stream channel adjustments.

La Cebadilla Estates and the Pima County Regional Flood Control District (PCFCD) are committed to the conservation of the unique ecological diversity of La Cebadilla cienega and are working to reduce woody vegetation. The homeowners association of La Cebadilla Estates manages their portion of the cienega as common property for the common use and enjoyment of its members. PCFCD manages their portion of the cienega as natural open space, which has a restrictive covenant that limits development and protects natural resources on the property.

Because of the small extent of the population and the encroachment of woody vegetation, the Arizona eryngo population is currently in moderate condition and is at risk of extirpation from decreased springflow due to continuing loss of groundwater from the aquifer.

Lewis Springs

The population of Arizona eryngo in Lewis Springs, estimated at 1,813 plants, occurs along a very narrow cienega parallel to a railroad, occupying about 0.04 hectares (0.1 acres) (Li 2020a, p. 1). In 2005, there were more than a dozen springs and seeps in the wetland complex; as of 2019, some of the wetland patches appear to be drying, with soil drier at several sites than it had been in 2005 (Simms 2019, entire). The water source of Lewis Springs Cienega is supplied by mountain front recharge (westward flow from the Mule Mountains and eastward flow from the Huachuca Mountains) (Baillie *et al.* 2007, p. 7; Stromberg *et al.* 2019, p. 6). Groundwater pumping up to several kilometers away may be affecting the regional groundwater flow to the wetlands along the San Pedro River, including Lewis Springs (Stromberg *et al.* 2019, p. 9).

Nonnative Johnsongrass is aggressively invading Lewis Springs and appears to be suppressing Arizona eryngo, particularly in the drier areas of the cienega (Simms 2019, p. 22; Li 2020a, p. 2). Similarly, baccharis has been invading and appears to be suppressing Arizona eryngo, as no Arizona eryngo plants were found growing in the understory of baccharis (Simms 2019, p. 6; Li 2019, p. 1). In the wetter areas of the cienega where the soil is saturated and surface water is generally present, common spikerush (*Eleocharis palustris*) and bulrush appear to suppress Arizona eryngo (Li 2020a, p. 2).

BLM has conducted some removal of Johnsongrass at Lewis Springs and is currently planning for additional removal of the species. BLM is also planning experimental removal of baccharis shrubs at Lewis Springs, and they are considering establishment of additional populations and/or subpopulations of Arizona eryngo at suitable sites within Lewis Springs and the SPRNCA. BLM is also collecting seeds for propagation and banking.

Because of the moderate population size, extremely small population extent, decreasing springflow and increased drying of soils, and plant species invasion, Lewis Springs is currently in moderate condition. The population is currently at risk of extirpation from drying due to drought, groundwater pumping, and invasion of nonnative Johnsongrass.

Rancho Agua Caliente, Mexico

The Arizona eryngo population at Rancho Agua Caliente occupies about 1 hectare (2.5 acres). The population is estimated to be several hundred plants, including juveniles (Sánchez Escalante *et al.* 2019, p. 16; Sánchez Escalante 2019, pers. comm.). This cienega is the only known population of Arizona eryngo in Sonora.

Rancho Agua Caliente is an active cattle ranch, and Arizona eryngo habitat is somewhat disturbed by cattle (Sánchez Escalante *et al.* 2019, p. 16), which may help create open sun conditions for the species. We have no information on the groundwater source for the spring.

Because of the small numbers of individuals at Rancho Agua Caliente, the population is currently in low condition and is at risk of extirpation due to drought and drying of habitat.

Ojo Vareleño, Mexico

The Arizona eryngo population at Ojo Vareleño contains about 56 adult plants (Sánchez Escalante *et al.* 2019, p. 17) in a 0.075-hectare (0.18-acre) area (Sánchez Escalante 2019, pers. comm.). No juveniles have been documented at this site.

Giant reed has been aggressively invading Ojo Vareleño (Sánchez Escalante *et al.* 2019, p. 10), and it appears that the site has variable soil moisture and sunlight conditions. The giant reed invasion is creating conditions with high amounts of shade and little to no space for other plants. Springflow is collected in concrete spa ponds (Sánchez Escalante *et al.* 2019, p. 28), which likely affects the natural hydrology of the site. Currently, we do not have information on the source of water supplying the springs or the amount of groundwater use at this site.

Because of the very low population numbers and the lack of juveniles, the population of Arizona eryngo at Ojo Vareleño is currently in low condition. A small change in the water levels at the cienega or further invasion by giant reed could cause the extirpation of the population in the near future.

We note that, by using the SSA framework to guide our analysis of the scientific information documented in the SSA report, we have not only analyzed individual effects on the species, but we have also analyzed their potential cumulative effects. We incorporate the cumulative effects into our SSA analysis when we characterize the current and future condition of the species. Our assessment of the current and future conditions encompasses and incorporates the threats individually and cumulatively. Our current and future condition assessment is iterative because it accumulates and evaluates the effects of all the factors that may be influencing the species, including threats and conservation efforts. Because the SSA framework considers not just the presence of the factors, but to what degree they collectively influence risk to the entire species, our assessment integrates the cumulative effects of the factors and replaces a standalone cumulative effects analysis.

Determination of Arizona Eryngo's Status

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of an endangered species or a threatened species. The Act defines endangered species as a species ''in danger of extinction throughout all or a significant portion of its range,'' and threatened species as a species ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The Act requires that we determine whether a species meets the definition of endangered species or threatened species because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

Status Throughout All of Its Range

After evaluating threats to the species and assessing the cumulative effect of the threats under the section 4(a)(1) factors, we found that the Arizona eryngo has declined in abundance and distribution. At present, most of the known populations exist in very low abundances, and all populations occur in extremely small areas. Furthermore, existing available habitats are reduced in quality and quantity, relative to historical conditions. Our analysis revealed three primary threats that caused these declines and pose a meaningful risk to the viability of the species. These threats are primarily related to habitat changes (Factor A from the Act): Physical alteration of cienegas, water loss, and changes in co-occurring vegetation, all of which are exacerbated by the effects of climate change.

Because of historical and current modifications of cienegas and groundwater withdrawals from the aquifers supporting occupied cienegas, Arizona eryngo populations are now fragmented and isolated from one another and unable to recolonize following extirpations. These populations are largely in a state of chronic degradation due to water loss and changes in co-occurring vegetation, affecting soil moisture and open canopy conditions and limiting the species' resiliency. Given the high risk of a catastrophic drought or groundwater depletion, both of which are exacerbated by climate change, all Arizona eryngo populations are at a high or moderate risk of extirpation. Historically, the species, with a larger range of likely interconnected populations, would have been more resilient to stochastic events because even if some populations were extirpated by such events, they could be recolonized over time by dispersal from nearby surviving populations. This connectivity, which would have made for a highly resilient species overall, has been lost, and with two populations in low condition and two in moderate condition, the remnant populations are all at risk of loss.

Our analysis of the Arizona eryngo's current conditions, using the best available information, shows that the Arizona eryngo is in danger of extinction throughout all of its range due to the severity and immediacy of threats currently impacting the species. We find that a threatened species status is not appropriate because of the Arizona eryngo's currently contracted range, because the populations are fragmented from one another, because the threats are currently ongoing and occurring across the entire range of the species.

Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. We have determined that the Arizona eryngo is in danger of extinction throughout all of its range and accordingly did not undertake an analysis of any significant portion of its range. Because the Arizona eryngo warrants listing as endangered throughout all of its range, our determination is consistent with the decision in *Center for Biological Diversity* v. *Everson,* 2020 WL 437289 (D.D.C. Jan. 28, 2020), in which the court vacated the aspect of the Final Policy on Interpretation of the Phrase ''Significant Portion of Its Range'' in the Endangered Species Act's Definitions of ''Endangered Species'' and ''Threatened Species'' (79 FR 37578; July 1, 2014) that provided the Services do not undertake an analysis of significant portions of a species' range if the species warrants listing as threatened throughout all of its range.

Determination of Status

Our review of the best available scientific and commercial information indicates that the Arizona eryngo meets the Act's definition of an endangered species. Therefore, we propose to list the Arizona eryngo as an endangered species in accordance with sections 3(6) and 4(a)(1) of the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition, recovery actions,

requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and conservation by Federal, State, Tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Section 4(f) of the Act calls for the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning consists of preparing draft and final recovery plans, beginning with the development of a recovery outline and making it available to the public within 30 days of a final listing determination. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan also identifies recovery criteria for review of when a species may be ready for reclassification from endangered to threatened (''downlisting'') or removal from protected status (''delisting''), and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available on our website (*http://www.fws.gov/endangered*), or from our Arizona Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (*e.g.,* restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

If this species is listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost-share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the State of Arizona would be eligible for Federal funds to implement management actions that promote the protection or recovery of the Arizona eryngo. Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants.*

Although the Arizona eryngo is only proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for this species. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as an endangered or threatened species and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Federal agency actions within the species' habitat that may require conference or consultation or both as described in the preceding paragraph include management and any other landscape-altering activities on Federal lands administered by the BLM or groundwater use by Fort Huachuca or other Federal agencies (or permitted or funded by a Federal agency) within the hydrological influence of Lewis Springs, La Cebadilla, or Agua Caliente.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to endangered plants. The prohibitions of section 9(a)(2) of the Act, codified at 50 CFR 17.61, make it illegal for any person subject to the jurisdiction of the United States to: Import or export; remove and reduce to possession from areas under Federal jurisdiction; maliciously damage or destroy on any such area; remove, cut, dig up, or damage or destroy on any other area in knowing violation of any law or regulation of any State or in the course of any violation of a State criminal trespass law; deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity; or sell or offer for sale in interstate or foreign commerce an endangered plant. Certain exceptions apply to employees of the Service, the National Marine Fisheries Service, other Federal land management agencies, and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered plants under certain circumstances. Regulations governing permits are codified at 50 CFR 17.62. With regard to endangered plants, a permit may be issued for scientific purposes or for enhancing the propagation or survival of the species. There are also certain statutory exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within the range of the species proposed for listing. Based on the best available

information, the following actions are unlikely to result in a violation of section 9, if these activities are carried out in accordance with existing regulations and permit requirements; this list is not comprehensive:

(1) Normal agricultural and silvicultural practices, including herbicide and pesticide use, that are carried out in accordance with any existing regulations, permit and label requirements, and best management practices;

(2) Normal residential landscaping activities on non-Federal lands; and

(3) Recreational use with minimal ground disturbance.

Based on the best available information, the following activities may potentially result in a violation of section 9 of the Act if they are not authorized in accordance with applicable law; this list is not comprehensive:

(1) Unauthorized handling, removing, trampling, or collecting of the Arizona eryngo on Federal land; and

(2) Removing, cutting, digging up, or damaging or destroying the Arizona eryngo in knowing violation of any law or regulation of the State of Arizona or in the course of any violation of a State criminal trespass law.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Arizona Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

II. Critical Habitat

Background

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

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

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

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

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

Our regulations at 50 CFR 424.02 define the geographical area occupied by the species as an area that may generally be delineated around species' occurrences, as determined by the Secretary (*i.e.,* range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.,* migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals).

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

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Designation also does not allow the government or public to access private lands, nor does designation require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the Federal agency would be required to consult with the Service under section 7(a)(2) of the Act. However, even if the Service were to conclude that the proposed activity would result in destruction or adverse modification of the critical habitat, the Federal action agency and the landowner are not required to abandon the proposed activity, or to restore or recover the species; instead, they must implement ''reasonable and prudent alternatives'' to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical or biological features that occur in specific occupied areas, we focus on the specific features that are essential to support the life-history needs of the species, including, but not limited to, water characteristics, soil type, geological features, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. When designating critical habitat, the Secretary will first evaluate areas occupied by the species. The Secretary will only consider unoccupied areas to be essential where a critical habitat designation limited to geographical areas occupied by the species would be inadequate to ensure the conservation of the species. In addition, for an unoccupied area to be considered essential, the Secretary must determine that there is a reasonable certainty both that the area will contribute to the conservation of the species and that the area contains one or more of those physical or biological features essential to the conservation of the species.

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

available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information from the SSA report and information developed during the listing process for the species. Additional information sources may include any generalized conservation strategy, criteria, or outline that may have been developed for the species; the recovery plan for the species; articles in peer-reviewed journals; conservation plans developed by States and counties; scientific status surveys and studies; biological assessments; other unpublished materials; or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act; (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species; and (3) the prohibitions found in section 9 of the Act. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Prudency Determination

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary shall designate critical habitat at the time the species is determined to be an endangered or threatened species. Our regulations (50 CFR 424.12(a)(1)) state that the Secretary may, but is not required to, determine that a designation would not be prudent in the following circumstances:

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

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

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

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

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

As discussed earlier in this document, there is currently no imminent threat of collection or vandalism identified under Factor B for this species, and identification and mapping of critical habitat is not expected to initiate any such threat. In our SSA and proposed listing determination for the Arizona eryngo, we determined that the present or threatened destruction, modification, or curtailment of habitat or range is a threat to the Arizona eryngo and that threat in some way can be addressed by section 7(a)(2) consultation measures. Over half of the historical range of the species occurs in the jurisdiction of the United States, and we are able to identify areas that meet the definition of critical habitat. Therefore, because none of the circumstances enumerated in our regulations at 50 CFR 424.12(a)(1) has been met and because there are no other circumstances the Secretary has identified for which this designation of critical habitat would be not prudent, we have determined that the designation of critical habitat is prudent for the Arizona eryngo.

Critical Habitat Determinability

Having determined that designation is prudent, under section 4(a)(3) of the Act we must find whether critical habitat for the Arizona eryngo is determinable. Our regulations at 50 CFR 424.12(a)(2) state that critical habitat is not determinable when one or both of the following situations exist:

(i) Data sufficient to perform required analyses are lacking, or

(ii) The biological needs of the species are not sufficiently well known to identify any area that meets the definition of ''critical habitat.''

When critical habitat is not determinable, the Act allows the Service an additional year to publish a critical habitat designation (16 U.S.C. 1533(b)(6)(C)(ii)).

We reviewed the available information pertaining to the biological needs of the species and habitat characteristics where this species is located. This and other information represent the best scientific data available and led us to conclude that the designation of critical habitat is determinable for the Arizona eryngo.

Physical or Biological Features Essential to the Conservation of the Species

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas we will designate as critical habitat from within the geographical area occupied by the species at the time of listing, we consider the physical or biological features that are essential to the conservation of the species and that may require special management considerations or protection. The regulations at 50 CFR 424.02 define ''physical or biological features essential to the conservation of the species'' as the features that occur in specific areas and that are essential to support the life-history needs of the species, including, but not limited to, water characteristics, soil type, geological features, sites, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity. For example, physical features essential to the conservation of the species might include gravel of a particular size required for spawning, alkali soil for seed germination, protective cover for migration, or susceptibility to flooding or fire that maintains necessary early-successional habitat characteristics. Biological features might include prey species, forage grasses, specific kinds or ages of trees for roosting or nesting,

symbiotic fungi, or a particular level of nonnative species consistent with conservation needs of the listed species. The features may also be combinations of habitat characteristics and may encompass the relationship between characteristics or the necessary amount of a characteristic essential to support the life history of the species.

In considering whether features are essential to the conservation of the species, the Service may consider an appropriate quality, quantity, and spatial and temporal arrangement of habitat characteristics in the context of the life-history needs, condition, and status of the species. These characteristics include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing (or development) of offspring; and habitats that are protected from disturbance.

Physiological Requirements

The Arizona eryngo needs permanently moist to saturated, alkaline, organic soils. The species is a cienega obligate and grows in wetland margins. At a minimum, soil should be moist year round immediately beneath the surface, even during drought years, as adequately moist soil is required for flowering, seed germination, and seedling survival and recruitment. Overly dry soils may allow other more drought-tolerant species to invade, or the Arizona eryngo plants may die. Conversely, if the soil is inundated with water for long periods, other invasive plant species may take over. Alkaline and organic soils are typical of cienegas.

Based on the above information, we determine that the Arizona eryngo needs permanently moist to saturated soils. Soils should be saturated with some standing water during winter and be at least moist just below the surface during summer.

Cienegas occupied by Arizona eryngo are associated with and fed by springs and are low-gradient wetlands that serve to slow water and trap organic materials and nutrients. Spring-dominated cienegas are maintained by fault lines crossing aquifers and/or the intersection of wetland sites with shallow aquifers overlaying a deeper, impervious layer, both of which allow for groundwater to be forced to the surface (Minckley *et al.* 2013a, p. 214; Johnson *et al.* 2016, pp. 80–81). Cienegas are often found in the upper reaches of small drainages or above river channels in a variety of surrounding vegetation communities, and thus are protected from scouring floods (Sivinski and Tonne 2011, p. 2). Cienegas have water tables at or near the ground surface (Norman *et al.* 2019, p. 4) and are therefore maintained by the discharge of groundwater from relatively shallow aquifers. A decline in groundwater inflow (recharge) or increase in groundwater outflow (discharge) (*e.g.,* from groundwater withdrawal, drought, increased evapotranspiration) can lead to reductions and disruptions in springflow, or elimination of springs and wetlands altogether (Johnson *et al.* 2016, p. 52). The hydrological processes that maintain functional cienega habitat support resilient Arizona eryngo populations.

Finally, the Arizona eryngo needs open sun conditions (Stromberg *et al.* 2019, p. 9). The species is more abundant in open areas than in areas shaded by riparian trees. Colony boundaries at most sites are defined by the presence of native and nonnative vegetation. Plants observed in November 2019 and January 2020 under tree canopy at La Cebadilla showed a reduction in flowering that year, and leaves appeared less upright (more prostrate) and etiolated (pale due to reduced exposure to sunlight) compared to nearby Arizona eryngo plants in sunnier conditions (Li 2020a, p. 11).

Summary of Essential Physical or Biological Features

We derive the specific physical or biological features essential to the conservation of the Arizona eryngo from studies of the species' habitat, ecology, and life history as described below. Additional information can be found in the SSA report (Service 2020, entire; available on *http://www.regulations.gov* under Docket No. FWS–R2–ES–2020–0130). We have determined that the following physical or biological features are essential to the conservation of Arizona eryngo:

(1) Cienegas within the Chihuahuan and Sonoran Deserts:

(a) That contain permanently moist to saturated, organic, alkaline soils with some standing water in winter and that are moist at or just below the surface in summer; and

(b) That have functional hydrological processes and are sustained by springflow via discharge of groundwater.

(2) Areas of open canopy throughout the cienega.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features which are essential to the conservation of the species and which may require special management considerations or protection. The features essential to the conservation of this species may require special management considerations or protection to reduce the following threats: Physical alteration of cienegas, water loss, and changes in co-occurring vegetation. Management activities that could ameliorate these threats include, but are not limited to: Use best management practices (BMPs) to minimize erosion and sedimentation; remove and control invasive, nonnative species (*e.g.,* Johnsongrass) that encroach on critical habitat; selectively manage woody vegetation that encroaches on critical habitat; exclude livestock, or in some instances where such management would further the conservation of cienega habitat and the species, use highly managed grazing; avoid or minimize groundwater withdrawal to maintain adequate springflow to maintain cienegas; and avoid springflow diversion and springhead modification to maintain springflow to cienegas.

In summary, we find that the occupied areas we are proposing to designate as critical habitat contain the physical or biological features that are essential to the conservation of the Arizona eryngo and that may require special management considerations or protection. Special management considerations or protection may be required of the Federal action agency to eliminate, or to reduce to negligible levels, the threats affecting the essential physical or biological features of each unit.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. In accordance with the Act and our implementing regulations at 50 CFR 424.12(b), we review available information pertaining to the habitat requirements of the species and identify specific areas within the geographical area occupied by the species at the time of listing and any specific areas outside the geographical area occupied by the species to be considered for designation as critical habitat. We are not currently proposing to designate any areas outside the geographical area occupied by the species because we have not identified any unoccupied areas that meet the definition of critical habitat at this time. While the Arizona eryngo needs

additional populations to reduce extinction risk, the only historical extirpated location with the essential physical or biological features is Agua Caliente, where the species has already been reintroduced; therefore, it is currently occupied. We are not aware of which additional locations may have a reasonable certainty of contributing to conservation.

In summary, for areas within the geographic area occupied by the species at the time of listing, we delineated critical habitat unit boundaries using the following criteria: Evaluate habitat suitability of cienegas within the geographic area occupied at the time of listing, and retain those cienegas that contain some or all of the physical or biological features that are essential to support life history processes of the species.

When determining proposed critical habitat boundaries, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack physical or biological features necessary for the Arizona eryngo. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat is finalized as proposed, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

We propose to designate as critical habitat lands that we have determined are occupied at the time of listing (*i.e.,* currently occupied) and that contain one or more of the physical or biological features that are essential to support life-history processes of the species.

Units are proposed for designation based on one or more of the physical or biological features being present to support Arizona eryngo's life-history processes. Some units contain all of the identified physical or biological features and support multiple life-history processes. Some units contain only some of the physical or biological features necessary to support the Arizona eryngo's particular use of that habitat.

The critical habitat designation is defined by the map or maps, as modified by any accompanying regulatory text, presented at the end of this document under *Proposed Regulation Promulgation*. We include more detailed information on the boundaries of the critical habitat designation in the preamble of this document. We will make the coordinates or plot points or both on which each map is based available to the public at *https://www.fws.gov/southwest/es/arizona/* and at *http://www.regulations.gov* under Docket No. FWS–R2–ES–2020–0130.

Proposed Critical Habitat Designation

We are proposing three units as critical habitat for the Arizona eryngo, all of which are in Arizona. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for the Arizona eryngo. The three areas we propose as critical habitat are: (1) Lewis Springs, (2) La Cebadilla, and (3) Agua Caliente. The table below shows the proposed critical habitat units and the approximate area of each unit. All units are occupied.

TABLE OF PROPOSED CRITICAL HABITAT UNITS FOR THE ARIZONA ERYNGO

[Area estimates reflect all land within critical habitat unit boundaries]

Critical habitat unit	Subunit	Land ownership by type	Size of unit in acres (hectares)	Occupied?
1. Lewis Springs		Federal (BLM)	9.6 (3.9)	Yes.
2. La Cebadilla		Private, Pima County Regional Flood Control District.	3.1 (1.3)	Yes.
3. Agua Caliente	3a. Pond 1 Wetland	Pima County Natural Resources, Parks and Recreation.	0.04 (0.02)	Yes.
	3b. Pond 1 Wildlife Island		0.2 (0.07)	
	3c. Pond 2		0.09 (0.04)	
Total			13.0 (5.3)	

Note: Area sizes may not sum due to rounding.

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for the Arizona eryngo, below.

Unit 1: Lewis Springs

Unit 1 consists of 9.6 acres (3.9 hectares) encompassing the wetlands at Lewis Springs just to the east of the San Pedro River in Cochise County, within the San Pedro River Basin. The unit is located within the SPRNCA, which is owned and managed by the BLM to conserve, protect, and enhance a rare remnant of desert riparian ecosystem. The unit is occupied by the species and contains all the physical or biological features essential to the conservation of the Arizona eryngo. The Lewis Springs Unit is being affected by drought, nonnative species invasion, woody vegetation encroachment, and ongoing human demand for water resulting in declining groundwater levels. Therefore, special management is necessary to reduce invasion of nonnative species and encroachment of woody vegetation and to improve groundwater levels to support continued springflow.

Unit 2: La Cebadilla

Unit 2 consists of 3.1 acres (1.3 hectares) of cienega habitat at La Cebadilla Cienega, adjacent to the Tanque Verde Wash east of Tucson in Pima County, within the Santa Cruz River Basin. The majority of the unit is located on lands owned by La Cebadilla Estates, with a smaller portion of the unit located on lands owned and managed by PCFCD. The homeowners association of La Cebadilla Estates manages their portion of the cienega as common property for the common use and enjoyment of its members. PCFCD manages their portion of the cienega as

natural open space, which has a restrictive covenant that limits development and protects natural resources on the property. The La Cebadilla Unit is occupied by the species and contains all the physical or biological features essential to the conservation of the Arizona eryngo. The unit is located in a rural neighborhood and is being affected by drought, woody vegetation encroachment, and ongoing human demand for water resulting in declining groundwater levels. Therefore, special management is necessary to reduce encroachment of woody vegetation and to improve groundwater levels to support continued springflow.

Unit 3: Agua Caliente

Unit 3 consists of three subunits totaling 0.3 acres (0.1 hectares), all within the Agua Caliente Regional Park. The park is located east of Tucson in Pima County within the Santa Cruz River Basin (Stromberg *et al.* 2019, p. 5) and is owned and managed by Pima County Natural Resources, Parks and Recreation. The Arizona eryngo historically occurred at this site, but the population was extirpated, likely due to multiple manipulations of the site, including spring modification (Stromberg *et al.,* p. 5; SWCA 2002, pp. 1–2) and pond impoundment. Reintroduction efforts for the species began in 2017, and while a self-sustaining population does not yet exist, multiple plants have been established at various sites within the unit. Therefore, the unit is occupied by the species and contains two (saturated soils and areas of open canopy) of the three physical or biological features essential to the conservation of the Arizona eryngo. The Agua Caliente Unit is in a semi-rural setting and is being affected by drought, nonnative species invasion, woody vegetation encroachment, and ongoing human demand for water resulting in declining groundwater levels. Therefore, special management is necessary to reduce invasion of nonnative species and encroachment of woody vegetation and to improve groundwater levels to support continued springflow.

Subunit 3a: Pond 1 Wetland—Subunit 3a, Pond 1 Wetland consists of 0.04 acres (0.02 hectares) of shoreline habitat on the northwest shore of Pond 1. During restoration of Pond 1, a small wetland was created in this area, and Arizona eryngo were planted. The shoreline contains saturated soils, and portions of the shoreline contain open canopy. This subunit is currently occupied.

Subunit 3b: Pond 1 Wildlife Island—Subunit 3b, Pond 1 Wildlife Island consists of 0.2 acres (0.07 hectares) of a wildlife island within Pond 1. A channel is cut through the wildlife island, creating saturated soil conditions within the channel, where Arizona eryngo were planted. The entire wildlife island has open canopy conditions currently. This subunit is currently occupied.

Subunit 3c: Pond 2—Subunit 3c, Pond 2 consists of 0.09 acres (0.04 hectares) of shoreline habitat on the south shore of Pond 2. Arizona eryngo were planted just above the water line in an area of completely open canopy that contains saturated soils. This subunit is currently occupied.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

We published a final rule revising the definition of destruction or adverse modification on August 27, 2019 (84 FR 44976). Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the value of critical habitat as a whole for the conservation of a listed species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, Tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat—and actions on State, Tribal, local, or private lands that are not federally funded, authorized, or carried out by a Federal agency—do not require section 7 consultation.

Compliance with the requirements of section 7(a)(2) is documented through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define ''reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Service Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 set forth requirements for Federal agencies to reinitiate formal consultation on previously reviewed actions. These requirements apply when the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law) and, subsequent to the previous consultation, we have listed a new species or designated critical habitat that may be affected by the Federal action, or the action has been modified in a manner that affects the species or critical habitat in a way not considered in the previous consultation. In such situations, Federal agencies sometimes may need to request reinitiation of consultation with us, but the regulations also specify some exceptions to the

requirement to reinitiate consultation on specific land management plans after subsequently listing a new species or designating new critical habitat. See the regulations for a description of those exceptions.

Application of the ''Destruction or Adverse Modification'' Standard

The key factor related to the destruction or adverse modification determination is whether implementation of the proposed Federal action directly or indirectly alters the designated critical habitat in a way that appreciably diminishes the value of the critical habitat as a whole for the conservation of the listed species. As discussed above, the role of critical habitat is to support physical or biological features essential to the conservation of a listed species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may violate section 7(a)(2) of the Act by destroying or adversely modifying such habitat, or that may be affected by such designation.

Activities that the Service may, during a consultation under section 7(a)(2) of the Act, find are likely to destroy or adversely modify critical habitat include, but are not limited to:

(1) Actions that would alter the hydrology of the cienega. Such activities could include, but are not limited to, springflow diversion, springhead modification, groundwater withdrawal, and physical alteration of the cienega. These activities could change the hydrological processes of the cienega, reducing or eliminating habitat for the Arizona eryngo.

(2) Actions that promote the growth of nonnative plant species and canopy cover. Such actions include, but are not limited to, planting of nonnative plant species and woody vegetation, and seed spread through livestock and tire treads. These activities could reduce or eliminate habitat for the Arizona eryngo.

(3) Actions that result in further fragmentation of Arizona eryngo habitat. Such actions include, but are not limited to, fuel breaks, roads, and trails. These activities could reduce or eliminate habitat for the Arizona eryngo.

Exemptions

Application of Section 4(a)(3) of the Act

Section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides that the Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan (INRMP) prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation. There are no Department of Defense (DoD) lands with a completed INRMP within the proposed critical habitat designation.

Consideration of Exclusions Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making the determination to exclude a particular area, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

We describe below the process that we undertook for taking into consideration each category of impacts and our analyses of the relevant impacts.

Consideration of Economic Impacts

Section 4(b)(2) of the Act and its implementing regulations require that we consider the economic impact that may result from a designation of critical habitat. To assess the probable economic impacts of a designation, we must first evaluate specific land uses or activities and projects that may occur in the area of the critical habitat. We then must evaluate the impacts that a specific critical habitat designation may have on restricting or modifying specific land uses or activities for the benefit of the species and its habitat within the areas proposed. We then identify which conservation efforts may be the result of the species being listed under the Act versus those attributed solely to the designation of critical habitat for this particular species. The probable economic impact of a proposed critical habitat designation is analyzed by comparing scenarios both ''with critical habitat'' and ''without critical habitat.''

The ''without critical habitat'' scenario represents the baseline for the analysis, which includes the existing regulatory and socio-economic burden imposed on landowners, managers, or other resource users potentially affected by the designation of critical habitat (*e.g.,* under the Federal listing as well as other Federal, State, and local regulations). The baseline, therefore, represents the costs of all efforts attributable to the listing of the species under the Act (*i.e.,* conservation of the species and its habitat incurred regardless of whether critical habitat is designated). The ''with critical habitat'' scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts would not be expected without the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat, above and beyond the baseline costs. These are the costs we use when evaluating the benefits of inclusion and exclusion of particular areas from the final designation of critical habitat should we choose to conduct a discretionary 4(b)(2) exclusion analysis.

For this particular designation, we developed an incremental effects memorandum (IEM) considering the probable incremental economic impacts that may result from this proposed designation of critical habitat. The information contained in our IEM was then used to develop a screening analysis of the probable effects of the designation of critical habitat for the Arizona eryngo (IEc 2020, entire). We began by conducting a screening analysis of the proposed designation of critical habitat in order to focus our analysis on the key factors that are likely to result in incremental economic impacts. The purpose of the screening analysis is to filter out particular geographic areas of critical habitat that are already subject to such protections and are, therefore, unlikely to incur incremental economic impacts. In particular, the screening analysis considers baseline costs (*i.e.,* absent critical habitat designation) and includes probable economic impacts where land and water use may be subject to conservation plans, land management plans, best management practices, or regulations that protect the habitat area as a result of the Federal listing status of the species. Ultimately, the screening analysis allows us to focus

our analysis on evaluating the specific areas or sectors that may incur probable incremental economic impacts as a result of the designation. If there are any unoccupied units in the proposed critical habitat designation, the screening analysis assesses whether any additional management or conservation efforts may incur incremental economic impacts. This screening analysis combined with the information contained in our IEM are what we consider our draft economic analysis (DEA) of the proposed critical habitat designation for the Arizona eryngo; our DEA is summarized in the narrative below.

Executive Orders (E.O.s) 12866 and 13563 direct Federal agencies to assess the costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consistent with the E.O. regulatory analysis requirements, our effects analysis under the Act may take into consideration impacts to both directly and indirectly affected entities, where practicable and reasonable. If sufficient data are available, we assess to the extent practicable the probable impacts to both directly and indirectly affected entities. As part of our screening analysis, we considered the types of economic activities that are likely to occur within the areas likely affected by the critical habitat designation. In our evaluation of the probable incremental economic impacts that may result from the proposed designation of critical habitat for the Arizona eryngo, first we identified, in the IEM dated October 15, 2020, probable incremental economic impacts associated with the following categories of activities: (1) Federal lands management (Bureau of Land Management); (2) vegetation management; (3) fire and fuels management; and (4) livestock grazing. We considered each industry or category individually. Additionally, we considered whether their activities have any Federal involvement. Critical habitat designation generally will not affect activities that do not have any Federal involvement; under the Act, designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. If we list the species, in areas where the Arizona eryngo is present, Federal agencies would be required to consult with the Service under section 7 of the Act on activities they fund, permit, or implement that may affect the species. If, when we list the species, we also finalize this proposed critical habitat designation, consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

In our IEM, we attempted to clarify the distinction between the effects that would result from the species being listed and those attributable to the critical habitat designation (*i.e.,* difference between the jeopardy and adverse modification standards) for the Arizona eryngo's critical habitat. Because the designation of critical habitat for Arizona eryngo is being proposed concurrently with the listing, it has been our experience that it is more difficult to discern which conservation efforts are attributable to the species being listed and those which will result solely from the designation of critical habitat. However, the following specific circumstances in this case help to inform our evaluation: (1) The essential physical or biological features identified for critical habitat are the same features essential for the life requisites of the species, and (2) any actions that would result in sufficient harm to constitute jeopardy to the Arizona eryngo would also likely adversely affect the essential physical or biological features of critical habitat. The IEM outlines our rationale concerning this limited distinction between baseline conservation efforts and incremental impacts of the designation of critical habitat for this species. This evaluation of the incremental effects has been used as the basis to evaluate the probable incremental economic impacts of this proposed designation of critical habitat.

The proposed critical habitat designation for the Arizona eryngo totals 13.0 acres (5.3 hectares) in three units, all of which are occupied. In occupied areas, any actions that may affect the species or its habitat would also affect critical habitat, and it is unlikely that any additional conservation efforts would be recommended to address the adverse modification standard over and above those recommended as necessary to avoid jeopardizing the continued existence of the Arizona eryngo. Therefore, only administrative costs are expected in the proposed critical habitat designation. While this additional analysis will require time and resources by both the Federal action agency and the Service, it is believed that, in most circumstances, these costs would predominantly be administrative in nature and would not be significant.

The probable incremental economic impacts of the Arizona eryngo critical habitat designation are expected to be limited to additional administrative effort as well as minor costs of conservation efforts resulting from a small number of future section 7 consultations. Because all of the proposed critical habitat units are occupied by the species, incremental economic impacts of critical habitat designation, other than administrative costs, are unlikely. At approximately $5,300 or less per consultation, in order to reach the threshold of $100 million of incremental administrative impacts in a single year, critical habitat designation would have to result in more than 18,800 consultations in a single year; instead, this designation is expected to result in 12 to 17 consultations in 10 years. Thus, the annual administrative burden is unlikely to reach $100 million.

We are soliciting data and comments from the public on the DEA discussed above, as well as all aspects of this proposed rule and our required determinations. During the development of a final designation, we will consider the information presented in the DEA and any additional information on economic impacts we receive during the public comment period to determine whether any specific areas should be excluded from the final critical habitat designation under authority of section 4(b)(2) and our implementing regulations at 50 CFR 424.19. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of this species.

Consideration of National Security Impacts

Section 4(a)(3)(B)(i) of the Act may not cover all DoD lands or areas that pose potential national-security concerns (*e.g.,* a DoD installation that is in the process of revising its INRMP for a newly listed species or a species previously not covered). If a particular area is not covered under section 4(a)(3)(B)(i), national-security or homeland-security concerns are not a factor in the process of determining what areas meet the definition of ''critical habitat.'' Nevertheless, when designating critical habitat under section 4(b)(2), the Service must consider impacts on national security, including homeland security, on lands or areas not covered by section 4(a)(3)(B)(i). Accordingly, we will always consider for exclusion from the designation areas for which DoD, Department of Homeland Security (DHS), or another Federal agency has requested exclusion based on an

assertion of national-security or homeland-security concerns.

We cannot, however, automatically exclude requested areas. When DoD, DHS, or another Federal agency requests exclusion from critical habitat on the basis of national-security or homeland-security impacts, it must provide a reasonably specific justification of an incremental impact on national security that would result from the designation of that specific area as critical habitat. That justification could include demonstration of probable impacts, such as impacts to ongoing border-security patrols and surveillance activities, or a delay in training or facility construction, as a result of compliance with section 7(a)(2) of the Act. If the agency requesting the exclusion does not provide us with a reasonably specific justification, we will contact the agency to recommend that it provide a specific justification or clarification of its concerns relative to the probable incremental impact that could result from the designation. If the agency provides a reasonably specific justification, we will defer to the expert judgment of DoD, DHS, or another Federal agency as to: (1) Whether activities on its lands or waters, or its activities on other lands or waters, have national-security or homeland-security implications; (2) the importance of those implications; and (3) the degree to which the cited implications would be adversely affected in the absence of an exclusion. In that circumstance, in conducting a discretionary section 4(b)(2) exclusion analysis, we will give great weight to national-security and homeland-security concerns in analyzing the benefits of exclusion.

In preparing this proposal, we have determined that the lands within the proposed designation of critical habitat for the Arizona eryngo are not owned, managed, or used by the DoD or DHS. We anticipate no impact on national security or homeland security. However, during the development of a final designation we will consider any additional information we receive through the public comment period on the impacts of the proposed designation on national security or homeland security to determine whether any specific areas should be excluded from the final critical habitat designation under authority of section 4(b)(2) and our implementing regulations at 50 CFR 424.19.

Consideration of Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security discussed above. We consider a number of factors including whether there are permitted conservation plans covering the species in the area such as HCPs, safe harbor agreements (SHAs), or candidate conservation agreements with assurances (CCAAs), or whether there are non-permitted conservation agreements and partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at the existence of Tribal conservation plans and partnerships and consider the government-to-government relationship of the United States with Tribal entities. We also consider any social impacts that might occur because of the designation.

In preparing this proposal, we have determined that there are currently no HCPs or other management plans for the Arizona eryngo, and the proposed designation does not include any Tribal lands or trust resources. We anticipate no impact on Tribal lands, partnerships, or HCPs from this proposed critical habitat designation. Additionally, as described above, we are not considering excluding any particular areas from critical habitat on the basis of impacts to national security or economic impacts. However, during the development of a final designation, we will consider any additional information we receive through the public comment period regarding other relevant impacts of the proposed designation and will determine whether any specific areas should be excluded from the final critical habitat designation under authority of section 4(b)(2) and our implementing regulations at 50 CFR 424.19.

Required Determinations

Clarity of the Rule

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

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

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

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this proposed rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and

town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine whether potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

Under the RFA, as amended, and as understood in light of recent court decisions, Federal agencies are required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself; in other words, the RFA does not require agencies to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by the agency is not likely to destroy or adversely modify critical habitat. Therefore, under section 7, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Consequently, it is our position that only Federal action agencies would be directly regulated if we adopt the proposed critical habitat designation. There is no requirement under the RFA to evaluate the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities. Therefore, because no small entities would be directly regulated by this rulemaking, the Service certifies that, if made final as proposed, the proposed critical habitat designation will not have a significant economic impact on a substantial number of small entities.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. For the above reasons and based on currently available information, we certify that, if made final, the proposed critical habitat designation will not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. In our economic analysis, we did not find that this proposed critical habitat designation would significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

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

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following finding:

(1) This proposed rule would not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule would significantly or uniquely affect small governments because the lands proposed for critical habitat designation that are owned by Pima County are already set aside for conservation purposes, and small governments would be affected only to the extent that any programs having Federal funds, permits, or other authorized activities must ensure that their actions would not adversely affect the critical habitat. Therefore, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for the Arizona eryngo in a takings implications assessment. The Act does not authorize the Service to regulate private actions on private lands or confiscate private property as a result of critical habitat designation. Designation of critical habitat does not affect land ownership, or establish any closures, or restrictions on use of or access to the designated areas. Furthermore, the designation of critical habitat does not affect landowner actions that do not require

Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. However, Federal agencies are prohibited from carrying out, funding, or authorizing actions that would destroy or adversely modify critical habitat. A takings implications assessment has been completed for the proposed designation of critical habitat for the Arizona eryngo, and it concludes that, if adopted, this designation of critical habitat does not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this proposed rule does not have significant Federalism effects. A federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of this proposed critical habitat designation with, appropriate State resource agencies. From a federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for States and local governments, or for anyone else. As a result, the proposed rule does not have substantial direct effects either on the States, or on the relationship between the national government and the States, or on the distribution of powers and responsibilities among the various levels of government. The proposed designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the physical or biological features of the habitat necessary for the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist State and local governments in long-range planning because they no longer have to wait for case-by-case section 7 consultations to occur.

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) of the Act would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, this proposed rule identifies the elements of physical or biological features essential to the conservation of the species. The proposed areas of designated critical habitat are presented on maps, and the proposed rule provides several options for the interested public to obtain more detailed location information, if desired.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) is not required. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)). All of the proposed critical habitat lies outside of the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit. As a result, we are not preparing an environmental analysis.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We have determined that no Tribal lands fall within the boundaries of the proposed critical habitat for the Arizona eryngo, so no Tribal lands would be affected by the proposed designation.

References Cited

A complete list of references cited in this rulemaking is available on the internet at *http://www.regulations.gov* and upon request from the Arizona Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff members of the Fish and Wildlife Service's Species Assessment Team and the Arizona Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. Amend § 17.12(h), the List of Endangered and Threatened Plants, by adding an entry for ''*Eryngium sparganophyllum*'' in alphabetical order under FLOWERING PLANTS to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Scientific name	Common name	Where listed	Status	Listing citations and applicable rules
FLOWERING PLANTS				
*	*	*	*	*
Eryngium sparganophyllum.	Arizona eryngo	Wherever found	E	[**Federal Register** citation when published as a final rule]; 50 CFR 17.96(a).[CH]
*	*	*	*	*

■ 3. Amend § 17.96(a) by adding an entry for ''*Eryngium sparganophyllum* (Arizona eryngo)'' in alphabetical order under Family Apiaceae to read as follows:

§ 17.96 Critical habitat—plants.

(a) *Flowering plants.*

* * * * *

Family Apiaceae: *Eryngium sparganophyllum* (Arizona eryngo)

(1) Critical habitat units are depicted for Pima and Cochise Counties, Arizona, on the maps in this entry.

(2) Within these areas, the physical or biological features essential to the conservation of the Arizona eryngo consist of the following components:

(i) Cienegas within the Chihuahuan and Sonoran Deserts:

(A) That contain permanently moist to saturated, organic, alkaline soils with some standing water in winter and that are moist at or just below the surface in summer; and

(B) That have functional hydrological processes and are sustained by springflow via discharge of groundwater.

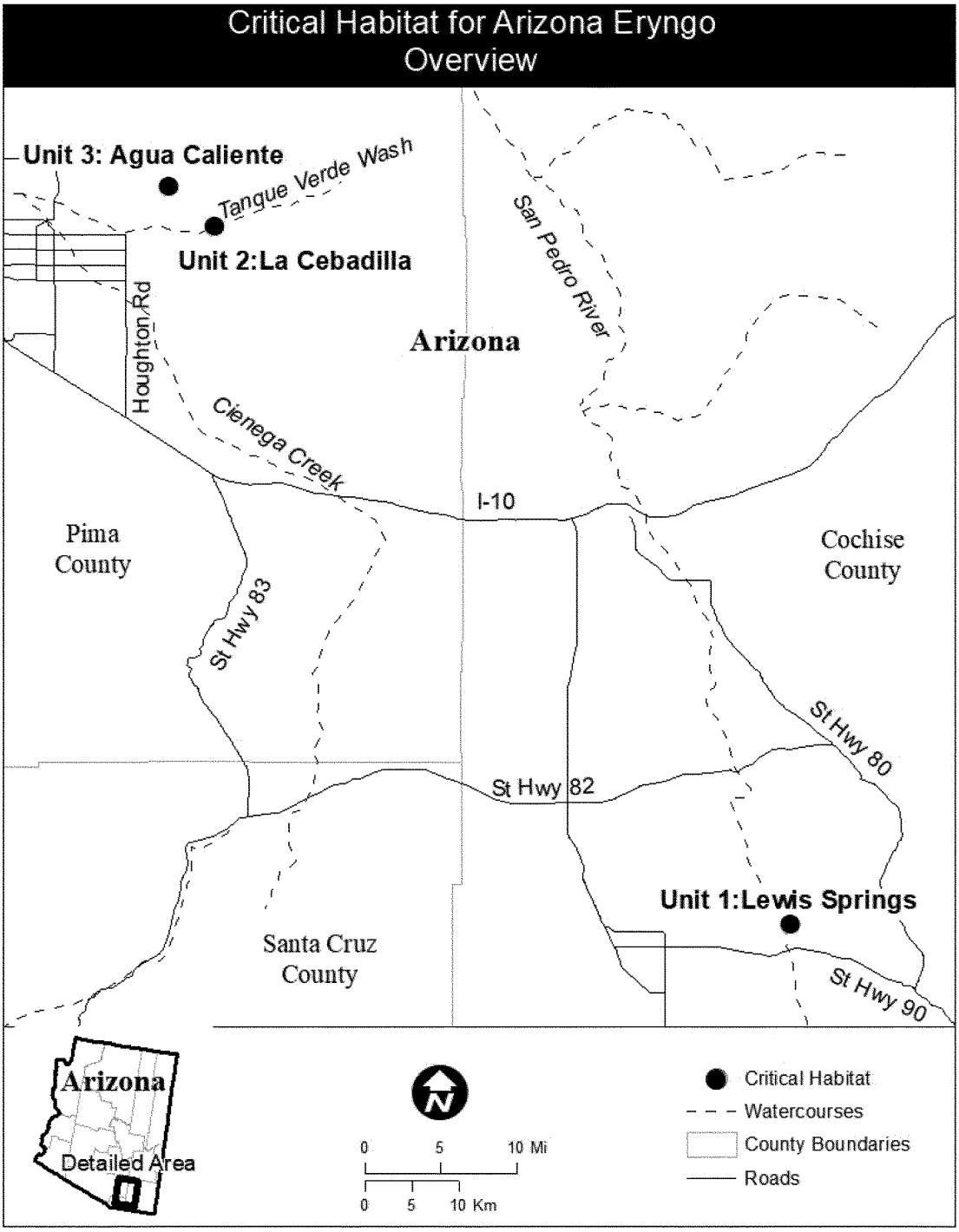
(ii) Areas of open canopy throughout the cienega.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of the final rule.

(4) *Critical habitat map units.* Data layers defining map units were created on a base of U.S. Geological Survey digital ortho-photo quarter-quadrangles, and critical habitat units were then mapped using Universal Transverse Mercator (UTM) Zone 15N coordinates. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service's internet site at *https://www.fws.gov/southwest/es/arizona/,* at *http://www.regulations.gov* at Docket No. FWS–R2–ES–2020–0130, and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) *Note:* Index map follows:

BILLING CODE 4333–15–P



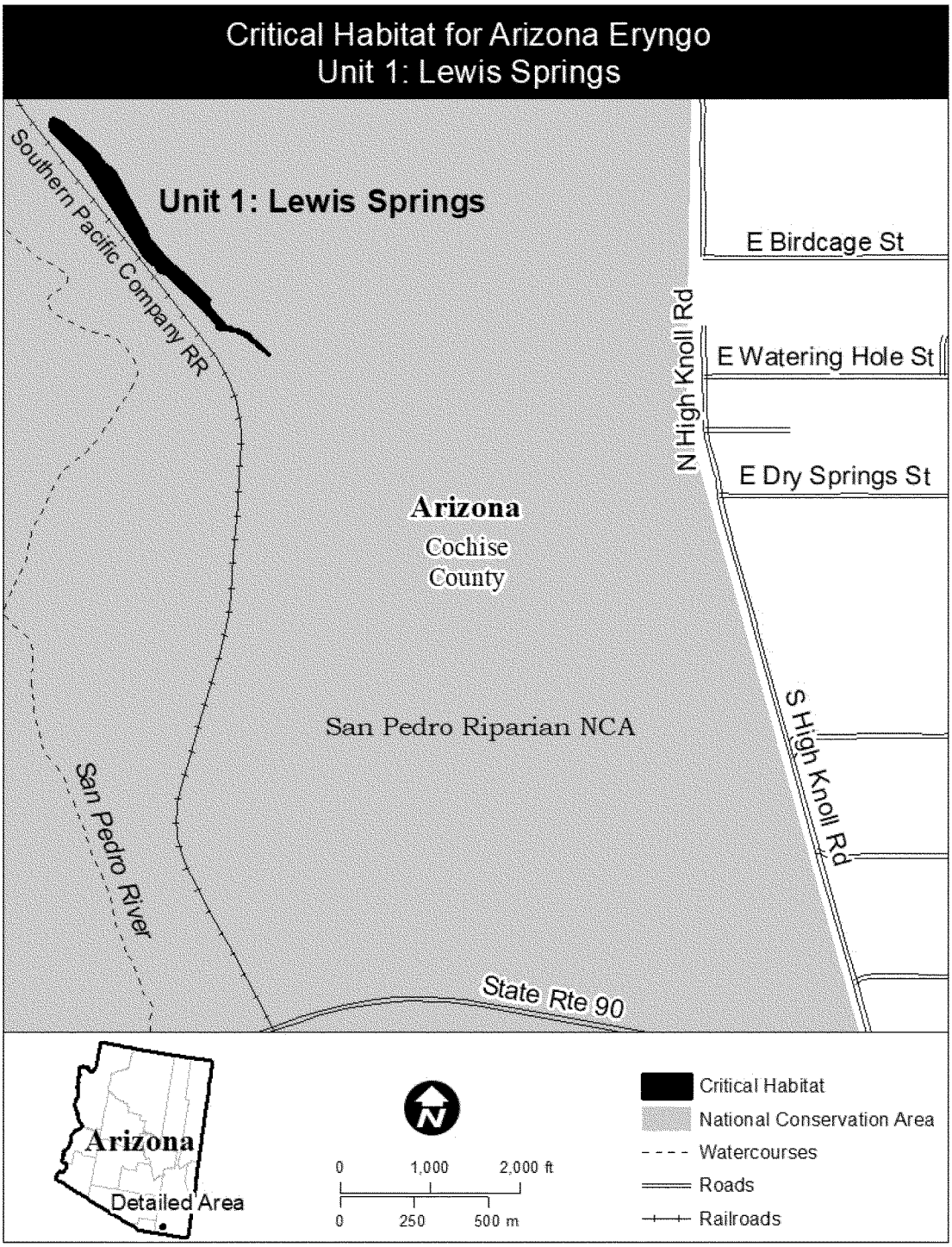
BILLING CODE 4333–15–C

(6) Unit 1: Lewis Springs, Cochise County, Arizona.

(i) *General description:* Unit 1 consists of 9.6 acres (3.9 hectares) encompassing the wetlands at Lewis Springs just to the east of the San Pedro River in Cochise County, within the San Pedro River Basin. The unit is located within the San Pedro Riparian National Conservation Area, which is owned and managed by the Bureau of Land Management.

(ii) Map of Unit 1 follows:

BILLING CODE 4333–15–P



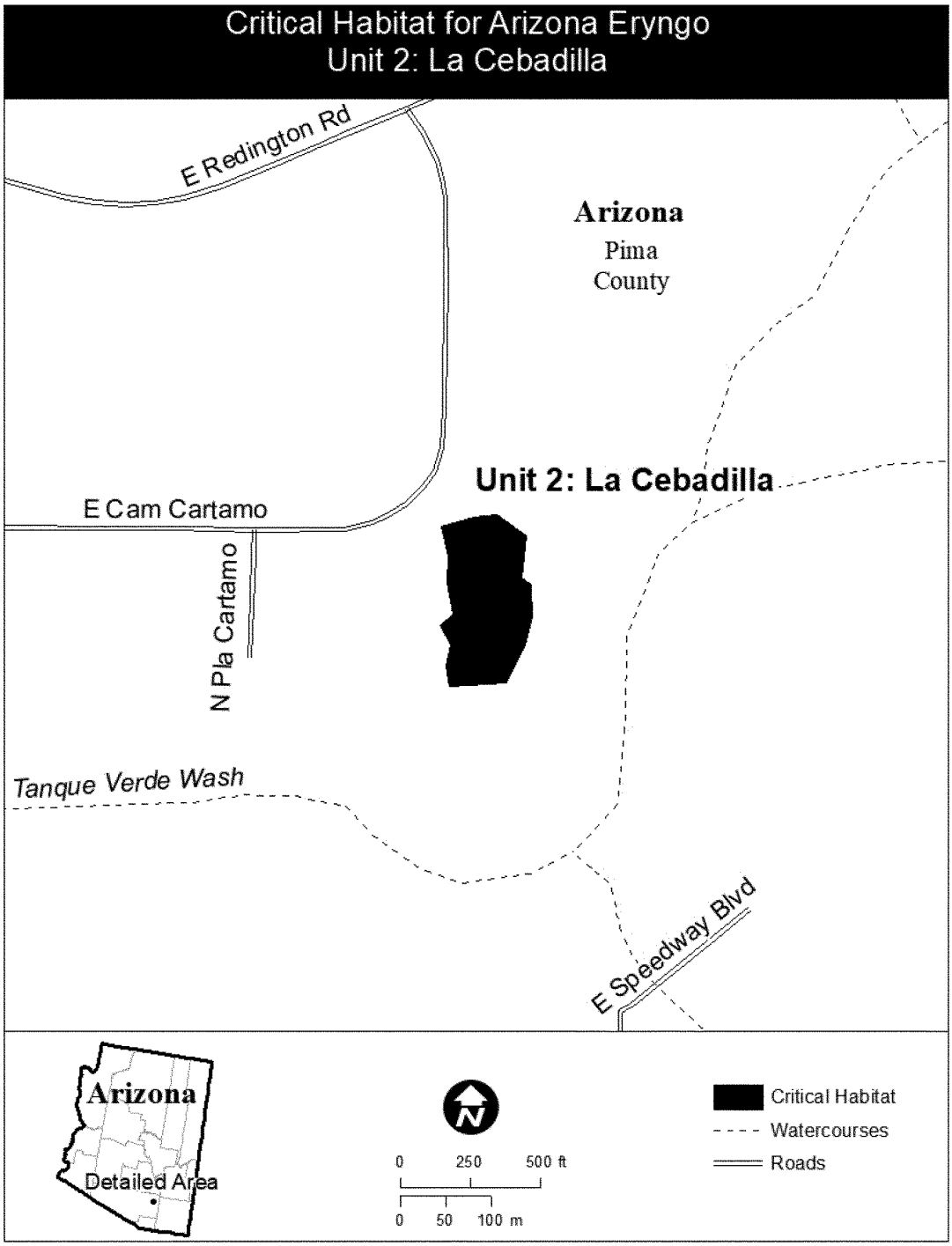
BILLING CODE 4333–15–C

(7) Unit 2: La Cebadilla, Pima County, Arizona.

(i) *General description:* Unit 2 consists of 3.1 acres (1.3 hectares) of cienega habitat at La Cebadilla Cienega, adjacent to the Tanque Verde Wash east of Tucson within the Santa Cruz River Basin. The majority of the unit is located on lands owned by La Cebadilla Estates, with a smaller portion of the unit located on lands owned and managed by the Pima County Regional Flood Control District.

(ii) Map of Unit 2 follows:

BILLING CODE 4333–15–P



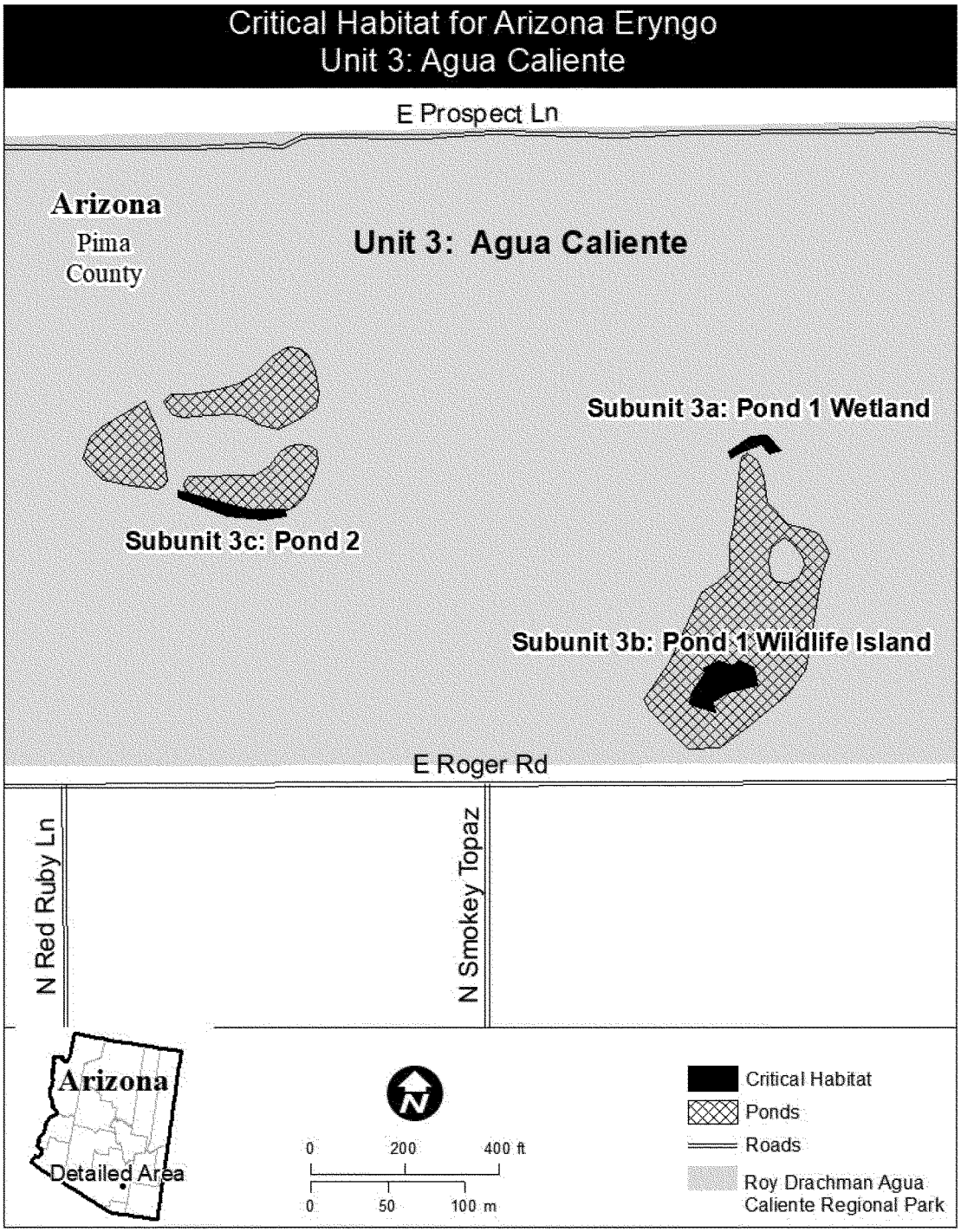
BILLING CODE 4333–15–C

(8) Unit 3: Agua Caliente, Pima County, Arizona.

(i) *General description:* Unit 3 consists of three subunits totaling 0.3 acres (0.1 hectares) east of Tucson within the Santa Cruz River Basin and is owned and managed by Pima County Natural Resources, Parks and Recreation.

(ii) Map of Unit 3 follows:

BILLING CODE 4333–15–P


Critical Habitat for Arizona Eryngo
Unit 3: Agua Caliente
E Prospect Ln
Arizona
Pima
County
Unit 3: Agua Caliente
Subunit 3a: Pond 1 Wetland
Subunit 3c: Pond 2
Subunit 3b: Pond 1 Wildlife Island
E Roger Rd
N Red Ruby Ln
N Smokey Topaz
Arizona
Detailed Area
N
0 200 400 ft
0 50 100 m
Critical Habitat
Ponds
Roads
Roy Drachman Agua
Caliente Regional Park

BILLING CODE 4333–15–C

* * * * *

Martha Williams,

Senior Advisor to the Secretary, Exercising the Delegated Authority of the Director, U.S. Fish and Wildlife Service.

[FR Doc. 2021–03705 Filed 3–3–21; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 210225–0031;RTID 0648–XX069]

Fisheries of the Northeastern United States; Atlantic Spiny Dogfish Fishery; Revised 2021 and Projected 2022 Specifications

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes revised specifications for the 2021 Atlantic spiny dogfish fishery based on the Mid-Atlantic Fishery Management Council's updated risk policy, and projected status quo specifications for fishing year 2022, as recommended by the Mid-Atlantic and New England Fishery Management Councils. This action is necessary to establish allowable harvest levels to prevent overfishing while enabling optimum yield, using the best information available. This rule also informs the public of the proposed fishery specifications and provides an opportunity for comment.

DATES: Comments must be received by March 19, 2021.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2021–0004, by the following method:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal.

1. Go to *https://www.regulations.gov/docket?D=NOAA-NMFS-2021-0004,*
2. Click the ''Comment Now!'' icon, complete the required fields, and
3. Enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). If you are unable to submit your comment through *www.regulations.gov,* contact Cynthia Ferrio, Fishery Policy Analyst, *Cynthia.Ferrio@noaa.gov.*

Copies of the Supplemental Information Report (SIR) and other supporting documents for this action are available upon request from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 North State Street, Dover, DE 19901. These documents are also accessible via the internet at *http://www.mafmc.org/supporting-documents.*

FOR FURTHER INFORMATION CONTACT: Cynthia Ferrio, Fishery Policy Analyst, (978) 281–9180.

SUPPLEMENTARY INFORMATION:

Background

The Mid-Atlantic Fishery Management Council and the New England Fishery Management Council jointly manage the Atlantic Spiny Dogfish Fishery Management Plan (FMP), with the Mid-Atlantic Council acting as the administrative lead. Additionally, the Atlantic States Marine Fisheries Commission manages the spiny dogfish fishery in state waters from Maine to North Carolina through an interstate fishery management plan. The Councils' FMP requires the specification of an annual catch limit (ACL), annual catch target (ACT), and total allowable landings (TAL). These limits and other management measures may be set for up to five fishing years at a time, with each fishing year running from May 1 through April 30. This action proposes revised specifications for the 2021 spiny dogfish fishery as well as projects specifications for 2022, based on the Mid-Atlantic Council's updated risk policy.

The spiny dogfish fishery is currently operating under multi-year specifications for 2019–2021, based on a 2018 assessment update. The commercial quota is already projected to increase approximately 14 percent from fishing year 2020 to 2021 under these initial specifications. However, the Mid-Atlantic Council recently updated its risk policy to accept a higher level of risk for stocks at or above biomass targets (85 FR 81152; December 15, 2020). At its meeting on September 8, 2020, the Mid-Atlantic Council's Scientific and Statistical Committee's (SSC) recommended that the projected Acceptable Biological Catch (ABC) and resulting commercial quota for the 2021 spiny dogfish fishery be recalculated using this new approach. Applying the new risk policy would increase the 2021 ABC 9 percent from what was initially projected (24 percent above 2020).

The joint New England and Mid-Atlantic Council Spiny Dogfish Monitoring Committee also recommended revising the 2021 specifications to reflect the updated risk policy at its September 2020 meeting, consistent with the SSC. The Monitoring Committee derived its recommendations for the remainder of the revised specifications from the recommended ABC using the process defined in the FMP. Expected Canadian landings (45 mt) were deducted from the ABC to calculate the ACL, which was set equal to the ACT because no overages have occurred in recent years. The estimate of U.S. discards (3,992 mt) was deducted from the ACT to derive the TAL, and expected U.S. recreational landings (53 mt) were removed from the TAL to calculate the final coastwide commercial quota.

The Monitoring Committee also recommended projecting status quo specifications for fishing year 2022. There is a research track stock assessment for spiny dogfish scheduled in 2022, and little additional or new data will be available to inform 2022 specifications prior to the assessment. Therefore, the Monitoring Committee determined that status quo catch limits would be appropriate until the upcoming assessment can inform specifications for the 2023 fishing year and beyond. Both Councils and the Commission reviewed and approved SSC and Monitoring Committee recommendations at their respective meetings in October and December, and all recommended revised and projected 2021 and 2022 spiny dogfish specifications based on the updated Mid-Atlantic Council risk policy.

Proposed Specifications

This action proposes the Councils' recommendations for revised 2021 and projected status quo 2022 spiny dogfish specifications to maintain compliance with the Mid-Atlantic Council's updated risk policy. These proposed catch limits are consistent with the SSC, Monitoring Committee, and Commission recommendations as well. Although currently projected 2021 specifications were already increasing compared to fishing year 2020, these revised catch limits are nearly 10

percent higher after applying the new risk policy. A comparison of the originally projected and proposed revised 2021–2022 specifications is summarized below in Table 1.

TABLE 1—COMPARISON OF ORIGINAL (CURRENT) AND REVISED (PROPOSED) SPINY DOGFISH FISHERY SPECIFICATIONS FOR FISHING YEARS 2021 AND 2022

	Originally projected 2021 (current)		Revised 2021–2022 (proposed)		Percent change
	Million lb	Metric tons	Million lb	Metric tons	
ABC	35.37	16,043	38.58	17,498	9
ACL = ACT	35.26	15,994	38.48	17,453	9
TAL	27.60	12,519	29.68	13,461	8
Commercial Quota	27.42	12,438	29.56	13,408	8

The Councils did not recommend any other changes to the spiny dogfish fishery. Therefore, all other fishery management measures, including the 6,000-lb (2,722-kg) Federal trip limit, would remain unchanged for fishing years 2021 and projected to be unchanged for 2022 under the proposed action. The Councils will review the projected 2022 specifications to determine if any changes need to be made prior to their implementation. Changes may occur if quota overages trigger accountability measures, or if new stock information results in changes to the ABC recommendations. NMFS will publish a notice prior to the 2022 fishing year to confirm or announce any necessary changes. NMFS expects the 2022 stock assessment to inform development of the next set of specifications beginning in 2023.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Spiny Dogfish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This action is not a significant action under Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows.

The Councils conducted an evaluation of the potential socioeconomic impacts of the proposed measures in conjunction with a SIR. There are no proposed regulatory changes in this spiny dogfish action, so none are considered in the evaluation. The proposed specifications would slightly increase 2021 spiny dogfish catch limits in accordance with the Mid-Atlantic Council's updated risk policy, and project status quo specifications for 2022.

According to the Northeast Fisheries Science Center commercial ownership database, 2,305 separate vessels held commercial spiny dogfish permits in 2019, the most recent year of fully available data. A total of 1,726 commercial entities owned those permitted vessels, and of those entities, 1,716 are categorized as small businesses and 10 as large businesses. Of those small businesses with commercial spiny dogfish permits, 1,315 had some revenue in 2019.

The proposed specifications for 2021 and projected specifications for 2022 are expected to provide similar fishing opportunities when compared to the 2020 fishing year. Although the proposed specifications increase the commercial quota, there are no proposed changes to the daily possession limits or other measures that are likely to change fishing behavior. Entities issued a commercial spiny dogfish permit may experience a slight positive impact related to potentially higher landings throughout the course of the entire year. However, based on market conditions, substantial changes in fishing behavior, or increases in short-term landings are not expected as a result of these specifications. As such, the proposed action is not expected to have an impact on the way the fishery operates or the revenue of small entities. Overall, analyses indicate that the proposed specifications will not substantially change: Fishing effort, the risk of overfishing, prices/revenues, or fishery behavior. Additionally, this action will not have a significant impact on small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

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

Dated: February 25, 2021.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2021–04356 Filed 3–3–21; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 86, No. 41
Thursday, March 4, 2021

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Team Nutrition Database

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. This is a revision of a currently approved collection and the information collected is used to facilitate a communication network among organizations participating in the Child and Adult Care Food Program (CACFP) and schools participating in the National School Lunch Program (NSLP) and School Breakfast Program (SBP). This communication network is implemented under the Team Nutrition initiative of the United States Department of Agriculture's (USDA) Food and Nutrition Service (FNS), Child Nutrition Programs.

DATES: Written comments must be received on or before May 3, 2021.

ADDRESSES: Comments may be sent to: Kaylyn Padovani, Food and Nutrition Service, U.S. Department of Agriculture, 1320 Braddock Place, 4th Floor Alexandria, VA 22314. Comments may also be submitted via email to the attention of Kaylyn Padovani at *TeamNutrition@usda.gov* with ''Team Nutrition Database Comments'' in the subject line. Comments will also be accepted through the Federal e-Rulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Kaylyn Padovani at *TeamNutrition@usda.gov* or by telephone at (703) 305–2078.

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Title: Team Nutrition Database.

Form Number: FNS 891 (Team Nutrition Schools) and FNS 892 (Team Nutrition CACFP Organizations).

OMB Number: 0584–0642.

Expiration Date: 10/31/2021.

Type of Request: Revision of a Currently Approved Collection.

Abstract: Team Nutrition is an initiative of the United States Department of Agriculture's Food and Nutrition Service to support national efforts to promote lifelong healthy food choices and physical activity by improving the nutrition practices of the Child Nutrition Programs, including the Child and Adult Care Food Program (CACFP), the National School Lunch Program (NSLP) and the School Breakfast and Special Milk Programs (SBP and SMP), in addition to the Fresh Fruit and Vegetable Program (FFVP), Afterschool Snacks, and Seamless Summer Option (SSO). This initiative provides resources to schools, child care settings, and summer meal and afterschool sites that participate in these programs.

Team Nutrition applies the social cognitive theory to change behavior through three main strategies. The first is to provide training and technical assistance to child nutrition professionals to enable them to prepare and serve nutritious meals that appeal to children. Team Nutrition also increases opportunities for nutrition education through multiple communication channels to help children gain the knowledge, skills, and motivation to make healthy food and physical activity choices as part of a healthy lifestyle. Finally, Team Nutrition helps to build and bolster support for healthy school and child care environments that encourage nutritious food choices and physically active lifestyles.

Since 1995, Team Nutrition has collected information from schools via the Team Nutrition Database to communicate releases and updates of Team Nutrition resources. In order to reach CACFP program operators and providers, FNS expanded the database in December 2018 to collect the contact information of interested CACFP organizations (such as sponsoring agencies and independent child care centers). Those eligible entities that choose to input their information into the database, via the online Team Nutrition Schools enrollment form (*https://www.fns.usda.gov/tn/schools*) or Team Nutrition CACFP Organization enrollment form (*https://www.fns.usda.gov/tn/cacfp*), will receive electronic correspondence, such as bimonthly newsletters and promotions. These communications announce the availability of new and updated Team Nutrition materials that support nutrition education and provide technical assistance to foster a positive healthy environment. This database allows the opportunity for the enrolled entities to affirm their commitment to childhood nutrition and wellness while also providing the opportunity to collaborate with other peers.

Since the previous renewal in 2018, the burden of this information collection has decreased due to changes in the number of respondents who are providing information. FNS has removed the school county field from the Team Nutrition Schools form because many participants did not complete this field. FNS has made no changes to the collection instrument for Team Nutrition CACFP Organizations or to the reminder notifications. Lastly, the title of this collection has been renamed from ''Contact Information of Schools that Participate in the National School

Lunch Program and Organizations that Participate in the USDA's Child and Adult Care Food Program'' to ''Team Nutrition Database'' as it is commonly known.

The collection of the school and CACFP organization contact information is currently approved under OMB Control #0584–0642, which expires on October 31, 2021. FNS wants to extend this data collection to continue the customer service provided to these entities. Once this information collection request has been reviewed and approved by the Office of Management and Budget (OMB), FNS will update the collection with the new expiration date.

Affected Public: Business or Other For Profit; Not For Profit; and State, Local and Tribal Government: Respondent groups identified include: (1) Organizations that have a CACFP agreement with the States and (2) Schools that participate in the NSLP.

Estimated Number of Respondents: The total estimated number of respondents is approximately 122,130 (22,130 are CACFP organizations and 100,000 are schools). For CACFP organizations, the total is broken down as follows: 19,662 CACFP sponsors; centers only; 674 CACFP sponsors of all home care; and 1,794 CACFP sponsors of adult care.

Estimated Number of Responses per Respondent: The total estimated number of responses per respondent for the entire collection is 3. The CACFP's organization and the schools will be asked to voluntarily complete one (1) enrollment form and submit changes as needed.

Estimated Total Annual Responses: 366,390.

Estimated Time per Response: The estimated time of response varies from 0.0835 to 0.25 hour (5–15 minutes), with an average estimated time of 0.097 (approximately 5.82 minutes) for all participants.

Estimated Total Annual Burden on Respondents: 354,484 hours. See the table below for estimated total annual burden for each type of respondent.

Affected public	Respondent	Estimated number respondent	Responses annually per respondent	Total annual responses (col. bxc)	Estimated avg. number of hours per response	Estimated total hours (col. dxe)
	Reporting Burden					
Businesses or Other for Profit, Not-for-Profit.	CACFP Organizations (completed form)–CACFP Sponsors: Centers Only.	19,662	1	19,662	0.25	4,915.5
	CACFP Organizations (completed form)—CACFP Sponsors of All Home Care.	674	1	674	0.25	168.5
	CACFP Organizations (completed form)—CACFP Sponsors of Adult Care.	1,794	1	1,794	0.25	448.5
	CACFP Organizations (updated form)—All.	22,130	1	22,130	0.0835	1,847.9
	CACFP Organizations (reminder notification).	22,130	1	22,130	0.025	553.3
Subtotal of Businesses or Other for Profit, Not-for Profit.		22,130		66,390		7,933.6
	Schools (completed form)	100,000	1	100,000	0.167	16,700
	Schools (updated form)	100,000	1	100,000	0.0835	8,350
	Schools (reminder notification).	100,000	1	100,000	0.025	2,500
Subtotal for State, Local, or Tribal Government.		100,000		300,000		27,550
	Total Reporting Burden	122,130		366,390		35,484

Cynthia Long,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 2021–04443 Filed 3–3–21; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Child Nutrition Programs: Income Eligibility Guidelines

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the Department's annual adjustments to the Income Eligibility Guidelines to be used in determining eligibility for free and reduced price meals and free milk for the period from July 1, 2021 through June 30, 2022. These guidelines are used by schools, institutions, and facilities participating in the National School Lunch Program (and Commodity School Program), School Breakfast Program, Special Milk Program for Children, Child and Adult Care Food Program and Summer Food Service Program. The annual adjustments are required by section 9 of the Richard B. Russell National School Lunch Act. The guidelines are intended to direct benefits to those children most in need and are revised annually to account for changes in the Consumer Price Index.

DATES: Implementation date July 1, 2021.

FOR FURTHER INFORMATION CONTACT: J. Kevin Maskornick, Program Monitoring and Operational Support Division, Child Nutrition Programs, Food and Nutrition Service, United States Department of Agriculture, 1320 Braddock Place, Suite 401, Alexandria, Virginia 22314, or call 703–305–2537.

SUPPLEMENTARY INFORMATION: This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C.

601–612) and thus is exempt from the provisions of that Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), no recordkeeping or reporting requirements have been included that are subject to approval from the Office of Management and Budget.

This notice has been determined to be not significant and was not reviewed by the Office of Management and Budget in conformance with Executive Order 12866.

The affected programs are listed in the Assistance Listings (*https://beta.sam.gov/*) under No. 10.553, No. 10.555, No. 10.556, No. 10.558, and No. 10.559 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 2 CFR part 415).

Background

Pursuant to sections 9(b)(1) and 17(c)(4) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)(1) and 42 U.S.C. 1766(c)(4)), and sections 3(a)(6) and 4(e)(1)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1772(a)(6) and 1773(e)(1)(A)), the Department annually issues the Income Eligibility Guidelines for free and reduced price meals for the National School Lunch Program (7 CFR part 210), the Commodity School Program (7 CFR part 210), School Breakfast Program (7 CFR part 220), Summer Food Service Program (7 CFR part 225) and Child and Adult Care Food Program (7 CFR part 226) and the guidelines for free milk in the Special Milk Program for Children (7 CFR part 215). These eligibility guidelines are based on the Federal income poverty guidelines and are stated by household size. The guidelines are used to determine eligibility for free and reduced price meals and free milk in accordance with applicable program rules.

Definition of Income

In accordance with the Department's policy as provided in the Food and Nutrition Service publication Eligibility Manual for School Meals, ''income,'' as the term is used in this notice, means income before any deductions such as income taxes, Social Security taxes, insurance premiums, charitable contributions, and bonds. It includes the following: (1) Monetary compensation for services, including wages, salary, commissions or fees; (2) net income from nonfarm self-employment; (3) net income from farm self-employment; (4) Social Security; (5) dividends or interest on savings or bonds or income from estates or trusts; (6) net rental income; (7) public assistance or welfare payments; (8) unemployment compensation; (9) government civilian employee or military retirement, or pensions or veterans payments; (10) private pensions or annuities; (11) alimony or child support payments; (12) regular contributions from persons not living in the household; (13) net royalties; and (14) other cash income. Other cash income would include cash amounts received or withdrawn from any source including savings, investments, trust accounts and other resources that would be available to pay the price of a child's meal.

''Income'', as the term is used in this notice, does *not* include any income or benefits received under any Federal programs that are excluded from consideration as income by any statutory prohibition. Furthermore, the value of meals or milk to children shall not be considered as income to their households for other benefit programs in accordance with the prohibitions in section 12(e) of the Richard B. Russell National School Lunch Act and section 11(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1760(e) and 1780(b)).

The Income Eligibility Guidelines

The following are the Income Eligibility Guidelines to be effective from July 1, 2021 through June 30, 2022. The Department's guidelines for free meals and milk and reduced price meals were obtained by multiplying the year 2021 Federal income poverty guidelines by 1.30 and 1.85, respectively, and by rounding the result upward to the next whole dollar.

This notice displays only the annual Federal poverty guidelines issued by the Department of Health and Human Services because the monthly and weekly Federal poverty guidelines are not used to determine the Income Eligibility Guidelines. The chart details the free and reduced price eligibility criteria for monthly income, income received twice monthly (24 payments per year); income received every two weeks (26 payments per year) and weekly income.

Income calculations are made based on the following formulas: Monthly income is calculated by dividing the annual income by 12; twice monthly income is computed by dividing annual income by 24; income received every two weeks is calculated by dividing annual income by 26; and weekly income is computed by dividing annual income by 52. All numbers are rounded upward to the next whole dollar. The numbers reflected in this notice for a family of four in the 48 contiguous States, the District of Columbia, Guam and the territories represent an increase of 1.1 percent over last year's level for a family of the same size.

Authority: Section 9(b)(1) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)(1)(A)).

BILLING CODE 3410–30–P

INCOME ELIGIBILITY GUIDELINES

Effective from July 1, 2021 to June 30, 2022

HOUSEHOLD SIZE	FEDERAL POVERTY GUIDELINES ANNUAL	REDUCED PRICE MEALS - 185 % ANNUAL	MONTHLY	TWICE PER MONTH	EVERY TWO WEEKS	WEEKLY	FREE MEALS - 130 % ANNUAL	MONTHLY	TWICE PER MONTH	EVERY TWO WEEKS	WEEKLY
48 CONTIGUOUS STATES, DISTRICT OF COLUMBIA, GUAM, AND TERRITORIES											
1	12,880	23,828	1,986	993	917	459	16,744	1,396	698	644	322
2	17,420	32,227	2,686	1,343	1,240	620	22,646	1,888	944	871	436
3	21,960	40,626	3,386	1,693	1,563	782	28,548	2,379	1,190	1,098	549
4	26,500	49,025	4,086	2,043	1,886	943	34,450	2,871	1,436	1,325	663
5	31,040	57,424	4,786	2,393	2,209	1,105	40,352	3,363	1,682	1,552	776
6	35,580	65,823	5,486	2,743	2,532	1,266	46,254	3,855	1,928	1,779	890
7	40,120	74,222	6,186	3,093	2,855	1,428	52,156	4,347	2,174	2,006	1,003
8	44,660	82,621	6,886	3,443	3,178	1,589	58,058	4,839	2,420	2,233	1,117
For each add'l family member, add	4,540	8,399	700	350	324	162	5,902	492	246	227	114
ALASKA											
1	16,090	29,767	2,481	1,241	1,145	573	20,917	1,744	872	805	403
2	21,770	40,275	3,357	1,679	1,550	775	28,301	2,359	1,180	1,089	545
3	27,450	50,783	4,232	2,116	1,954	977	35,685	2,974	1,487	1,373	687
4	33,130	61,291	5,108	2,554	2,358	1,179	43,069	3,590	1,795	1,657	829
5	38,810	71,799	5,984	2,992	2,762	1,381	50,453	4,205	2,103	1,941	971
6	44,490	82,307	6,859	3,430	3,166	1,583	57,837	4,820	2,410	2,225	1,113
7	50,170	92,815	7,735	3,868	3,570	1,785	65,221	5,436	2,718	2,509	1,255
8	55,850	103,323	8,611	4,306	3,974	1,987	72,605	6,051	3,026	2,793	1,397
For each add'l family member, add	5,680	10,508	876	438	405	203	7,384	616	308	284	142
HAWAII											
1	14,820	27,417	2,285	1,143	1,055	528	19,266	1,606	803	741	371
2	20,040	37,074	3,090	1,545	1,426	713	26,052	2,171	1,086	1,002	501
3	25,260	46,731	3,895	1,948	1,798	899	32,838	2,737	1,369	1,263	632
4	30,480	56,388	4,699	2,350	2,169	1,085	39,624	3,302	1,651	1,524	762
5	35,700	66,045	5,504	2,752	2,541	1,271	46,410	3,868	1,934	1,785	893
6	40,920	75,702	6,309	3,155	2,912	1,456	53,196	4,433	2,217	2,046	1,023
7	46,140	85,359	7,114	3,557	3,284	1,642	59,982	4,999	2,500	2,307	1,154
8	51,360	95,016	7,918	3,959	3,655	1,828	66,768	5,564	2,782	2,568	1,284
For each add'l family member, add	5,220	9,657	805	403	372	186	6,786	566	283	261	131

Cynthia Long,

Acting Administrator, USDA Food and Nutrition Service.

[FR Doc. 2021–04452 Filed 3–3–21; 8:45 am]

BILLING CODE 3410–30–C

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Rural Housing Service

Rural Utilities Service

[Docket No. RBS–20–BUSINESS–0040]

Notice of Solicitation of Applications (NOSA) for the Strategic Economic and Community Development Program for Fiscal Year (FY) 2021; Correction

AGENCY: Rural Business-Cooperative Service, Rural Housing Service, and Rural Utilities Service, USDA.

ACTION: Notice; correction.

SUMMARY: The Rural Business-Cooperative Service, Rural Housing Service, and Rural Utilities Service, agencies that comprise the Rural Development Mission Area within the United States Department of Agriculture, published a notice of solicitation of applications in the **Federal Register** on January 11, 2021, entitled ''Notice of Solicitation of Applications (NOSA) for the Strategic Economic and Community Development Program for Fiscal Year (FY) 2021.'' The NOSA provides requirements to applicants submitting applications for programs that have been prioritized by the Secretary of Agriculture for Strategic Economic and Community Development funding. Contrary to what was published in the NOSA, this Correction Notice (Correction) is being issued to clarify that Strategic Economic and Community Development priority funding will not be set aside for the Community Connect Grant Program in FY 2021.

FOR FURTHER INFORMATION CONTACT: Greg Batson, Rural Development Innovation Center, U.S. Department of Agriculture, Stop 0793, 1400 Independence Avenue SW, Washington, DC 20250–0783, Telephone: (573) 239–2945. Email: *gregory.batson@usda.gov.*

SUPPLEMENTARY INFORMATION:

Correction

In FR Doc 2021–00234 of January 11, 2021 (86 FR 1918), make the following corrections of references in the NOSA to ''Community Connect,'' ''Community Connect Grant,'' and ''Community Connect Grant Program'' are being removed by this Correction:

(1) On page 1919, in column 2, on lines 16 and 17, remove ''Community Connect Grant; see 7 CFR part 1739;''

(2) On page 1919, in column 2, under section II. ''Award Information,'' in the table, remove ''Community Connect 10;'' and

(3) On page 1919, in column 2, on lines 4 and 5 under the subheading ''Award Dates'' in section II. ''Award Information,'' remove ''Community Connect Grant Program.''

Christopher A. McLean,

Acting Deputy Under Secretary, Rural Development.

[FR Doc. 2021–04440 Filed 3–3–21; 8:45 am]

BILLING CODE 3410–XY–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

[Docket No. ATBCB–2020–0005]

Agency Information Collection Activities; Submission of Renewed Generic Clearance for OMB Review

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: 30-Day notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Architectural and Transportation Barriers Compliance Board (Access Board) has submitted to the Office of Management and Budget (OMB) a request for renewal of its existing generic clearance to continue to collect qualitative feedback on agency services and programs.

DATES: Submit comments by April 5, 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.

FOR FURTHER INFORMATION CONTACT: Frances Spiegel, Attorney Advisor, Office of General Counsel, U.S. Access Board, 1331 F Street NW, Suite 1000, Washington, DC 20004–1111. Phone: 202–272–0041 (voice). Email: *spiegel@access-board.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

Under the PRA and its implementing regulations (5 CFR part 1320), Federal agencies must generally provide opportunities for public comment and obtain OMB approval for each collection of information they conduct or sponsor (*e.g.,* contractually-required information collection by a third-party). ''Collection of information'' refers to agency informational requests that pose identical questions to, or impose reporting or record-keeping obligations on, ten or more non-federal entities or persons, regardless of whether response is mandatory or voluntary. *See* 5 CFR 1320.3(c); *see also* 44 U.S.C. 3502(3).

In December 2020, the Access Board published a 60-day notice concerning the proposed renewal of its existing generic clearance for the collection of qualitative feedback, which expires in May 2021 (OMB Control No. 3014–0011). 82 FR 37421 (Aug. 10, 2017). We received no comments in response to this 60-day notice.

B. Overview of Requested Generic Clearance Renewal

By this notice, the Access Board announces that it has requested OMB renewal of our existing generic clearance so that we may continue ongoing efforts to solicit qualitative customer feedback on agency programs and services. OMB approval is requested for three years. Provided below is an overview of the existing generic clearance for which the Access Board seeks renewal:

OMB Control Number: 3014–0011.

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

Type of Request: Extension without change.

Abstract: The proposed information collection activity facilitates collection of qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Federal Government's commitment to improving service delivery. By qualitative feedback we mean information collections that provide useful insights on perceptions and opinions but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insight into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training, or changes in operations might improve delivery of services. These collections will allow for ongoing, collaborative, and actionable communications between the Access Board and its customers and stakeholders.

Respondents/Affected Public: Individuals and Households; Businesses and Organizations; State, Local or Tribal Government.

Burden Estimates: In the table below (Table 1), the Access Board provides estimates for the annual reporting burden for the information collections proposed under this renewed generic information collection request. (The Access Board does not anticipate incurring any capital or other direct costs associated with this information collection. Nor will there be any costs to respondents, other than their time.)

TABLE 1—ESTIMATED ANNUAL BURDEN HOURS

Type of collection	Number of respondents	Frequency of response (per year)	Average response time (mins.)	Total burden (hours)
Customer feedback surveys—Office of Technical and Information Services	3,830	1	4	255
Customer feedback survey: ABA Compliance and enforcement program	40	1	4	3
Totals:	3,870	n/a	n/a	258

(**Note:** Total burden hours per collection rounded to the nearest full hour.)

Request for Comment: The Access Board seeks comment on any aspect of the proposed renewal of its existing generic clearance for the collection of qualitative feedback on agency service delivery, including (a) whether the proposed collection of information is necessary for the Access Board's performance; (b) the accuracy of the estimated burden; (c) ways for the Access Board 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.

Gretchen Jacobs,

General Counsel.

[FR Doc. 2021–04419 Filed 3–3–21; 8:45 am]

BILLING CODE 8150–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Tennessee 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 Tennessee Advisory Committee (Committee) will hold a meeting via the web platform Webex on Thursday, March 18, 2021 at 12:00 p.m. Central Time. The purpose of the meeting is for the committee to discuss proposed topics of study.

DATES: The meetings will be held on:

- Thursday, March 18, 2021, at 12:00 p.m. Central Time

https://civilrights.webex.com/civilrights/j.php?MTID=m992749f83df222cdaaa858ecac88662f

or Join by phone: 800–360–9505 USA Toll Free, Access code: 1992 414 037

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, Tennessee 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: February 26, 2021.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2021–04436 Filed 3–3–21; 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 Thursday, March 18, 2021 at 10:00 a.m. Central Time. The purpose of the meeting is for the committee to discuss civil rights concerns in the state, and to work on logistics for their upcoming briefings.

DATES: The meeting will be held on:

- Thursday, March 18, 2021, at 10:00 a.m. Central Time

https://civilrights.webex.com/civilrights/j.php?MTID=madd740b602a57f45fe85eec1114633eb

or Join by phone: 800–360–9505 USA Toll Free, Access code: 1990 598 676

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 on Proposed Panelists
IV. Next Steps
V. Public Comment
VI. Adjournment

Dated: February 26, 2021.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2021–04437 Filed 3–3–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–65–2020]

Foreign-Trade Zone (FTZ) 168—Dallas/Fort Worth, Texas; Authorization of Production Activity; Gulfstream Aerospace Corporation; (Disassembly of Aircraft); Dallas, Texas

On October 29, 2020, the Metroplex International Trade Development Corporation, grantee of FTZ 168, submitted a notification of proposed production activity to the FTZ Board on behalf of Gulfstream Aerospace Corporation, within Subzone 168E, in Dallas, Texas.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (85 FR 70580, November 5, 2020). On February 26, 2021, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: February 26, 2021.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2021–04410 Filed 3–3–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Emerging Technology Technical Advisory Committee; Notice of Partially Closed Meeting

The Emerging Technology Technical Advisory Committee (ETTAC) will meet on March 19, 2021, at 8:00 a.m., Eastern Standard Time. The meetings will be available via teleconference. The Committee advises the Office of the Assistant Secretary for Export Administration on the identification of emerging and foundational technologies with potential dual-use applications as early as possible in their developmental stages both within the United States and abroad.

Agenda

Closed Session: 8:00 a.m.–10:00 a.m.

1. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

Open Session: 10:30 a.m.—12:30 p.m.

2. Welcome and Introductions.
3. *Presentations:* Active Cyber Defense: Emerging Technologies and Policy Issues.
4. *Open Forum:* Issues Surrounding Emerging/Foundational Technologies Controls.
5. Public Comments.

To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov* no later than December 2, 2020.

To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via email.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 9, 2021, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 § 10(d)), that the portion of the meeting dealing with pre-decisional changes to the Commerce Control List and the U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 § § 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2021–04434 Filed 3–3–21; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

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

SUMMARY: The Department of Commerce (Commerce) has received requests to conduct administrative reviews of various antidumping duty (AD) and countervailing duty (CVD) orders and findings with January anniversary dates. In accordance with Commerce's regulations, we are initiating those administrative reviews.

DATES: Applicable March 4, 2021.

FOR FURTHER INFORMATION CONTACT: Brenda E. Brown, AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–4735.

SUPPLEMENTARY INFORMATION:

Background

Commerce has received timely requests, in accordance with 19 CFR 351.213(b), for administrative reviews of various AD and CVD orders and findings with January anniversary dates.

All deadlines for the submission of various types of information, certifications, or comments or actions by

Commerce discussed below refer to the number of calendar days from the applicable starting time.

Notice of No Sales

If a producer or exporter named in this notice of initiation had no exports, sales, or entries during the period of review (POR), it must notify Commerce within 30 days of publication of this notice in the **Federal Register**. All submissions must be filed electronically at *https://access.trade.gov* in accordance with 19 CFR 351.303.[1] Such submissions are subject to verification in accordance with section 782(i) of the Tariff Act of 1930, as amended (the Act). Further, in accordance with 19 CFR 351.303(f)(1)(i), a copy must be served on every party on Commerce's service list.

Respondent Selection

In the event Commerce limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, Commerce intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the POR. We intend to place the CBP data on the record within five days of publication of the initiation notice and to make our decision regarding respondent selection within 30 days of publication of the initiation **Federal Register** notice. Comments regarding the CBP data and respondent selection should be submitted within seven days after the placement of the CBP data on the record of this review. Parties wishing to submit rebuttal comments should submit those comments within five days after the deadline for the initial comments.

In the event Commerce decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act, the following guidelines regarding collapsing of companies for purposes of respondent selection will apply. In general, Commerce has found that determinations concerning whether particular companies should be ''collapsed'' (*e.g.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, Commerce will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this AD proceeding (*e.g.,* investigation, administrative review, new shipper review, or changed circumstances review). For any company subject to this review, if Commerce determined, or continued to treat, that company as collapsed with others, Commerce will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, Commerce will not collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete the Quantity and Value (Q&V) Questionnaire for purposes of respondent selection, in general, each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where Commerce considered collapsing that entity, complete Q&V data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that has requested a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that Commerce may extend this time if it is reasonable to do so. Determinations by Commerce to extend the 90-day deadline will be made on a case-by-case basis.

Deadline for Particular Market Situation Allegation

Section 504 of the Trade Preferences Extension Act of 2015 amended the Act by adding the concept of a particular market situation (PMS) for purposes of constructed value under section 773(e) of the Act.[2] Section 773(e) of the Act states that ''if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.'' When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act nor 19 CFR 351.301(c)(2)(v) set a deadline for the submission of PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of initial responses to section D of the questionnaire.

Separate Rates

In proceedings involving non-market economy (NME) countries, Commerce begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is Commerce's policy to assign all exporters of merchandise subject to an administrative review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, Commerce analyzes each entity exporting the subject merchandise. In accordance with the separate rates criteria, Commerce assigns separate rates to companies in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

All firms listed below that wish to qualify for separate rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate rate application or certification, as described below. For these administrative reviews, in order to demonstrate separate rate eligibility, Commerce requires entities for whom a review was requested, that were assigned a separate rate in the

[1] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

[2] *See* Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).

most recent segment of this proceeding in which they participated, to certify that they continue to meet the criteria for obtaining a separate rate. The Separate Rate Certification form will be available on Commerce's website at *https://enforcement.trade.gov/nme/nme-sep-rate.html* on the date of publication of this **Federal Register** notice. In responding to the certification, please follow the ''Instructions for Filing the Certification'' in the Separate Rate Certification. Separate Rate Certifications are due to Commerce no later than 30 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Certification applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers who purchase and export subject merchandise to the United States.

Entities that currently do not have a separate rate from a completed segment of the proceeding [3] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. In addition, companies that received a separate rate in a completed segment of the proceeding that have subsequently made changes, including, but not limited to, changes to corporate structure, acquisitions of new companies or facilities, or changes to their official company name,[4] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. The Separate Rate Application will be available on Commerce's website at *https://enforcement.trade.gov/nme/nme-sep-rate.html* on the date of publication of this **Federal Register** notice. In responding to the Separate Rate Application, refer to the instructions contained in the application. Separate Rate Applications are due to Commerce no later than 30 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Separate Rate Application applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers that purchase and export subject merchandise to the United States.

For exporters and producers who submit a Separate Rate Application or Certification and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents.

Initiation of Reviews:

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following AD and CVD orders and findings. We intend to issue the final results of these reviews not later than January 31, 2022.

	Period to be reviewed
AD Proceedings	
Canada: Softwood Lumber,[5] A–122–857	1/1/20–12/31/20
1074712 BC Ltd.	
5214875 Manitoba Ltd.	
54 Reman	
752615 B.C Ltd. Fraserview Remanufacturing Inc., (dba Fraserview Cedar Products)	
9224–5737 Quebec inc. (aka A.G. Bois)	
AA Trading Ltd.	
Absolute Lumber Products Ltd.	
Adwood Manufacturing Ltd	
Aler Forest Products Ltd.	
All American Forest Products Inc.	
Alpa Lumber Mills Inc.	
Andersen Pacific Forest Products Ltd.	
Anglo American Cedar Products Ltd.	
Antrim Cedar Corporation	
Aquila Cedar Products Ltd.	
Arbec Lumber Inc.	
Aspen Planers Ltd.	
B&L Forest Products Ltd.	
Babine Forest Products Limited	
Bakerview Forest Products Inc.	
Bardobec Inc.	
Barrette-Chapais Ltee	
BarretteWood Inc.	
Benoît & Dionne Produits Forestiers Ltée (aka Benoît & Dionne Forest Products Ltd.)	
Best Quality Cedar Products Ltd.	
Blanchet Multi Concept Inc.	
Blanchette & Blanchette Inc.	
Bois Aisé de Montréal Inc.	
Bois Bonsaï inc.	
Bois D'Oeuvre Cedrico Inc. (aka Cedrico Lumber Inc.)	
Bois Daaquam Inc.	
Bois et Solutions Marketing SPEC, Inc.	
Boisaco Inc.	
Boscus Canada Inc.	
Boucher Bros. Lumber Ltd.	
BPWood Ltd.	
Bramwood Forest Inc.	

[3] Such entities include entities that have not participated in the proceeding, entities that were preliminarily granted a separate rate in any currently incomplete segment of the proceeding (*e.g.,* an ongoing administrative review, new shipper review, *etc.*) and entities that lost their separate rate in the most recently completed segment of the proceeding in which they participated.

[4] Only changes to the official company name, rather than trade names, need to be addressed via a Separate Rate Application. Information regarding new trade names may be submitted via a Separate Rate Certification.

	Period to be reviewed
Brink Forest Products Ltd.	
Brunswick Valley Lumber Inc.	
Burrows Lumber (CD) Ltd., Theo A. Burrows Lumber Company Limited	
Busque & Laflamme Inc.	
Campbell River Shake & Shingle Co. Ltd.	
Canada Pallet Corp.	
Canadian Forest Products Ltd.; Canfor Wood Products Marketing Ltd.; Canfor Corporation	
Canasia Forest Industries Ltd.	
Canyon Lumber Company Ltd.	
Careau Bois Inc.	
Carrier & Bégin Inc.	
Carrier Forest Products Ltd.	
Carrier Lumber Ltd.	
Carter Forest Products Inc.	
Cedar Island Forest Products Ltd.	
Cedar Valley Holdings Ltd.	
Cedarcoast Lumber Products	
Cedarland Forest Products Ltd.	
Cedarline Industries Ltd.	
Central Cedar Ltd.	
Central Forest Products Inc.	
Centurion Lumber Ltd.	
Chaleur Sawmills LP	
Channel-ex Trading Corporation	
Clair Industrial Development Corp. Ltd.	
Clermond Hamel Ltee	
CNH Products Inc.	
Coast Clear Wood Ltd.	
Coast Mountain Cedar Products Ltd.	
Commonwealth Plywood Co. Ltd.	
Conifex Fibre Marketing Inc.	
Coulson Manufacturing Ltd.	
Cowichan Lumber Ltd.	
CS Manufacturing Inc. (dba Cedarshed)	
CWP—Industriel Inc.	
CWP—Montréal Inc.	
D & D Pallets Ltd.	
Dakeryn Industries Ltd.	
Decker Lake Forest Products Ltd.	
Deep Cove Forest Products, Inc.	
Delco Forest Products Ltd.	
Delta Cedar Specialties Ltd.	
Devon Lumber Co. Ltd.	
DH Manufacturing Inc.	
Direct Cedar Supplies Ltd.	
Distribution Rioux Inc.	
Doubletree Forest Products Ltd.	
Downie Timber Ltd.	
Dunkley Lumber Ltd.	
EACOM Timber Corporation	
East Fraser Fiber Co. Ltd.	
Edgewood Forest Products Inc.	
Elrod Cartage Ltd.	
ER Probyn Export Ltd.	
Falcon Lumber Ltd.	
Fontaine Inc.	
Foothills Forest Products Inc.	
Fornebu Lumber Company Inc.	
Fraser Specialty Products Ltd.	
FraserWood Industries Ltd	
Furtado Forest Products Ltd.	
Glandell Enterprises Inc.	
Goldband Shake & Shingle Ltd.	
Goldwood Industries Ltd.	
Goodfellow Inc.	
Gorman Bros. Lumber Ltd.	
Greendale Industries Inc.	
Greenwell Resources Inc.	
Griff Building Supplies Ltd.	
Groupe Crête Chertsey Inc.	
Groupe Crête Division St-Faustin Inc.	
Groupe Lebel Inc.	
Groupe Lignarex Inc.	
H.J. Crabbe & Sons Ltd.	

	Period to be reviewed
Haida Forest Products Ltd.	
Halo Sawmill, a division of Delta Cedar Specialties Ltd.	
Hampton Tree Farms, LLC (dba Hampton Lumber Sales Canada)	
Hornepayne Lumber LP	
Hudson Mitchell & Sons Lumber Inc.	
Hy Mark Wood Products Inc.	
Imperial Cedar Products Ltd.	
Independent Building Materials Distribution Inc.	
Interfor Corporation	
Interfor Sales & Marketing Ltd.	
Intertran Holdings Ltd. (dba Richmond Terminal)	
Island Cedar Products Ltd.	
J&G Log Works Ltd.	
J.H. Huscroft Ltd.	
Jan Woodlands (2001) Inc.	
Jasco Forest Products Ltd.	
Jazz Forest Products Ltd.	
Jhajj Lumber Corporation	
Kalesnikoff Lumber Co. Ltd.	
Kan Wood Ltd.	
Kébois Ltée	
Kelfor Industries Ltd.	
Kermode Forest Products Ltd.	
Keystone Timber Ltd.	
L'Atelier de Réadaptation au Travil de Beauce Inc.	
Lafontaine Lumber Inc.	
Langevin Forest Products Inc.	
Lecours Lumber Co. Limited	
Leisure Lumber Ltd.	
Les Bardeaux Lajoie Inc.	
Les Bois d'oeuvre Beaudoin Gauthier Inc.	
Les Bois Martek Lumber	
Les Bois Traités M.G. Inc.	
Les Chantiers de Chibougamau Ltée	
Les Industries P.F. Inc.	
Les Palettes B.B. Inc. (aka B.B.Pallets Inc.)	
Les Produits Forestiers D&G Ltée (aka D&G Forest Products Ltd.)	
Leslie Forest Products Ltd.	
Lignum Forest Products LLP	
Linwood Homes Ltd.	
Lonestar Lumber Inc.	
Lulumco inc.	
Magnum Forest Products, Ltd.	
Maibec inc.	
Mainland Sawmill, a division of Terminal Forest Products	
Manitou Forest Products Ltd.	
Manning Forest Products Ltd.; Sundre Forest Products Inc.; Blue Ridge Lumber Inc.; West Fraser Mills Ltd.	
Marcel Lauzon Inc.	
Marwood Ltd.	
Materiaux Blanchet Inc.	
Mid Valley Lumber Specialties Ltd.	
Midway Lumber Mills Ltd.	
Mill & Timber Products Ltd.	
Millar Western Forest Products Ltd.	
Mirax Lumber Products Ltd.	
Mobilier Rustique (Beauce) Inc.	
Monterra Lumber Mills Limited	
Morwood Forest Products Inc.	
Multicedre Itee	
Nakina Lumber Inc.	
National Forest Products Ltd.	
Nicholson and Cates Ltd	
Nickel Lake Lumber	
Norsask Forest Products Inc.	
Norsask Forest Products Limited Partnership	
North American Forest Products Ltd. (located in Saint-Quentin, New Brunswick)	
North American Forest Products, Ltd. (located in Abbotsford, British Columbia)	
North Enderby Timber Ltd.	
Northland Forest Products Ltd.	
Olympic Industries Inc-Reman Codes	
Olympic Industries ULC	
Olympic Industries ULC-Reman	
Olympic Industries ULC-Reman Code	
Olympic Industries, Inc.	

	Period to be reviewed
Oregon Canadian Forest Products Inc. d.b.a. Oregon Canadian Forest Products	
Pacific Coast Cedar Products Ltd.	
Pacific Lumber Remanufacturing Inc.	
Pacific Pallet, Ltd.	
Pacific Western Wood Works Ltd.	
PalletSource Inc.	
Parallel Wood Products Ltd.	
Pat Power Forest Products Corporation	
Phoenix Forest Products Inc.	
Pine Ideas Ltd.	
Pioneer Pallet & Lumber Ltd.	
Porcupine Wood Products Ltd.	
Portbec Forest Products Ltd./Les Produits Forestiers Portbec Ltée	
Power Wood Corp.	
Precision Cedar Products Corp.	
Prendiville Industries Ltd. (aka Kenora Forest Products)	
Produits Forestiers Petit Paris Inc.	
Produits forestiers Temrex, s.e.c.	
Produits Matra Inc.	
Promobois G.D.S. Inc.	
Rayonier A.M. Canada GP	
Rembos Inc.	
René Bernard Inc.	
Resolute Growth Canada Inc.; Forest Products Mauricie LP, Société en commandite Scierie Opitciwan; Resolute-LP Engineered Wood Larouche Inc.; Resolute-LP Engineered Wood St-Prime Limited Partnership; Resolute FP Canada Inc.	
Rick Dubois	
Rielly Industrial Lumber Inc.	
River City Remanufacturing Inc.	
S&R Sawmills Ltd.	
S&W Forest Products Ltd.	
San Industries Ltd.	
Sapphire Lumber Company	
Sawarne Lumber Co. Ltd.	
Scierie Alexandre Lemay & Fils Inc.	
Scierie St-Michel Inc.	
Scierie West Brome Inc.	
Scott Lumber Sales	
Sechoirs de Beauce Inc.	
Shakertown Corp.	
Sigurdson Forest Products Ltd.	
Silvaris Corporation	
Sinclar Group Forest Products Ltd.	
Skana Forest Products Ltd.	
Skeena Sawmills Ltd.	
Sonora Logging Ltd.	
Source Forest Products	
South Beach Trading Inc.	
South Coast Reman Ltd.	
South Fraser Container Terminals	
Specialiste du Bardeau de Cedre Inc.	
Spruceland Millworks Inc.	
Star Lumber Canada Ltd.	
Suncoast Industries Inc.	
Suncoh Custom Lumber Ltd.	
Sundher Timber Products Inc.	
Surplus G Rioux	
Surrey Cedar Ltd.	
Taan Forest Limited Partnership	
Taiga Building Products Ltd.	
Tall Tree Lumber Company	
Teal Cedar Products Ltd.	
Terminal Forest Products Ltd.	
The Teal Jones Group	
The Wood Source Inc.	
Tolko Marketing and Sales Ltd., Tolko Industries Ltd., and Gilbert Smith Forest Products Ltd.	
Trans-Pacific Trading Ltd.	
Triad Forest Products Ltd.	
Twin Rivers Paper Co. Inc.	
Tyee Timber Products Ltd.	
Usine Sartigan Inc.	
Vaagen Fibre Canada ULC	
Valley Cedar 2 Inc.	
Vancouver Specialty Cedar Products Ltd.	

	Period to be reviewed
Vanderhoof Specialty Wood Products Ltd.	
Visscher Lumber Inc.	
W.I. Woodtone Industries Inc.	
Waldun Forest Product Sales Ltd.	
Watkins Sawmills Ltd.	
West Bay Forest Products Ltd.	
Western Forest Products Inc.	
Western Lumber Sales Limited	
Western Timber Products, Inc.	
Westminster Industries Ltd.	
Weston Forest Products Inc.	
Weyerhaeuser Co.	
White River Forest Products L.P.	
Winton Homes Ltd.	
Woodline Forest Products Ltd.	
Woodstock Forest Products	
Woodtone Specialties Inc.	
WWW Timber Products Ltd.	
India: Polyester Textured Yarn, A–533–885	7/1/19–12/31/20
Sanathan Textiles Private Limited	
Thailand: Prestressed Concrete Steel Wire Strand, A–549–820	1/1/20–12/31/20
The Siam Industrial Wire Co., Ltd.	
Thai Wire Products Public Co. Ltd.	
The People's Republic of China: Certain Hardwood Plywood Products, A–570–051	1/1/20–12/31/20
Anhui Hoda Wood Co., Ltd.	
Celtic Co., Ltd China Friend Limited.	
Cosco Star International Co., Ltd.	
Deqing China-Africa Foreign Trade Port Co., Ltd.	
Feixian Jinde Wood Factory	
G.D. Enterprise Limited	
Happy Wood Industrial Group Co., Ltd.	
Henan Hongda Woodcraft Industry Co., Ltd.	
Jiangsu Qianjiuren International Trading Co., Ltd.	
Jiangsu Shengyang Industrial Joint Stock Co., Ltd.	
Jiashan Dalin Wood Industry Co., Ltd.	
Jiaxing Hengtong Wood Co., Ltd.	
Jiaxing Kaochuan Woodwork Co., Ltd.	
Leadwood Industrial Corp.	
Linyi Chengen Import and Export Co., Ltd.	
Linyi City Dongfang Fukai Wood Industry Co., Ltd.	
Linyi City Shenrui International Trade Co., Ltd.	
Linyi Evergreen Wood Co., Ltd.	
Linyi Glary Plywood Co., Ltd.	
Linyi Huasheng Yongbin Wood Co., Ltd.	
Linyi Jiahe Wood Industry Co., Ltd.	
Linyi Sanfortune Wood Co., Ltd.	
Linyi Tian He Wooden Industry Co., Ltd.	
Pizhou Dayun Import & Export Trade Co., Ltd.	
Pizhou Jin Sheng Yuan International Trade Co., Ltd.	
Qingdao Top P&Q International Corp.	
Shandong Anxin Timber Co., Ltd.	
Shandong Huaxin Jiasheng Wood Co., Ltd.	
Shandong Huiyu International Trade Co., Ltd.	
Shandong Johnson Trading Co., Ltd.	
Shandong Qishan International Trading Co., Ltd	
Shanghai Brightwood Trading Co., Ltd.	
Shanghai Futuwood Trading Co., Ltd.	
Shanghai Luli Trading Co., Ltd.	
Shanghai S&M Trade Co., Ltd.	
Smart Gift International	
Suining Pengxiang Wood Co., Ltd.	
Suqian Hopeway International Trade Co., Ltd.	
Suqian Yaorun Trade Co., Ltd	
Suzhou Dongsheng Wood Co., Ltd.	
Suzhou Oriental Dragon Import and Export Co., Ltd.	
Xuzhou Baoqi Wood Product Co., Ltd.	
Xuzhou Dilun Wood Co. Ltd.	
Xuzhou Eastern Huatai International Trading Co., Ltd.	
Xuzhou Hansun Import & Export Co. Ltd.	
Xuzhou Jiangheng Wood Products Co., Ltd.	
Xuzhou Jiangyang Wood Industries Co., Ltd.	
Xuzhou Maker's Mark Building Materials Co., Ltd.	
Xuzhou Shenghe Wood Co. Ltd.	
Xuzhou Shuiwangxing Trading Co., Ltd.	

	Period to be reviewed
Xuzhou Shuner Import & Export Trade Co. Ltd.	
Xuzhou Tianshan Wood Co., Ltd.	
Xuzhou Timber International Trade Co., Ltd.	
Yangzhou Hanov International Co., Ltd.	
Zhejiang Dehua TB Import & Export Co., Ltd.	
The People's Republic of China: Crystalline Silicon Photovoltaic Cells, Whether Or Not Assembled Into Modules,[6] A–570–979	12/1/19–11/30/20
The People's Republic of China: Wooden Bedroom Furniture, A–570–890	1/1/20–12/31/20
Dongguan Chengcheng Group Co., Ltd.	
Dongguan Sunrise Furniture Co.	
Dongguan Sunrise Furniture Co., Ltd.	
Eurosa (Kunshan) Co., Ltd.	
Eurosa Furniture Co., (PTE) Ltd.	
Fairmont Designs	
Fortune Glory Industrial Ltd. (H.K. Ltd.)	
Fortune Glory Industrial, Ltd. (HK Ltd.)	
Golden Lion International Trading Ltd.	
Golden Well International (HK), Ltd.	
Guangzhou Maria Yee Furnishings Ltd.	
Hang Hai Woodcraft's Art Factory	
Hui Zhou Tian Mei Furniture Co., Ltd.	
Jiangmen Kinwai Furniture Decoration Co., Ltd.,	
Jiangmen Kinwai International Furniture Co., Ltd.	
Jiangsu Xiangsheng Bedtime Furniture Co., Ltd.	
Jiangsu Yuexing Furniture Group Co., Ltd.	
Lianjiang Zongyu Art Products Co., Ltd.	
Maria Yee, Inc.	
Meizhou Sunrise Furniture Co., Ltd.	
Nanhai Jiantai Woodwork Co. Ltd.	
Nathan International Ltd., Nathan Rattan Factory	
Perfect Line Furniture Co., Ltd.	
PuTian JingGong Furniture Co., Ltd.	
Pyla HK Ltd.	
Shanghai Sunrise Furniture Co., Ltd.	
Shenyang Shining Dongxing Furniture Co., Ltd.	
Shenzhen Forest Furniture Co., Ltd.	
Shenzhen Jiafa High Grade Furniture Co., Ltd.	
Shenzhen New Fudu Furniture Co., Ltd.	
Shenzhen Wonderful Furniture Co., Ltd.	
Shin Feng Furniture Co., Ltd.	
Stupendous International Co., Ltd.	
Sun Fung Co.	
Sun Fung Wooden Factory	
Sunforce Furniture (Hui-Yang) Co., Ltd.	
Superwood Co. Ltd.	
Taicang Fairmont Designs Furniture Co., Ltd.	
Taicang Sunrise Wood Industry Co., Ltd.	
Taicang Sunrise Wood Industry, Co., Ltd.	
Tradewinds Furniture Ltd. (successor-in-interest to Nanhai Jiantai Woodwork Co.)	
Wuxi Yushea Furniture Co., Ltd.	
Xiamen Yongquan Sci-Tech Development Co., Ltd.	
Yeh Brothers World Trade Inc.	
Yihua Lifestyle Technology Co., Ltd.	
Yihua Timber Industry Co., Ltd. (a.k.a. Guangdong Yihua Timber Industry Co., Ltd.)	
Zhangjiagang Daye Hotel Furniture Co. Ltd.	
Zhangzhou Guohui Industrial & Trade Co. Ltd.	
Zhangzhou XYM Furniture Product Co., Ltd.	
Zhejiang Tianyi Scientific & Educational Equipment Co., Ltd.	
Zhongshan Fookyik Furniture Co., Ltd.	
Zhongshan Golden King Furniture Industrial Co., Ltd.	
Zhoushan For-Strong Wood Co., Ltd.	
CVD Proceedings	
Argentina: Biodiesel, C–357–821	1/1/20–12/31/20
Aceitera General Deheza S.A.	
Bio Nogoya S.A.	
Bunge Argentina S.A.	
Cámara Argentina de Biocombustibles	
Cargill S.A.C.I.	
COFCO Argentina S.A.	
Explora	
GEFCO Argentina	
LDC Argentina S.A.	
Molinos Agro S.A.	

	Period to be reviewed
Noble Argentina	
Oleaginosa Moreno Hermanos S.A.	
Patagonia Bioenergia	
Renova S.A.	
T6 Industrial SA (EcoFuel)	
Unitec Bio S.A.	
Vicentin S.A.I.C.	
Viluco S.A.	
Canada: Softwood Lumber,[7] C–122–858	1/1/20–12/31/20
1074712 BC Ltd.	
5214875 Manitoba Ltd.	
752615 B.C Ltd, Fraserview Remanufacturing Inc, dba Fraserview Cedar Products.	
9224–5737 Québec inc. (aka A.G. Bois)	
AA Trading Ltd.	
Absolute Lumber Products, Ltd.	
Adwood Manufacturing Ltd.	
Aler Forest Products, Ltd.	
All American Forest Products Inc.	
Alpa Lumber Mills Inc.	
Andersen Pacific Forest Products Ltd.	
Anglo American Cedar Products Ltd.	
Antrim Cedar Corporation	
Aquila Cedar Products, Ltd.	
Arbec Lumber Inc.	
Aspen Planers Ltd.	
B&L Forest Products Ltd	
B.B. Pallets Inc.	
Babine Forest Products Limited	
Bakerview Forest Products Inc.	
Bardobec Inc.	
Barrette-Chapais Ltee	
BarretteWood Inc.	
Benoît & Dionne Produits Forestiers Ltee	
Best Quality Cedar Products Ltd.	
Blanchet Multi Concept Inc.	
Blanchette & Blanchette Inc.	
Bois Aise de Montreal inc.	
Bois Bonsaï Inc.	
Bois Daaquam Inc.	
Bois D'oeuvre Cedrico Inc. (aka Cedrico Lumber Inc.)	
Bois et Solutions Marketing SPEC, Inc.	
Boisaco	
Boscus Canada Inc.	
Boucher Bros. Lumber Ltd.	
BPWood Ltd.	
Bramwood Forest Inc.	
Brunswick Valley Lumber Inc.	
Burrows Lumber (CD) Ltd., Theo A. Burrows Lumber Company Limited	
Busque & Laflamme Inc.	
Campbell River Shake & Shingle Co., Ltd.	
Canada Pallet Corp.	
Canasia Forest Industries Ltd.	
Canfor Corporation	
Canyon Lumber Company, Ltd.	
Careau Bois Inc.	
Carrier & Begin Inc.	
Carrier Forest Products Ltd.	
Carrier Lumber Ltd.	
Carter Forest Products Inc.	
Cedar Island Forest Products Ltd.	
Cedar Valley Holdings Ltd.	
Cedarland Forest Products Ltd.	
Cedarline Industries, Ltd.	
Central Cedar Ltd.	
Central Forest Products, Inc.	
Centurion Lumber, Ltd.	
Chaleur Sawmills LP	
Channel-ex Trading Corporation	
Clair Industrial Development Corp. Ltd.	
Clermond Hamel Ltee	
CNH Products Inc.	
Coast Mountain Cedar Products Ltd.	
Commonwealth Plywood Co. Ltd.	
Comox Valley Shakes (2019) Ltd.	

	Period to be reviewed
Conifex Fibre Marketing Inc.	
Cowichan Lumber Ltd.	
CS Manufacturing Inc., dba Cedarshed	
CWP—Industriel Inc.	
CWP—Montreal inc.	
D & D Pallets, Ltd.	
Dakeryn Industries Ltd.	
Decker Lake Forest Products Ltd.	
Delco Forest Products Ltd.	
Delta Cedar Specialties Ltd.	
Devon Lumber Co. Ltd.	
DH Manufacturing Inc.	
Direct Cedar Supplies Ltd.	
Distribution Rioux Inc.	
Doubletree Forest Products Ltd.	
Downie Timber Ltd.	
Dunkley Lumber Ltd.	
EACOM Timber Corporation	
East Fraser Fiber Co. Ltd.	
Edgewood Forest Products Inc.	
Elrod Cartage Ltd.	
ER Probyn Export Ltd.	
Falcon Lumber Ltd.	
Fontaine Inc.	
Foothills Forest Products Inc.	
Fornebu Lumber Co. Ltd.	
Fraser Specialty Products Ltd.	
FraserWood Industries Ltd.	
Furtado Forest Products Ltd.	
Glandell Enterprises Inc.	
Goldband Shake & Shingle Ltd.	
Goldwood Industries Ltd.	
Goodfellow Inc.	
Gorman Bros. Lumber Ltd.	
Greendale Industries Inc.	
Greenwell Resources Inc.	
Griff Building Supplies Ltd.	
Groupe Crete Chertsey	
Groupe Crete division St-Faustin	
Groupe Lebel Inc.	
Groupe Lignarex Inc.	
H.J. Crabbe & Sons Ltd.	
Haida Forest Products Ltd.	
Hampton Tree Farms, LLC dba Hampton Lumber Sales Canada	
Hornepayne Lumber LP	
Hudson Mitchell & Sons Lumber Inc.	
Hy Mark Wood Products Inc.	
Imperial Cedar Products, Ltd.	
Interfor Corporation	
Interfor Sales & Marketing Ltd.	
Intertran Holdings Ltd. dba Richmond Terminal	
Island Cedar Products Ltd	
J&G Log Works Ltd.	
J.D. Irving, Limited	
J.H. Huscroft Ltd.	
Jan Woodland (2001) inc.	
Jasco Forest Products Ltd.	
Jazz Forest Products Ltd.	
Jhajj Lumber Corporation	
Kalesnikoff Lumber Co. Ltd.	
Kan Wood, Ltd.	
Kebois Ltee/Ltd	
Kelfor Industries Ltd.	
Kermode Forest Products Ltd.	
Keystone Timber Ltd.	
L'Atelier de Réadaptation au Travil de Beauce Inc.	
Lafontaine Lumber Inc.	
Langevin Forest Products Inc.	
Lecours Lumber Co. Limited	
Leisure Lumber Ltd.	
Les Bardeaux Lajoie Inc.	
Les Bois d'oeuvre Beaudoin Gauthier inc.	
Les Bois Martek Lumber	
Les Bois Traites M.G. Inc.	

	Period to be reviewed
Les Chantiers de Chibougamau ltd.	
Les Industries P.F. Inc.	
Les Produits Forestiers D&G Ltee	
Leslie Forest Products Ltd.	
Lignum Forest Products LLP	
Linwood Homes Ltd.	
Lonestar Lumber Inc.	
Lulumco Inc.	
Magnum Forest Products, Ltd.	
Maibec Inc.	
Manitou Forest Products Ltd.	
Marcel Lauzon Inc.	
Marwood Ltd.	
Materiaux Blanchet Inc.	
Mid Valley Lumber Specialties, Ltd.	
Midway Lumber Mills Ltd.	
Mill & Timber Products Ltd.	
Millar Western Forest Products Ltd.	
Mirax Lumber Products Ltd.	
Mobilier Rustique (Beauce) Inc.	
Monterra Lumber Mills Limited	
Morwood Forest Products Inc.	
Multicedre Itee	
Nakina Lumber Inc.	
National Forest Products Ltd.	
Nicholson and Cates Ltd	
NorSask Forest Products Limited Partnership	
North American Forest Products Ltd. (located in Abbotsford, British Columbia)	
North American Forest Products Ltd. (located in Saint-Quentin, New Brunswick)	
North Enderby Timber Ltd.	
Northland Forest Products Ltd.	
Olympic Industries, Inc./Olympic Industries Inc-Reman Code/Olympic Industries ULC/Olympic Industries ULCReman/Olympic Industries ULC-Reman Code	
Oregon Canadian Forest Products Inc. dba Oregon Canadian Forest Products	
Pacific Coast Cedar Products Ltd.	
Pacific Lumber Remanufacturing Inc.	
Pacific Pallet, Ltd.	
Pacific Western Wood Works Ltd.	
PalletSource Inc.	
Parallel Wood Products Ltd.	
Pat Power Forest Products Corporation	
Phoenix Forest Products Inc.	
Pioneer Pallet & Lumber Ltd	
Porcupine Wood Products Ltd.	
Portbec Forest Products Ltd (aka Les Produits Forestiers Portbec Ltée)	
Power Wood Corp.	
Precision Cedar Products Corp.	
Prendiville Industries Ltd. (aka Kenora Forest Products)	
Produits Forestiers Petit Paris	
Produits forestiers Temrex, s.e.c.	
Produits Matra Inc.	
Promobois G.D.S. Inc.	
Rayonier A.M. Canada GP	
Rembos Inc.	
Rene Bernard Inc.	
Resolute FP Canada Inc.	
Rick Dubois	
Rielly Industrial Lumber Inc.	
River City Remanufacturing Inc.	
Roland Boulanger & Cie Ltee	
S&R Sawmills Ltd	
S&W Forest Products Ltd.	
San Industries Ltd.	
Sapphire Lumber Company	
Sawarne Lumber Co. Ltd.	
Scierie Alexandre Lemay & Fils Inc.	
Scierie St-Michel inc.	
Scierie West Brome Inc.	
Scott Lumber Sales	
Sechoirs de Beauce Inc.	
Shakertown Corp.	
Sigurdson Forest Products Ltd.	
Silvaris Corporation	
Sinclar Group Forest Products Ltd.	

	Period to be reviewed
Skana Forest Products Ltd.	
Skeena Sawmills Ltd	
Sonora Logging Ltd.	
Source Forest Products	
South Beach Trading Inc.	
South Coast Reman Ltd.	
South Fraser Container Terminals	
Specialiste du Bardeau de Cedre Inc	
Spruceland Millworks Inc.	
Star Lumber Canada Ltd.	
Suncoast Industries Inc.	
Suncoh Custom Lumber Ltd.	
Sundher Timber Products Inc.	
Surplus G Rioux	
Surrey Cedar Ltd.	
Taan Forest Limited Partnership	
Taiga Building Products Ltd.	
Tall Tree Lumber Company	
Teal Cedar Products Ltd.	
Terminal Forest Products Ltd.	
The Teal-Jones Group	
The Wood Source Inc.	
Tolko Marketing and Sales Ltd., Tolko Industries Ltd., and Gilbert Smith Forest Products Ltd.	
Trans-Pacific Trading Ltd.	
Triad Forest Products Ltd.	
Twin Rivers Paper Co. Inc.	
Tyee Timber Products Ltd.	
Usine Sartigan Inc.	
Vaagen Fibre Canada, ULC	
Valley Cedar 2 Inc.	
Vancouver Specialty Cedar Products Ltd.	
Visscher Lumber Inc	
W.I. Woodtone Industries Inc.	
Waldun Forest Product Sales Ltd.	
Watkins Sawmills Ltd.	
West Bay Forest Products Ltd.	
West Fraser Mills Ltd.	
Western Forest Products Inc.	
Western Lumber Sales Limited	
Western Timber Products, Inc.	
Westminster Industries Ltd.	
Weston Forest Products Inc.	
Weyerhaeuser Co.	
White River Forest Products L.P.	
Winton Homes Ltd.	
Woodline Forest Products Ltd.	
Woodstock Forest products	
Woodtone Specialties Inc.	
WWW Timber Products Ltd.	
India: Polyester Textured Yarn, C–533–886	5/3/19–12/31/20
Sanathan Textiles Private Limited	
Indonesia: Biodiesel, C–560–831	1/1/20–12/31/20
PT Cermerlang Energi Perkasa (CEP)	
PT Ciliandra Perkasa	
PT. Musim Mas, Medan	
PT Pelita Agung Agrindustri	
Wilmar International Ltd.	
The People's Republic of China: Multilayered Wood Flooring, C–570–971	1/1/19–12/31/19
Metropolitan Hardwood Floors, Inc.[8]	
Suspension Agreements	
None.	

Duty Absorption Reviews

During any administrative review covering all or part of a period falling

[5] We request that the companies listed for A–122–857 review the spelling of their company name. If a company name is not accurate (*i.e.,* misspelled or incomplete) or appears more than once with different spelling variations, then please notify Commerce of the company's correct legal name in writing within 30 days after the date of publication of this initiation notice. All submissions must be filed electronically at *https://access.trade.gov.*

[6] In the initiation notice that published on February 4, 2021 (86 FR 8166), Commerce inadvertently listed the wrong period of review for the referenced case above. The correct period of review is listed in this notice.

[7] We request that the companies listed for C–122–858 review the spelling of their company name. If a company name is not accurate (*i.e.,* misspelled or incomplete) or appears more than once with different spelling variations, then please notify Commerce of the company's correct legal name in writing within 30 days after the date of publication of this initiation notice. All submissions must be filed electronically at *https://access.trade.gov.*

between the first and second or third and fourth anniversary of the publication of an AD order under 19 CFR 351.211 or a determination under 19 CFR 351.218(f)(4) to continue an order or suspended investigation (after sunset review), Commerce, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether AD duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Gap Period Liquidation

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant ''gap'' period of the order (*i.e.,* the period following the expiry of provisional measures and before definitive measures were put into place), if such a gap period is applicable to the POR.

Administrative Protective Orders and Letters of Appearance

Interested parties must submit applications for disclosure under administrative protective orders in accordance with the procedures outlined in Commerce's regulations at 19 CFR 351.305. Those procedures apply to administrative reviews included in this notice of initiation. Parties wishing to participate in any of these administrative reviews should ensure that they meet the requirements of these procedures (*e.g.,* the filing of separate letters of appearance as discussed at 19 CFR 351.103(d)).

Factual Information Requirements

Commerce's regulations identify five categories of factual information in 19 CFR 351.102(b)(21), which are summarized as follows: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). These regulations require any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. The regulations, at 19 CFR 351.301, also provide specific time limits for such factual submissions based on the type of factual information being submitted. Please review the *Final Rule,*[9] available at *https://enforcement.trade.gov/frn/2013/1304frn/2013-08227.txt,* prior to submitting factual information in this segment. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[10]

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information using the formats provided at the end of the *Final Rule.*[11] Commerce intends to reject factual submissions in any proceeding segments if the submitting party does not comply with applicable certification requirements.

Extension of Time Limits Regulation

Parties may request an extension of time limits before a time limit established under Part 351 expires, or as otherwise specified by Commerce.[12] In general, an extension request will be considered untimely if it is filed after the time limit established under Part 351 expires. For submissions which are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. on the due date. Examples include, but are not limited to: (1) Case and rebuttal briefs, filed pursuant to 19 CFR 351.309; (2) factual information to value factors under 19 CFR 351.408(c), or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2), filed pursuant to 19 CFR 351.301(c)(3) and rebuttal, clarification and correction filed pursuant to 19 CFR 351.301(c)(3)(iv); (3) comments concerning the selection of a surrogate country and surrogate values and rebuttal; (4) comments concerning CBP data; and (5) Q&V questionnaires. Under certain circumstances, Commerce may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, Commerce will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. This policy also requires that an extension request must be made in a separate, stand-alone submission, and clarifies the circumstances under which Commerce will grant untimely-filed requests for the extension of time limits. Please review the *Final Rule,* available at *https://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in these segments.

These initiations and this notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: February 26, 2021.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2021–04479 Filed 3–3–21; 8:45 am]

BILLING CODE 3510–DS–P

[8] This company was inadvertently omitted from the initiation notice that published on February 4, 2021 (86 FR 8166). This omission is corrected in this notice.

[9] *See Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*); *see also* the frequently asked questions regarding the *Final Rule,* available at *https://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[10] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 41363 (July 10, 2020).

[11] *See* section 782(b) of the Act; *see also Final Rule;* and the frequently asked questions regarding the *Final Rule,* available at *https://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[12] *See* 19 CFR 351.302.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–134]

Certain Metal Lockers and Parts Thereof From the People's Republic of China: Amended Preliminary Affirmative Countervailing Duty Determination

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

SUMMARY: On December 14, 2020, the Department of Commerce (Commerce) published in the **Federal Register** the preliminary determination of the countervailing duty (CVD) investigation of certain metal lockers and parts thereof (metal lockers) from the People's Republic of China (China). Commerce is amending the scope of the preliminary determination.

DATES: Applicable March 4, 2021.

FOR FURTHER INFORMATION CONTACT: Alex Cipolla, 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) 482–4956.

SUPPLEMENTARY INFORMATION:

Background

On December 14, 2020, Commerce published in the **Federal Register** the preliminary determination in the CVD investigation of metal lockers from China.[1] On February 2, 2021, Commerce placed on the record of this investigation a preliminary decision memorandum addressing all comments received in this proceeding and the companion antidumping proceeding regarding the scope of the investigations.[2] In accordance with the comments discussed in the memorandum, we made certain changes to the scope of these investigations. The changes include certain exclusions and clarifications of the scope language. The revised scope is printed in its entirety below.

Scope of the Investigation

The scope of this investigation covers certain metal lockers, with or without doors, and parts thereof (metal lockers). The subject metal lockers are secure metal storage devices less than 27 inches wide and less than 27 inches deep, whether floor standing, installed onto a base or wall-mounted. In a multiple locker assembly (whether a welded locker unit, otherwise assembled locker unit or knocked down unit or kit), the width measurement shall be based on the width of an individual locker not the overall unit dimensions. All measurements in this scope are based on actual measurements taken on the outside dimensions of the single-locker unit. The height is the vertical measurement from the bottom to the top of the unit. The width is the horizontal (side to side) measurement of the front of the unit, and the front of the unit is the face with the door or doors or the opening for internal access of the unit if configured without a door. The depth is the measurement from the front to the back of the unit. The subject certain metal lockers typically include the bodies (back, side, shelf, top and bottom panels), door frames with or without doors which can be integrated into the sides or made separately, and doors.

The subject metal lockers typically are made of flat-rolled metal, metal mesh and/or expanded metal, which includes but is not limited to alloy or non-alloy steel (whether or not galvanized or otherwise metallically coated for corrosion resistance), stainless steel, or aluminum, but the doors may also include transparent polycarbonate, Plexiglas or similar transparent material or any combination thereof. Metal mesh refers to both wire mesh and expanded metal mesh. Wire mesh is a wire product in which the horizontal and transverse wires are welded at the cross-section in a grid pattern. Expanded metal mesh is made by slitting and stretching metal sheets to make a screen of diamond or other shaped openings.

Where the product has doors, the doors are typically configured with or for a handle or other device or other means that permit the use of a mechanical or electronic lock or locking mechanism, including, but not limited to: a combination lock, a padlock, a key lock (including cylinder locks) lever or knob lock, electronic key pad, or other electronic or wireless lock. The handle and locking mechanism, if included, need not be integrated into one another. The subject locker may or may not also enter with the lock or locking device included or installed. The doors or body panels may also include vents (including wire mesh or expanded metal mesh vents) or perforations. The bodies, body components and doors are typically powder coated, otherwise painted or epoxy coated or may be unpainted. The subject merchandise includes metal lockers imported either as welded or otherwise assembled units (ready for installation or use) or as knocked down units or kits (requiring assembly prior to installation or use).

The subject lockers may be shipped as individual or multiple locker units preassembled, welded, or combined into banks or tiers for ease of installation or as sets of component parts, bulk packed (*i.e.,* all backs in one package, crate, rack, carton or container and sides in another package, crate, rack, carton or container) or any combination thereof. The knocked down lockers are shipped unassembled requiring a supplier, contractor or end-user to assemble the individual lockers and locker banks prior to installation.

The scope also includes all parts and components of lockers made from flat-rolled metal or expanded metal (*e.g.,* doors, frames, shelves, tops, bottoms, backs, side panels, etc.) as well as accessories that are attached to the lockers when installed (including, but not limited to, slope tops, bases, expansion filler panels, dividers, recess trim, decorative end panels, and end caps) that may be imported together with lockers or other locker components or on their own. The particular accessories listed for illustrative purposes are defined as follows:

a. *Slope tops:* Slope tops are slanted metal panels or units that fit on the tops of the lockers and that slope from back to front to prevent the accumulation of dust and debris on top of the locker and to discourage the use of the tops of lockers as storage areas. Slope tops come in various configurations including, but not limited to, unit slope tops (in place of flat tops), slope hoods made of a back, top and end pieces which fit over multiple units and convert flat tops to a sloping tops, and slope top kits that convert flat tops to sloping tops and include tops, backs and ends.

b. *Bases:* Locker bases are panels made from flat-rolled metal that either conceal the legs of the locker unit, or for lockers without legs, provide a toe space in the front of the locker and conceal the flanges for floor anchoring.

c. *Expansion filler panel:* Expansion filler panels or fillers are metal panels that attach to locker units to cover columns, pipes or other obstacles in a row of lockers or fill in gaps between the locker and the wall. Fillers may also include metal panels that are used on the sides or the top of the lockers to fill gaps.

d. *Dividers:* Dividers are metal panels that divide the space within a locker unit into different storage areas.

e. *Recess trim:* Recess trim is a narrow metal trim that bridges the gap between lockers and walls or soffits when lockers are recessed into a wall.

f. *Decorative end panels:* End panels fit onto the exposed ends of locker units to cover holes, bolts, nuts, screws and other fasteners. They typically are painted to match the lockers.

g. *End caps:* End caps fit onto the exposed ends of locker units to cover holes, bolts, nuts, screws and other fasteners.

The scope also includes all hardware for assembly and installation of the lockers and locker banks that are imported with or shipped, invoiced, or sold with the imported locker or locker system except the lock.

Excluded from the scope are wire mesh lockers. Wire mesh lockers are

[1] *See Certain Metal Lockers and Parts Thereof from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination with Final Antidumping Duty Determination,* 85 FR 80771 (December 14, 2020) (*Preliminary CVD Determination*).

[2] *See* Memorandum, ''Antidumping Duty and Countervailing Duty Investigations of Certain Metal Lockers and Parts Thereof from the People's Republic of China: Preliminary Scope Decision Memorandum,'' dated February 2, 2021 (Prelim Scope Memo).

those with each of the following characteristics:

(1) At least three sides, including the door, made from wire mesh;

(2) the width and depth each exceed 25 inches; and

(3) the height exceeds 90 inches.

Also excluded are lockers with bodies made entirely of plastic, wood, or any nonmetallic material.

Also excluded are exchange lockers with multiple individual locking doors mounted on one master locking door to access multiple units. Excluded exchange lockers have multiple individual storage spaces, typically arranged in tiers, with access doors for each of the multiple individual storage space mounted on a single frame that can be swung open to allow access to all of the individual storage spaces at once. For example, uniform or garment exchange lockers are designed for the distinct function of securely and hygienically exchanging clean and soiled uniforms. Thus, excluded exchange lockers are a multi-access point locker whereas covered lockers are a single access point locker for personal storage. The excluded exchange lockers include assembled exchange lockers and those that enter in 'knock down' form in which all of the parts and components to assemble a completed exchange locker unit are packaged together. Parts for exchange lockers that are imported separately from the exchange lockers in 'knock down' form are not excluded.

Also excluded are metal lockers that are imported with an installed electronic, internet-enabled locking device that permits communication or connection between the locker's locking device and other internet connected devices.

Also excluded are locks and hardware and accessories for assembly and installation of the lockers, locker banks and storage systems that are separately imported in bulk and are not incorporated into a locker, locker system or knocked down kit at the time of importation. Such excluded hardware and accessories include but are not limited to locks and bulk imported rivets, nuts, bolts, hinges, door handles, door/frame latching components, and coat hooks. Accessories of sheet metal, including but not limited to end panels, bases, dividers and sloping tops, are not excluded accessories.

Mobile tool chest attachments that meet the physical description above are covered by the scope of this investigation, unless such attachments are covered by the scope of the orders on certain tool chests and cabinets from China. If the orders on certain tool chests and cabinets from China are revoked, the mobile tool chest attachments from China will be covered by the scope of this investigation.

The scope also excludes metal safes with each of the following characteristics: (1) Pry resistant, concealed hinges; (2) body walls and doors of steel that are at least 17 gauge (0.05625 inch or 1.42874 mm thick); and (3) an integrated locking mechanism that includes at least two round steel bolts 0.75 inch (19 mm) or larger in diameter; or three bolts 0.70 inch (17.78 mm) or more in diameter; or four or more bolts at least 0.60 inch (15.24 mm) or more in diameter, that project from the door into the body or frame of the safe when in the locked position.

The scope also excludes gun safes meeting each of the following requirements:

(1) Shall be able to fully contain firearms and provide for their secure storage.

(2) Shall have a locking system consisting of at minimum a mechanical or electronic combination lock. The mechanical or electronic combination lock utilized by the safe shall have at least 10,000 possible combinations consisting of a minimum three numbers, letters, or symbols. The lock shall be protected by a casehardened (Rc 60+) drill-resistant steel plate, or drill-resistant material of equivalent strength.

(3) Boltwork shall consist of a minimum of three steel locking bolts of at least ½ inch thickness that intrude from the door of the safe into the body of the safe or from the body of the safe into the door of the safe, which are operated by a separate handle and secured by the lock.

(4) The exterior walls shall be constructed of a minimum 12-gauge thick steel for a single-walled safe, or the sum of the steel walls shall add up to at least 0.100 inches for safes with walls made from two pieces of flat-rolled steel.

(5) Doors shall be constructed of a minimum one layer of 7-gauge steel plate reinforced construction or at least two layers of a minimum 12-gauge steel compound construction.

(6) Door hinges shall be protected to prevent the removal of the door. Protective features include, but are not limited to: Hinges not exposed to the outside, interlocking door designs, dead bars, jeweler's lugs and active or inactive locking bolts.

The scope also excludes metal storage devices that (1) have two or more exterior exposed drawers regardless of the height of the unit, or (2) are no more than 30 inches tall and have at least one exterior exposed drawer.

Also excluded from the scope are free standing metal cabinets less than 30 inches tall with a single opening, single door and an installed tabletop.

The scope also excludes metal storage devices less than 27 inches wide and deep that (1) have two doors hinged on the right and left side of the door frame respectively covering a single opening and that open from the middle toward the outer frame; or (2) are free standing or wall-mounted, single-opening units 20 inches or less high with a single door.

The subject certain metal lockers are classified under Harmonized Tariff Schedule of the United States (HTSUS) subheading 9403.20.0078. Parts of subject certain metal lockers are classified under HTS subheading 9403.90.8041. In addition, subject certain metal lockers may also enter under HTS subheading 9403.20.0050. While HTSUS subheadings are provided for convenience and Customs purposes, the written description of the scope of this investigation is dispositive.

Suspension of Liquidation

Pursuant to the *Preliminary CVD Determination,* Commerce previously suspended liquidation of metal lockers from China entered, or withdrawn from warehouse, for consumption on or after December 14, 2020 (the publication of the *Preliminary CVD Determination* in the **Federal Register**). Commerce will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of subject merchandise as defined by the revised scope language included above, entered, or withdrawn from warehouse, for consumption on or after the publication of this notice in the **Federal Register**, and to continue to require a cash deposit, pursuant to 19 CFR 351.205(d).

Liquidation of Suspended Entries

As a result of Commerce's amended preliminary determination, certain products are now excluded from the scope of the investigation. For suspended entries of excluded products, that were entered, or withdrawn from warehouse, for consumption on or after December 14, 2020 (the date on which suspension of liquidation first began), we will instruct CBP to discontinue the suspension of liquidation and liquidate such entries without regard to countervailing duties (*i.e.,* refund all cash deposits).

Public Comment

Commerce has set a separate deadline for scope comments for both the

antidumping and CVD proceedings.[3] The current deadline for case briefs regarding scope issues is March 15, 2021,[4] and the current deadline for rebuttal briefs regarding scope issues is March 22, 2021. Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

International Trade Commission Notification

In accordance with section 703(f) of the Tariff Act of 1930, as amended (the Act), Commerce will notify the International Trade Commission (ITC) of its amended preliminary determination. If Commerce's final determination is affirmative, the ITC will make its final determination before the later of 120 days after the date of this preliminary determination or 45 days after Commerce's final determination.

Notification to Interested Parties

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act.

Dated: February 26, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2021–04481 Filed 3–3–21; 8:45 am]

BILLING CODE 3510–DS–P

[3] *See* Prelim Scope Memo at 6.

[4] The actual deadline falls on March 13, 2021, which is a Saturday. Commerce's practice dictates that where a deadline falls on a weekend or Federal holiday, the appropriate deadline is the next business day. *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, as Amended,* 70 FR 24533 (May 10, 2005).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–469–822]

Methionine From Spain: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Negative Determination of Critical Circumstances, Postponement of Final Determination, and Extension of Provisional Measures

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that methionine from Spain is being, or is likely to be, sold in the United States at less than fair value (LTFV). Commerce also preliminarily determines that critical circumstances do not exist with respect to certain imports of subject merchandise. The period of investigation is July 1, 2019, through June 30, 2020. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable March 4, 2021.

FOR FURTHER INFORMATION CONTACT: Elizabeth Bremer, 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) 482–4987.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce initiated this LTFV investigation on August 18, 2020.[1] On December 14, 2020, Commerce postponed the preliminary determination of this investigation, and the revised deadline is now February 24, 2021.[2]

For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The product covered by this investigation is methionine from Spain. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] No interested parties commented on the scope of this investigation as it appeared in the *Initiation Notice.*[6] Commerce is not preliminarily modifying the scope language as it appeared in the *Initiation Notice. See* the scope in Appendix I to this notice.

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce has calculated constructed export prices in accordance with section 772(b) of the Act. Normal value is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

Preliminary Negative Determination of Critical Circumstances

On January 26, 2021, the petitioner[7] timely filed a critical circumstances allegation, pursuant to section 733(e)(1) of the Act and 19 CFR 351.206(c)(1), alleging that critical circumstances exist with respect to imports of the subject merchandise from Spain.

Section 733(e)(1) of the Act provides that Commerce will preliminarily determine that critical circumstances exist in an LTFV investigation if there is a reasonable basis to believe or suspect that: (A) There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and (B) there have been massive imports of the

[1] *See Methionine from France, Japan, and Spain: Initiation of Less-Than-Fair-Value Investigations,* 85 FR 52324 (August 25, 2020) (*Initiation Notice*).

[2] *See Methionine from France, Japan, and Spain: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 85 FR 80774 (December 14, 2020).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Methionine from Spain,'' dated concurrently with, and hereby adopted by this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice*, 85 FR at 52325.

[6] Sumitomo Chemical Company, Ltd. and Sumitomo Chemical America, Inc (Sumitomo)'s September 8, 2020 scope comments pertain to the product characteristics, and not to the scope of the investigation. *See* Sumitomo's Letter, ''Methionine from Japan; Product Characteristic Comments,'' dated September 8, 2020 and filed on the administrative record of the instant investigation.

[7] The petitioner is Novus International, Inc. (the petitioner).

subject merchandise over a relatively short period.

In accordance with section 733(e) of the Act and 19 CFR 351.206, Commerce preliminarily finds that critical circumstances do not exist for Adisseo España, or for all other producers and exporters in Spain. For a full description of the methodology and results of Commerce's critical circumstances analysis, *see* the Preliminary Decision Memorandum.

All-Others Rate

Section 733(d)(1)(A)(ii) of the Act provides that in the preliminary determination Commerce shall determine an estimated weighted-average dumping margin for all other producers and exporters not individually examined. Pursuant to section 735(c)(5)(A) of the Act, this rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters or producers individually investigated, excluding estimated weighted-average dumping margins that are zero, *de minimis,* or determined entirely under section 776 of the Act. Pursuant to section 735(c)(5)(B) of the Act, if the estimated weighted-average dumping margins established for all exporters and producers individually examined are zero, *de minimis* or determined based entirely on facts otherwise available, Commerce may use any reasonable method to establish the estimated weighted-average dumping margin for all other producers or exporters.

Commerce calculated an individual estimated weighted-average dumping margin for Adisseo España, the only individually examined company in this investigation. Because the only individually calculated estimated weighted-average dumping margin is not zero, *de minimis,* or based entirely on facts otherwise available, the estimated weighted-average dumping margin calculated for Adisseo España is the estimated weighted-average dumping margin assigned to all other producers and exporters, pursuant to section 735(c)(5)(A) of the Act. For a full description of the methodology underlying Commerce's analysis, *see* the Preliminary Decision Memorandum.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Producer or exporter	Estimated weighted-average dumping margin (percent)
Adisseo España S.A.	31.98
All Others	31.98

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin as follows: (1) The cash deposit rate for Adisseo España will be equal to the company-specific estimated weighted-average dumping margin determined in this preliminary determination; (2) if the exporter is not the respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin.

Section 733(e)(2) of the Act provides that, given an affirmative determination of critical circumstances, any suspension of liquidation shall apply to unliquidated entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the later of: (a) The date which is 90 days before the date on which the suspension of liquidation was first ordered; or (b) the date on which notice of initiation of the investigation was published. As noted above, Commerce preliminarily finds that critical circumstances do not exist for imports of subject merchandise produced and exported by Adisseo España and all other exporters and producers from Spain. In accordance with section 733(e)(2)(A) of the Act, the suspension of liquidation preliminarily shall not apply to unliquidated entries of shipments of subject merchandise from Adisseo España and all other exporters and producers from Spain that were entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the publication of this notice.

These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination. Commerce is currently unable to conduct on-site verification of the information relied upon in making its final determination in this investigation. Accordingly, we intend to take additional steps in lieu of on-site verification. Commerce will notify interested parties of any additional documentation or information required.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance. A timeline for the submission of case briefs and written comments will be announced at a later date. Rebuttal briefs, limited to issues raised in these case briefs, may be submitted no later than seven days after the deadline date for case briefs.[8] Commerce has modified certain of its requirements for serving documents containing business proprietary information until further notice.[9] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the

[8] *See* 19 CFR 351.309; and 19 CFR 351.303 (for general filing requirements).

[9] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of Commerce's regulations requires that a request by exporters for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On February 5, 2021, pursuant to 19 CFR 351.210(e), Adisseo España requested that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed six months.[10] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) The preliminary determination is affirmative; (2) the requesting exporter, Adisseo España, accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.

International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, then the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of methionine from Spain are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act, and 19 CFR 351.205(c).

Dated: February 24, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is methionine and dl-Hydroxy analogue of dl-methionine, also known as 2-Hydroxy 4-(Methylthio) Butanoic acid (HMTBa), regardless of purity, particle size, grade, or physical form. Methionine has the chemical formula $C_5H_{11}NO_2S$, liquid HMTBa has the chemical formula $C_5H_{10}O_3S$, and dry HMTBa has the chemical formula $(C_5H_9O_3S)_2Ca$.

Subject merchandise also includes methionine processed in a third country including, but not limited to, refining, converting from liquid to dry or dry to liquid form, or any other processing that would not otherwise remove the merchandise from the scope of this investigation if performed in the country of manufacture of the in-scope methionine or dl-Hydroxy analogue of dl-methionine.

The scope also includes methionine that is commingled (*i.e.,* mixed or combined) with methionine from sources not subject to this investigation. Only the subject component of such commingled products is covered by the scope of this investigation.

Excluded from this investigation is United States Pharmacopoeia (USP) grade methionine. In order to qualify for this exclusion, USP grade methionine must meet or exceed all of the chemical, purity, performance, and labeling requirements of the United States Pharmacopeia and the National Formulary for USP grade methionine.

Methionine is currently classified under subheadings 2930.40.00.00 and 2930.90.46.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Methionine has the Chemical Abstracts Service (CAS) registry numbers 583–91–5, 4857–44–7, 59–51–8 and 922–50–9. While the HTSUS subheadings and CAS registry number are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Scope of the Investigation
V. Critical Circumstances
VI. Scope Comments
VII. Discussion of the Methodology
VIII. Currency Conversion
IX. Recommendation

[FR Doc. 2021–04416 Filed 3–3–21; 8:45 am]

BILLING CODE 3510–DS–P

[10] *See* Adisseo España's Letter, ''Methionine from Spain: Request for Postponement of Final Determination and Provisional Measures Period,'' dated February 5, 2021.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–135]

Certain Chassis and Subassemblies Thereof From the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that certain chassis and subassemblies thereof from the People's Republic of China (China) are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is January 1, 2020, through June 30, 2020. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable March 4, 2021.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla or Mary Kolberg, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5439 or (202) 482–1785, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on August 19, 2020.[1] On October 20, 2020, Commerce postponed the preliminary determination of this investigation, and the revised deadline is now February 25, 2021.[2] For a complete description of the events that followed the initiation of this

[1] *See Certain Chassis and Subassemblies Thereof from the People's Republic of China: Initiation of Less-Than-Fair-Value Investigations,* 85 FR 52552 (August 19, 2020) (*Initiation Notice*).

[2] *See Certain Chassis and Subassemblies Thereof from the People's Republic of China: Postponement of Preliminary Determination in the Less-Than-Fair-Value Investigation,* 85 FR 68559 (October 20, 2020).

investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The products covered by this investigation are certain chassis and subassemblies thereof from China. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] On September 22, 2020, we received comments from respondent interested parties and the Coalition of American Chassis Manufacturers (the petitioner) on the scope of the investigation.[6] On October 5, 2020, we received scope rebuttal comments from the petitioner.[7] On February 9, 2021, we issued the Preliminary Scope Decision Memorandum.[8] For a summary of all scope related comments submitted to the record for this investigation and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum. In the Preliminary Scope Decision Memorandum, Commerce preliminarily modified the scope language as it appeared in the *Initiation Notice. See* the revised scope in Appendix I to this notice. On February 11, 2021, we established a scope briefing schedule[9] and timely received a scope case brief from CIMC.[10] The scope comments from CIMC will be addressed in the final determination of the companion countervailing duty (CVD) investigation due no later than March 15, 2021.

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Pursuant to section 776(a) and (b) of the Act, we have preliminarily relied upon facts otherwise available, with adverse inferences for the China-wide entity. The China-wide entity includes each of the companies selected for individual examination (CIMC and Fuwa), as well as the companies that received but did not answer Commerce's quantity and value questionnaire.[11] Because none of the companies responded to the best of their ability to Commerce's questionnaires, we assigned the highest margin alleged in the petition (*i.e.,* 188.05 percent) to the China-wide entity. Furthermore, because neither CIMC nor Fuwa demonstrated eligibility for a separate rate, both companies are preliminarily found to be part of the China-wide entity. For a full description of the methodology underlying Commerce's preliminary determination, *see* the Preliminary Decision Memorandum.

Combination Rates

In the *Initiation Notice,*[12] Commerce stated that it would calculate producer/exporter combination rates for the respondents that are eligible for a separate rate in this investigation. Policy Bulletin 05.1 describes this practice.[13] In this case, because no companies qualified for a separate rate, producer/exporter combination rates were not calculated for this preliminary determination.[14]

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist during the period January 1, 2020, and June 30, 2020:

Producer/exporter	Estimated weighted-average dumping margin (percent)	Estimated weighted-average dumping margin adjusted for export subsidy offset(s) (percent)
China-Wide Entity	188.05	182.28

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of subject merchandise, as described in the scope of the investigation section, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, as discussed below. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the weighted average amount by which normal value exceeds U.S. price, as indicated in the chart above, as follows: (1) For all combinations of Chinese producers/exporters of subject merchandise that have not established eligibility for their own separate rates, the cash deposit rate will be equal to the estimated weighted-average dumping margin established for the China-wide entity; and (2) for all third-county exporters of subject merchandise not listed in the table above, the cash deposit rate is the cash deposit rate applicable to the Chinese producer/exporter combination (or China-wide entity) that supplied that third-country exporter.

To determine the cash deposit rate, Commerce normally adjusts the estimated weighted-average dumping margin by the amount of domestic

[3] *See* Memorandum, ''Certain Chassis and Subassemblies Thereof from the People's Republic of China: Decision Memorandum for Preliminary Affirmative Determination of Sales at Less Than Fair Value,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice.*

[6] *See* Guangdong Fuwa Heavy Industries Co., Ltd. (Fuwa)'s Letter, ''Certain Chassis and Subassemblies Thereof from the People's Republic of China: Scope Comments,'' dated September 22, 2020; *see also* CIMC Vehicle Co., Ltd. (CIMC)'s Letter, ''Certain Chassis and Subassemblies Thereof from the People's Republic of China: Scope Comments,'' dated September 22, 2020; TRP International, LLC's Letter, ''Scope Comments Regarding Certain Chassis and Subassemblies Thereof from the People's Republic of China (A–570–135 & C–570–136); TRP International, LLC,'' dated September 22, 2020; and Master Tow, Inc.'s Letter, ''Certain Chassis and Subassemblies Thereof from the People's Republic of China; Submission of Scope Comments,'' dated September 22, 2020.

[7] *See* Petitioner's Letter, ''Certain Chassis and Subassemblies Thereof form the People's Republic of China: Petitioner's Scope Rebuttal Comments,'' dated October 5, 2020.

[8] *See* Memorandum, ''Certain Chassis and Subassemblies Thereof from the People's Republic of China: Scope Comments Preliminary Decision Memorandum,'' dated February 9, 2021 (Preliminary Scope Decision Memorandum).

[9] *See* Memorandum, ''Scope Briefing Schedule,'' February 11, 2021.

[10] *See* CIMC's Letter, ''Certain Chassis and Subassemblies Thereof from the People's republic of China: Scope Case Brief,'' dated February 16, 2021.

[11] *See* Memorandum, ''Quantity & Value Questionnaire,'' dated October 7, 2020.

[12] *See Initiation Notice.*

[13] *See* Enforcement and Compliance's Policy Bulletin No. 05.1, regarding, ''Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries,'' (April 5, 2005) (Policy Bulletin 05.1), available on Commerce's website at *http://enforcement.trade.gov/policy/bull05-1.pdf.*

[14] *See* Preliminary Decision Memorandum.

subsidy pass-through and export subsidies determined in a companion CVD proceeding when CVD provisional measures are in effect. Accordingly, where Commerce has made a preliminary affirmative determination for domestic subsidy pass-through or export subsidies, Commerce has offset the calculated estimated weighted-average dumping margin by the appropriate rate(s). As discussed in the Preliminary Decision Memorandum, we made no adjustment for domestic subsidy pass-through. As further explained in the Preliminary Decision Memorandum, we made an adjustment for export subsidies found in the companion CVD investigation.[15] The adjusted rate may be found in the ''Preliminary Determination'' section's chart of estimated weighted-average dumping margins above.

Should provisional measures in the companion CVD investigation expire prior to the expiration of provisional measures in this LTFV investigation, Commerce will direct CBP to begin collecting cash deposits at a rate equal to the estimated weighted-average dumping margin calculated in this preliminary determination unadjusted for export subsidies at the time the CVD provisional measures expire. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Normally, Commerce discloses to interested parties the calculations performed in connection with a preliminary determination within five days of its public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). However, because Commerce preliminarily determined that the mandatory respondents are considered to be part of the China-wide entity and assigned the China-wide entity a rate that is based solely on the petition, there are no calculations to disclose.

Verification

Because the mandatory respondents in this investigation did not provide information requested by Commerce by the established deadline and Commerce preliminarily determines in accordance with section 776(b) of the Act that each of the mandatory respondents has been uncooperative, verification will not be conducted.

[15] *See* Preliminary Decision Memorandum at 17.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than 30 days after the of publication of the preliminary determination. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.[16] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Note that Commerce has modified certain of its requirements for serving documents containing business proprietary information until further notice.[17]

As noted above, the deadline has passed for filing case briefs on scope issues. Therefore, the case briefs that are due after the preliminary determination may not include any scope issues.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm the date and time of the hearing two days before the scheduled date.

Final Determination

Section 735(a)(1) of the Act and 19 CFR 351.210(b)(1) provide that Commerce will issue the final determination within 75 days after the date of its preliminary determination. Accordingly, Commerce will make its final determination no later than 75 days after the signature date of this preliminary determination.

International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its preliminary determination of sales at LTFV. If the final determination is affirmative, the ITC will make its determination before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of certain chassis and subassemblies thereof are materially injuring, or threaten to injury to, the U.S. industry.

[16] *See* 19 CFR 351.309; 19 CFR 351.303 (for general filing requirements); *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*).

[17] *See Temporary Rule.*

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act, and 19 CFR 351.205(c).

Dated: February 25, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is chassis and subassemblies thereof, whether finished or unfinished, whether assembled or unassembled, whether coated or uncoated, regardless of the number of axles, for carriage of containers, or other payloads (including self-supporting payloads) for road, marine roll-on/roll-off (RORO) and/or rail transport. Chassis are typically, but are not limited to, rectangular framed trailers with a suspension and axle system, wheels and tires, brakes, a lighting and electrical system, a coupling for towing behind a truck tractor, and a locking system or systems to secure the shipping container or containers to the chassis using twistlocks, slide pins or similar attachment devices to engage the corner fittings on the container or other payload.

Subject merchandise includes, but is not limited to, the following subassemblies:

- Chassis frames, or sections of chassis frames, including kingpin assemblies, bolsters consisting of transverse beams with locking or support mechanisms, goosenecks, drop assemblies, extension mechanisms and/or rear impact guards;
- Running gear assemblies or axle assemblies for connection to the chassis frame, whether fixed in nature or capable of sliding fore and aft or lifting up and lowering down, which may or may not include suspension(s) (mechanical or pneumatic), wheel end components, slack adjusters, axles, brake chambers, locking pins, and tires and wheels;
- Landing gear assemblies, for connection to the chassis frame, capable of supporting the chassis when it is not engaged to a tractor; and
- Assemblies that connect to the chassis frame or a section of the chassis frame, such as, but not limited to, pintle hooks or B-trains (which include a fifth wheel), which are capable of connecting a chassis to a converter dolly or another chassis.

Importation of any of these subassemblies, whether assembled or unassembled, constitutes an unfinished chassis for purposes of this investigation.

Subject merchandise also includes chassis, whether finished or unfinished, entered with or for further assembly with components such as, but not limited to: Hub and drum assemblies, brake assemblies (either drum or disc), axles, brake chambers, suspensions and suspension components, wheel end components, landing gear legs, spoke or disc wheels, tires, brake control systems, electrical harnesses and lighting systems.

Processing of finished and unfinished chassis and components such as trimming, cutting, grinding, notching, punching, drilling, painting, coating, staining, finishing, assembly, or any other processing either in the country of manufacture of the in-scope product or in a third country does not remove the product from the scope. Inclusion of other components not identified as comprising the finished or unfinished chassis does not remove the product from the scope.

Individual components entered and sold by themselves are not subject to the investigation, but components entered with or for further assembly with a finished or unfinished chassis are subject merchandise. A finished chassis is ultimately comprised of several different types of subassemblies. Within each subassembly there are numerous components that comprise a given subassembly.

This scope excludes dry van trailers, refrigerated van trailers and flatbed trailers. Dry van trailers are trailers with a wholly enclosed cargo space comprised of fixed sides, nose, floor and roof, with articulated panels (doors) across the rear and occasionally at selected places on the sides, with the cargo space being permanently incorporated in the trailer itself. Refrigerated van trailers are trailers with a wholly enclosed cargo space comprised of fixed sides, nose, floor and roof, with articulated panels (doors) across the rear and occasionally at selected places on the sides, with the cargo space being permanently incorporated in the trailer and being insulated, possessing specific thermal properties intended for use with self-contained refrigeration systems. Flatbed (or platform) trailers consist of load-carrying main frames and a solid, flat or stepped loading deck or floor permanently incorporated with and supported by frame rails and cross members.

The finished and unfinished chassis subject to this investigation are typically classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 8716.39.0090 and 8716.90.5060. Imports of finished and unfinished chassis may also enter under HTSUS subheading 8716.90.5010. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Scope Comments
V. Respondent Selection
VI. Discussion of the Methodology
VII. Adjustment Under Section 777A(f) of the Act
VIII. Adjustment to Cash Deposit Rate for Export Subsidies
IX. ITC Notification
X. Recommendation

[FR Doc. 2021–04409 Filed 3–3–21; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–120]

Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof From the People's Republic of China: Countervailing Duty Order and Amended Final Affirmative Countervailing Duty Determination

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

SUMMARY: Based on affirmative final determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC), Commerce is issuing a countervailing duty order on certain vertical shaft engines between 225cc and 999cc, and parts thereof (vertical shaft engines) from the People's Republic of China (China). In addition, Commerce is amending its final determination with respect to vertical shaft engines from China to correct ministerial errors.

DATES: Applicable March 4, 2021.

FOR FURTHER INFORMATION CONTACT: Andrew Huston, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4261.

SUPPLEMENTARY INFORMATION:

Background

In accordance with sections 705(a), 705(d), and 777(i)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.210(c), on January 11, 2021, Commerce published its affirmative final determination that countervailable subsidies are being provided to producers and exporters of vertical shaft engines from China.[1] In the investigation of vertical shaft engines from China, the petitioners and a mandatory respondent submitted timely allegations on the record that Commerce made certain ministerial errors in the final countervailing duty determination on vertical shaft engines from China. Section 705(e) of the Act and 19 CFR 351.224(f) define ministerial errors as errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which Commerce considers ministerial. We reviewed the allegations and determined that we made certain ministerial errors in the final countervailing duty determination on vertical shaft engines from China. *See* ''Amendment to the Final Determination'' section below for further discussion.

On February 24, 2021, the ITC notified Commerce of its affirmative final determination that pursuant to sections 705(b)(1)(A)(i) and 705(d) of the Act, that an industry in the United States is materially injured by reason of subsidized imports of subject merchandise from China.[2]

Scope of the Order

The products covered by this order are certain large vertical shaft engines from China. For a complete description of the scope of the order, *see* the appendix to this notice.

Amendment to the Final Determination of Vertical Shaft Engines From China

On January 21, 2021, co-petitioner Kohler Co. (Kohler) and mandatory respondent Loncin Motor Co., Ltd. (Loncin) submitted timely ministerial error allegations regarding the *Final Determination*.[3] On January 29, 2012, Kohler, mandatory respondent Chongqing Zongshen General Power Machine Co., Ltd. (Zongshen) and interested party MTD Products Inc. (MTD) submitted timely responses to the ministerial allegations.[4]

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[1] *See Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination,* 86 FR 1933 (January 11, 2021) (*Final Determination*), and accompanying Issues and Decision Memorandum.

[2] *See* ITC Letter, ''Notification of ITC Final Determination,'' dated February 24, 2021 (ITC Notification Letter).

[3] *See* Kohler's Letter, ''*Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof, from the People's Republic of China:* Ministerial Error Allegations,'' dated January 21, 2021 (Kohler Allegations); Loncin's Letter, ''*Loncin Comments on Ministerial Errors in the Final Determination and the Disclosed Calculations for Loncin:* Countervailing Duty Investigation of Certain Vertical Shaft Engines Between 225CC and 999CC, and Parts Thereof From the People's Republic of China (C–570–120),'' dated January 21, 2021 (Loncin Allegations).

[4] *See* Kohler's Letter, ''*Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof, from the People's Republic of China:*

Continued

Commerce reviewed the record and agreed that certain errors referenced in Kohler and Loncin's allegations constituted ministerial errors within the meaning of section 705(e) of the Act and 19 CFR 351.224(f).[5] Pursuant to 19 CFR 351.224(e), Commerce is amending the *Final Determination* to reflect the corrections of the ministerial errors described in the Ministerial Error Memorandum. Based on these corrections, the subsidy rate for Loncin changed from 17.75 to 18.96 percent, and the subsidy rate for Zongshen changed from 19.29 percent to 20.38 percent. Because we based the all-others rate on Loncin's and Zongshen's *ad valorem* subsidy rates, the all-others rate has also changed from 18.72 percent to 19.85 percent.

Countervailing Duty (CVD) Order

On February 24, 2021, in accordance with sections 705(b)(1)(A)(i) and 705(d) of the Act, the ITC notified Commerce of its final determination in this investigation, in which it found that an industry in the United States is materially injured by reason of subsidized imports of vertical shaft engines from China.[6] Therefore, in accordance with section 705(c)(2) of the Act, Commerce is issuing this countervailing duty order. Because the ITC determined that imports of vertical shaft engines from China are materially injuring a U.S. industry, unliquidated entries of such merchandise from China, entered or withdrawn from warehouse for consumption, are subject to the assessment of countervailing duties.

Therefore, in accordance with section 706(a) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by Commerce, countervailing duties for all relevant entries of vertical shaft engines from China which are entered, or withdrawn from warehouse, for consumption on or after June 19, 2020, the date of publication of the *Preliminary Determination,*[7] but will not include entries occurring after the expiration of the provisional measures period and before the publication of the ITC's final injury determinations under section 705(b) of the Act, as further described below.

Suspension of Liquidation and Cash Deposits

In accordance with section 706 of the Act, Commerce will instruct CBP to reinstitute the suspension of liquidation of vertical shaft engines from China, as described in the appendix to this notice, effective on the date of publication of the ITC's notice of final determinations in the **Federal Register**, and to assess, upon further instruction by Commerce, pursuant to section 706(a)(1) of the Act, countervailing duties for each entry of the subject merchandise in an amount based on the net countervailable subsidy rates below. On or after the date of publication of the ITC's final injury determinations in the **Federal Register**, CBP must require, at the same time as importers would deposit estimated normal customs duties on this merchandise, a cash deposit equal to the rates noted below. The all-others rate applies to all producers or exporters not specifically listed below.

Producers/exporters	Subsidy rate (percent)
Loncin Motor Co	18.96
Chongqing Zongshen General Power Machine Co	20.38
All Others	19.85

Provisional Measures

Section 703(d) of the Act states that instructions issued pursuant to an affirmative preliminary determination may not remain in effect for more than four months. In the underlying investigations, Commerce published the *Preliminary Determinations* on June 19, 2020. As such, the four-month period beginning on the date of the publication of the *Preliminary Determination* ended on October 16, 2020. Furthermore, section 707(b) of the Act states that definitive duties are to begin on the date of publication of the ITC's final injury determination. Therefore, in accordance with section 703(d) of the Act, we instructed CBP to terminate the suspension of liquidation and to liquidate, without regard to countervailing duties, unliquidated entries of vertical shaft engines from China, entered, or withdrawn from warehouse, for consumption, on or after October 17, 2020, the date on which the provisional measures expired, until and through the day preceding the date of publication of the ITC's final injury determinations in the **Federal Register**. Suspension of liquidation will resume on the date of publication of the ITC's final determinations in the **Federal Register**.

Notification to Interested Parties

This notice constitutes the CVD orders with respect to vertical shaft engines from China pursuant to section 706(a) of the Act. Interested parties can find a list of CVD orders currently in effect at *http://enforcement.trade.gov/stats/iastats1.html.* This order is issued and published in accordance with section 706(a) of the Act and 19 CFR 351.211(b).

Dated: February 26, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Order

The merchandise covered by this order consists of spark-ignited, non-road, vertical shaft engines, whether finished or unfinished, whether assembled or unassembled, primarily for riding lawn mowers and zero-turn radius lawn mowers. Engines meeting this physical description may also be for other non-hand-held outdoor power equipment such as, including but not limited to, tow-behind brush mowers, grinders, and vertical shaft generators. The subject engines are spark ignition, single or multiple cylinder, air cooled, internal combustion engines with vertical power take off shafts with a minimum displacement of 225 cubic centimeters (cc) and a maximum displacement of 999cc. Typically, engines with displacements of this size generate gross power of between 6.7 kilowatts (kw) to 42 kw.

Engines covered by this scope normally must comply with and be certified under Environmental Protection Agency (EPA) air pollution controls title 40, chapter I, subchapter U, part 1054 of the Code of Federal Regulations standards for small non-road spark-ignition engines and equipment. Engines that otherwise meet the physical description of the scope but are not certified under 40 CFR part 1054 and are not certified under other parts of subchapter U of the EPA air pollution controls are not excluded from the scope of this proceeding. Engines that may be certified under both 40 CFR part 1054 as well as other parts of subchapter U remain subject to the scope of this proceeding.

For purposes of this order, an unfinished engine covers at a minimum a sub-assembly

Response to Ministerial Error Comments,'' dated January 29, 2021 (Kohler Response); Zongshen's Letter, ''Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof, from China; CVD Investigation; Chongqing Zongshen Response to Petitioner Ministerial Error Comments,'' dated January 29, 2021 (Zongshen Response); and MTD's Letter, ''Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof (VSEs) from the People's Republic of China: MTD's Response to Kohler Ministerial Error Comments,'' dated January 29, 2021 (MTD Response).

[5] *See* Memorandum, ''Countervailing Duty Investigation of Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof from the People's Republic of China: Ministerial Error Allegations in the Final Determination,'' dated concurrently with, and hereby adopted by, this notice (Ministerial Error Memorandum), at 2–6.

[6] *See* ITC Notification Letter.

[7] *See Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Negative Critical Circumstances Determination, and Alignment of Final Determination With Final Antidumping Duty Determination,* 85 FR 37061 (June 19, 2020) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.

comprised of, but not limited to, the following components: Crankcase, crankshaft, camshaft, piston(s), and connecting rod(s). Importation of these components together, whether assembled or unassembled, and whether or not accompanied by additional components such as an oil pan, manifold, cylinder head(s), valve train, or valve cover(s), constitutes an unfinished engine for purposes of this order. The inclusion of other products such as spark plugs fitted into the cylinder head or electrical devices (*e.g.,* ignition modules, ignition coils) for synchronizing with the motor to supply tension current does not remove the product from the scope. The inclusion of any other components not identified as comprising the unfinished engine subassembly in a third country does not remove the engine from the scope.

The engines subject to this order are typically classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 8407.90.1020, 8407.90.1060, and 8407.90.1080. The engine subassemblies that are subject to this investigation enter under HTSUS 8409.91.9990. Engines subject to this order may also enter under HTSUS 8407.90.9060 and 8407.90.9080. The HTSUS subheadings are provided for convenience and customs purposes only, and the written description of the merchandise subject to this order is dispositive.

[FR Doc. 2021–04477 Filed 3–3–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–896]

Magnesium Metal From the People's Republic of China: Preliminary Results of Antidumping Administrative Review; 2019–20

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

SUMMARY: The Department of Commerce (Commerce) is conducting the administrative review of the antidumping duty (AD) order on magnesium metal from the People's Republic of China (China). The period of review (POR) is April 1, 2019, through March 31, 2020. Commerce preliminarily determines that Tianjin Magnesium International Co., Ltd. (TMI) and Tianjin Magnesium Metal Co., Ltd. (TMM) did not have reviewable entries during the POR. We invite interested parties to comment on these preliminary results.

DATES: Applicable March 4, 2021.

FOR FURTHER INFORMATION CONTACT: Kyle Clahane, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5449.

SUPPLEMENTARY INFORMATION:

Background

On April 1, 2020, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the AD order on magnesium metal from China for the POR.[1] On June 8, 2020, in response to a timely request from the petitioner,[2] and in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.221(c)(1)(i), we initiated an administrative review of the *Order* with respect to TMI and TMM.[3] On April 24, 2020, Commerce tolled all deadlines for 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 the preliminary results of this review is now March 1, 2021.

Scope of the Order

The product covered by the *Order* is magnesium metal from China, which includes primary and secondary alloy magnesium metal, regardless of chemistry, raw material source, form, shape, or size. Magnesium is a metal or alloy containing by weight primarily the element magnesium. Primary magnesium is produced by decomposing raw materials into magnesium metal. Secondary magnesium is produced by recycling magnesium-based scrap into magnesium metal. The magnesium covered by the *Order* includes blends of primary and secondary magnesium.

The subject merchandise includes the following alloy magnesium metal products made from primary and/or secondary magnesium including, without limitation, magnesium cast into ingots, slabs, rounds, billets, and other shapes; magnesium ground, chipped, crushed, or machined into rasping, granules, turnings, chips, powder, briquettes, and other shapes; and products that contain 50 percent or greater, but less than 99.8 percent, magnesium, by weight, and that have been entered into the United States as conforming to an ''ASTM Specification for Magnesium Alloy''[6] and are thus outside the scope of the existing antidumping orders on magnesium from China (generally referred to as ''alloy'' magnesium).

The scope of the *Order* excludes: (1) All forms of pure magnesium, including chemical combinations of magnesium and other material(s) in which the pure magnesium content is 50 percent or greater, but less than 99.8 percent, by weight, that do not conform to an ''ASTM Specification for Magnesium Alloy'';[7] (2) magnesium that is in liquid or molten form; and (3) mixtures containing 90 percent or less magnesium in granular or powder form by weight and one or more of certain non-magnesium granular materials to make magnesium-based reagent mixtures, including lime, calcium metal, calcium silicon, calcium carbide, calcium carbonate, carbon, slag coagulants, fluorspar, nephaline syenite, feldspar, alumina (Al203), calcium aluminate, soda ash, hydrocarbons, graphite, coke, silicon, rare earth metals/mischmetal, cryolite, silica/fly ash, magnesium oxide, periclase, ferroalloys, dolomite lime, and colemanite.[8] The merchandise subject to this order is classifiable under items 8104.19.00, and 8104.30.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS items are provided for

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 85 FR 18191 (April 1, 2020); *see also Notice of Antidumping Duty Order: Magnesium Metal From the People's Republic of China,* 70 FR 19928 (April 15, 2005) (*Order*).

[2] *See* U.S. Magnesium LLC's Letter, ''Magnesium Metal from the People's Republic of China/Request for Administrative Review,'' dated April 30, 2020.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 85 FR 35068 (June 8, 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] The meaning of this term is the same as that used by the American Society for Testing and Materials in its Annual Book for ASTM Standards: Volume 01.02 Aluminum and Magnesium Alloys.

[7] The material is already covered by existing antidumping orders. *See Notice of Antidumping Duty Orders: Pure Magnesium from the People's Republic of China, the Russian Federation and Ukraine; Notice of Amended Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Pure Magnesium from the Russian Federation,* 60 FR 25691 (May 12, 1995); and *Antidumping Duty Order: Pure Magnesium in Granular Form from the People's Republic of China,* 66 FR 57936 (November 19, 2001).

[8] This third exclusion for magnesium-based reagent mixtures is based on the exclusion for reagent mixtures in the 2000–2001 investigations of magnesium from China, Israel, and Russia. *See Final Determination of Sales at Less Than Fair Value: Pure Magnesium in Granular Form from the People's Republic of China,* 66 FR 49345 (September 27, 2001); *see also Final Determination of Sales at Less Than Fair Value: Pure Magnesium from Israel,* 66 FR 49349 (September 27, 2001); and, *Final Determination of Sales at Not Less Than Fair Value: Pure Magnesium From the Russian Federation,* 66 FR 49347 (September 27, 2001). These mixtures are not magnesium alloys, because they are not combined in liquid form and cast into the same ingot.

convenience and customs purposes, the written description of the merchandise is dispositive.

Preliminary Determination of No Shipments

We received timely submissions from TMI and TMM certifying that they did not have sales, shipments, or exports of subject merchandise to the United States during the POR.[9] On February 2, 2021, we requested the U.S. Customs and Border Protection (CBP) data file of entries of subject merchandise imported into the United States during the POR, and exported by TMM and/or TMI.[10] This query returned no entries during the POR.[11] Additionally, on February 4, 2021, Commerce submitted a no-shipments inquiry to CBP with regard to TMI and TMM, to which CBP responded that it found no shipments of subject merchandise by TMI and TMM during the POR.[12]

Accordingly, and consistent with our practice, we preliminarily determine that TMI and TMM had no shipments and, therefore, no reviewable entries during the POR. In addition, we find it is not appropriate to rescind the review with respect to these companies, but rather to complete the review with respect to TMI and TMM and issue appropriate instructions to CBP based on the final results of the review, consistent with our practice in non-market economy (NME) cases.[13]

Public Comment

Interested parties are invited to comment on the preliminary results and may submit case briefs and/or written comments, filed electronically via Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS), within 30 days after the date of publication of these preliminary results of review.[14] ACCESS is available to registered users at *https://access.trade.gov.* Rebuttal briefs, limited to issues raised in the case briefs, must be filed within seven days after the time limit for filing case briefs.[15] Parties who submit case or rebuttal briefs in this proceeding are requested to submit with each argument a statement of the issue, a brief summary of the argument, and a table of authorities.[16] Note that Commerce has temporarily modified certain portions of its requirements for serving documents containing business proprietary information, until further notice.[17]

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to Commerce within 30 days of the date of publication of this notice.[18] Requests should contain: (1) The party's name, address, the 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 those raised in the respective case and rebuttal briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held.[19] Commerce intends to issue the final results of this administrative review, which will include the results of our analysis of all issues raised in the case briefs, within 120 days of publication of these preliminary results in the **Federal Register**, unless extended, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results of this review, Commerce will determine, and CBP will assess, antidumping duties on all appropriate entries covered by this review.[20] Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication). Pursuant to Commerce's practice in NME cases, if we continue to determine in the final results that TMI and TMM had no shipments of subject merchandise, any suspended entries of subject merchandise during the POR from these companies will be liquidated at the China-wide rate.[21]

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 review, as provided for by section 751(a)(2)(C) of the Act: (1) For TMI, which claimed no shipments, the cash deposit rate will remain unchanged from the rate assigned to TMI in the most recently completed review of the company; (2) for previously investigated or reviewed Chinese and non-Chinese exporters who are not under review in this segment of the proceeding but who have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate (including TMM, which claimed no shipments, but has not been found to be separate from China-wide entity), the cash deposit rate will be China-wide rate of 141.49 percent; and (4) for all non-Chinese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to Chinese exporter(s) that supplied that non-Chinese exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

[9] *See* TMI's Letter, ''Magnesium Metal from the People's Republic of China; A–570–896; No Shipment Certification,'' dated June 15, 2020; *see also* TMM's Letter, ''Magnesium Metal from the People's Republic of China; A–570–896; No Shipment Certification,'' dated June 15, 2020.

[10] *See* Memorandum, ''2019–2020 Administrative Review of Magnesium Metal from the People's Republic of China, U.S. Customs and Border Protection Data,'' dated February 19, 2021 at Attachment 1.

[11] *Id.* at Attachment 2.

[12] *Id.* at Attachment 3; *see also* ''Magnesium Metal from China; No Shipment Inquiry for Tianjin Magnesium International Co., Ltd and Tianjin Magnesium Metal Co., Ltd. during the period 04/01/2019 through 03/31/2020,'' dated February 24, 2021.

[13] *See Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review 2014–2015,* 81 FR 72567 (October 20, 2016), and the ''Assessment Rates'' section, below.

[14] *See* 19 CFR 351.309(c)(1)(ii).

[15] *See* 19 CFR 351.309(d)(1) and (2); *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*).

[16] *See* 19 CFR 351.309(c) and (d); *see also* 19 CFR 351.303 (for general filing requirements).

[17] *See Temporary Rule.*

[18] *See* 19 CFR 351.310(c).

[19] *See* 19 CFR 310(d).

[20] *See* 19 CFR 351.212(b)(1).

[21] For a full discussion of this practice, *see Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

Notification to Interested Parties

These preliminary results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: February 25, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2021–04412 Filed 3–3–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–119]

Certain Large Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof, From the People's Republic of China: Amended Final Antidumping Duty Determination and Antidumping Duty Order

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

SUMMARY: Based on affirmative final determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC), Commerce is issuing an antidumping duty (AD) order on certain large vertical shaft engines between 225cc and 999cc, and parts thereof (large vertical shaft engines) from the People's Republic of China (China). In addition, Commerce is amending its final determination to correct a ministerial error with respect to the final dumping rate determination for Loncin Motor Co., Ltd. (Loncin) and, therefore, is also amending its final determination as to the rate applicable to the separate rate companies.

DATES: Applicable March 4, 2021.

FOR FURTHER INFORMATION CONTACT: Leo Ayala AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3945.

SUPPLEMENTARY INFORMATION:

Background

In accordance with sections 735(d) and 777(i)(1) of the Tariff Act, as amended (the Act), on January 11, 2021, Commerce published its *Final Determination* in the less-than-fair-value (LTFV) investigation of imports of large vertical shaft engines from China.[1] On January 12, 2021, Commerce received ministerial error allegations with respect to Loncin in the *Final Determination*.[2] No other party made an allegation of ministerial errors. *See* the ''Analysis of Ministerial Error Allegations'' section of this notice for further discussion. After reviewing the allegations, we determine that the *Final Determination* included a ministerial error with respect to Loncin's final rate determination. Therefore, we made certain changes, as described below, to the *Final Determination.*

On February 24, 2021, the ITC notified Commerce of its final determination, pursuant to section 735(d) of the Act, that an industry in the United States is materially injured within the meaning of section 735(b)(1)(A)(i) of the Act by reason of LTFV imports of large vertical shaft engines from China.[3]

Scope of the Order

The products covered by this order are large vertical shaft engines from China. For a complete description of the scope of this order, *see* the appendix to this notice.

Amendment to Final Determination

A ministerial error is defined in 19 CFR 351.224(f) as ''an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial.''[4] Pursuant to 19 CFR 351.224(e), and as explained further in the Ministerial Error Memorandum[5] issued concurrently with this notice, Commerce is amending the *Final Determination* to reflect the correction of a ministerial error in the final estimated weighted-average dumping margin calculated for Loncin.[6] Correction of this error changes the final rate determined for Loncin, and also changes the rate applicable to the separate rate companies.

AD Order

On February 24, 2021, in accordance with section 735(d) of the Act, the ITC notified Commerce of its final determination in this investigation, in which it found that an industry in the United States is materially injured by reason of imports of large vertical shaft engines from China.[7] Therefore, in accordance with section 735(c)(2) of the Act, Commerce is issuing this AD order. Because the ITC determined that large vertical shaft engines from China are materially injuring a U.S. industry, unliquidated entries of such merchandise from China, entered or withdrawn from warehouse for consumption, are subject to the assessment of antidumping duties. Therefore, in accordance with section 736(a)(1) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by Commerce, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise, for all relevant entries of large vertical shaft engines from China. In addition, the ITC made a negative finding concerning critical circumstances with regard to imports of large vertical engines from China that are sold in the United States at LTFV. As a result, these imports will not be subject to retroactive antidumping duties.[8] With the exception of entries occurring after the expiration of the provisional measures period and before publication of the ITC's final affirmative injury determinations, as further described below, antidumping duties will be assessed on unliquidated entries of large vertical shaft engines entered, or withdrawn from warehouse, for consumption, on or after August 19, 2020, the date of publication of the *Preliminary Determination*.[9]

Suspension of Liquidation

Except as noted in the ''Provisional Measures'' section of this notice, in accordance with section 735(c)(1)(B) of the Act, Commerce will instruct CBP to continue to suspend liquidation on all relevant entries of large vertical shaft engines from China. These instructions

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[1] *See Certain Large Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof, from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Critical Circumstances Determination,* 86 FR 1936 (January 11, 2021) (*Final Determination*), and accompanying Issues and Decision Memorandum (IDM).

[2] *Id.*

[3] *See* ITC Notification Letter, Investigation No. 701–TA–637 and 731–TA–1471 (Final), dated February 24, 2021 (ITC Notification Letter).

[4] *See* section 735(e) of the Act; *see also* 19 CFR 351.224(f).

[5] *See* Memorandum, ''Antidumping Duty Investigation of Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof, from China: Allegation of Ministerial Errors in Final Determination of AD Investigation,'' dated concurrently with, and hereby adopted by, this notice (Ministerial Error Memorandum).

[6] *Id.*

[7] *See* ITC Notification Letter.

[8] *Id.*

[9] *See Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof, From the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, Postponement of Final Determination, and Extension of Provisional Measures,* 85 FR 51015 (August 19, 2020) (*Preliminary Determination*).

suspending liquidation will remain in effect until further notice.

Commerce will also instruct CBP to require cash deposits equal to the estimated weighted-average dumping margin indicated in the tables below. Accordingly, effective on the date of publication in the **Federal Register** of the notice of the ITC's final affirmative injury determination, CBP will require, at the same time as importers would normally deposit estimated duties on subject merchandise, a cash deposit equal to the rates listed below.

Provisional Measures

Section 733(d) of the Act states that suspension of liquidation pursuant to an affirmative preliminary determination may not remain in effect for more than four months, except where exporters representing a significant proportion of exports of the subject merchandise request that Commerce extend the four-month period to no more than six months. At the request of exporters that account for a significant proportion of large vertical shaft engines from China, Commerce extended the four-month period to six months in this investigation. Commerce published the *Preliminary Determination* in this investigation on August 19, 2020.[10]

The extended provisional measures period, beginning on the date of publication of the preliminary determination, ended on January 4, 2021. Therefore, in accordance with section 733(d) of the Act and our practice,[11] Commerce will instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, unliquidated entries of large vertical shaft engines from China entered, or withdrawn from warehouse, for consumption after January 4, 2021, the final day on which the provisional measures were in effect, until and through the day preceding the date of publication of the ITC's final affirmative injury determination in the **Federal Register**. Suspension of liquidation and the collection of cash deposits will resume on the date of publication of the ITC's final determination in the **Federal Register**.

Estimated Weighted-Average Dumping Margins

The estimated weighted-average dumping margins are as follows:

Producer	Exporter	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for export subsidy offset) (percent)
Loncin Motor Co., Ltd	Loncin Motor Co. Ltd	185.65	173.42
Chongqing Zongshen General Power Machine Co., Ltd.	Chongqing Zongshen General Power Machine Co., Ltd.	336.26	323.91
Chongqing Rato Technology Co., Ltd	Chongqing Rato Technology Co., Ltd	274.24	261.93
Jialing-Honda Motors Co., Ltd	Jialing-Honda Motors Co., Ltd	274.24	261.93
Yamaha Motor Powered Products Jiangsu Co., Ltd.	Yamaha Motor Powered Products Jiangsu Co., Ltd.	274.24	261.93
China-Wide Entity		468.33	456.1

Notification to Interested Parties

This notice constitutes the AD order with respect to large vertical shaft engines from China pursuant to section 736(a) of the Act. Interested parties can find a list of AD orders currently in effect at *http://enforcement.trade.gov/stats/iastats1.html.*

This amended final determination and AD order is published in accordance with sections 735(e) and 736(a) of the Act, and 19 CFR 351.224(e) and 19 CFR 351.211(b).

Dated: February 26, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix—Scope of the Order

The merchandise covered by this order consists of spark-ignited, non-road, vertical shaft engines, whether finished or unfinished, whether assembled or unassembled, primarily for riding lawn mowers and zero-turn radius lawn mowers. Engines meeting this physical description may also be for other non-hand-held outdoor power equipment such as, including but not limited to, tow-behind brush mowers, grinders, and vertical shaft generators. The subject engines are spark ignition, single or multiple cylinder, air cooled, internal combustion engines with vertical power take off shafts with a minimum displacement of 225 cubic centimeters (cc) and a maximum displacement of 999cc. Typically, engines with displacements of this size generate gross power of between 6.7 kilowatts (kw) to 42 kw.

Engines covered by this scope normally must comply with and be certified under Environmental Protection Agency (EPA) air pollution controls title 40, chapter I, subchapter U, part 1054 of the Code of Federal Regulations standards for small non-road spark-ignition engines and equipment. Engines that otherwise meet the physical description of the scope but are not certified under 40 CFR part 1054 and are not certified under other parts of subchapter U of the EPA air pollution controls are not excluded from the scope of this proceeding. Engines that may be certified under both 40 CFR part 1054 as well as other parts of subchapter U remain subject to the scope of this proceeding.

For purposes of this order, an unfinished engine covers at a minimum a sub-assembly comprised of, but not limited to, the following components: Crankcase, crankshaft, camshaft, piston(s), and connecting rod(s). Importation of these components together, whether assembled or unassembled, and whether or not accompanied by additional components such as an oil pan, manifold, cylinder head(s), valve train, or valve cover(s), constitutes an unfinished engine for purposes of this order. The inclusion of other products such as spark plugs fitted into the cylinder head or electrical devices (*e.g.,* ignition modules, ignition coils) for synchronizing with the motor to supply tension current does not remove the product from the scope. The inclusion of any other components not identified as comprising the unfinished engine subassembly in a third country does not remove the engine from the scope.

The engines subject to this order are typically classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 8407.90.1020, 8407.90.1060, and 8407.90.1080. The engine subassemblies that are subject to this order enter under HTSUS 8409.91.9990. Engines subject to this order may also enter under HTSUS 8407.90.9060 and 8407.90.9080. The HTSUS subheadings are provided for convenience and customs purposes only, and the written

[10] *See Preliminary Determination.*

[11] *See, e.g., Certain Corrosion-Resistant Steel Products from India, the People's Republic of China, the Republic of Korea and Taiwan: Amended Final Affirmative Antidumping Determination for India and Taiwan, and Antidumping Duty Orders,* 81 FR 48390, 48392 (July 25, 2016).

description of the merchandise subject to this order is dispositive.

[FR Doc. 2021–04476 Filed 3–3–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–879]

Methionine From Japan: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances and Postponement of Final Determination and Extension of Provisional Measures

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that methionine from Japan is being, or is likely to be, sold in the United States at less than fair value (LTFV). The period of investigation is July 1, 2019, through June 30, 2020. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable March 4, 2021.

FOR FURTHER INFORMATION CONTACT: Robert Scully, 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) 482–0572.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on August 25, 2020.[1] On December 14, 2020, Commerce postponed the preliminary determination of this investigation, and the revised deadline is now February 24, 2021.[2] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at h*ttp://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The products covered by this investigation are methionine from Japan. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] No interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* Commerce is not preliminarily modifying the scope language as it appeared in the *Initiation Notice. See* the scope in Appendix I to this notice.

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce has calculated constructed export prices in accordance with section 772(a) of the Act. Normal value is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

Preliminary Affirmative Determination of Critical Circumstances

In accordance with section 733(e) of the Act and 19 CFR 351.206, Commerce preliminarily finds that critical circumstances exist for Sumitomo Chemical Company, Ltd. (Sumitomo Chemical), and for all other producers and exporters in Japan. For a full description of the methodology and results of Commerce's critical circumstances analysis, *see* the Preliminary Decision Memorandum.

All-Others Rate

Section 733(d)(1)(A)(ii) of the Act provides that in the preliminary determination Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. Pursuant to section 735(c)(5)(A) of the Act, this rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act.

Commerce calculated an individual estimated weighted-average dumping margin for Sumitomo Chemical. Therefore, for purposes of determining the all-others rate, and pursuant to section 735(c)(5)(A) of the Act, we are using the dumping margin calculated for Sumitomo Chemical, which is not zero, *de minimis,* or determined entirely under section 776 of the Act. For a full description of the methodology underlying Commerce's analysis, *see* the Preliminary Decision Memorandum.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Exporter/producer	Estimated weighted-average dumping margin (percent)
Sumitomo Chemical Company, Ltd	135.10
All Others	135.10

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), where appropriate, Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) The cash deposit rate for the respondent listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the

[1] *See Methionine from France, Japan and Spain: Initiation of Less-than-Fair-Value Investigations,* 85 FR 52324 (August 25, 2020) (*Initiation Notice*).

[2] *See Methionine from France, Japan and Spain: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 85 FR 80774 (December 14, 2020).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Methionine from Japan,'' dated concurrently with, and hereby adopted by this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice.*

producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin.

Section 733(e)(2) of the Act provides that, given an affirmative determination of critical circumstances, any suspension of liquidation shall apply to unliquidated entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the later of: (a) The date which is 90 days before the date on which the suspension of liquidation was first ordered; or (b) the date on which notice of initiation of the investigation was published. As noted above, Commerce preliminarily finds that critical circumstances exist for imports of subject merchandise produced and exported by Sumitomo Chemical and all other exporters and producers from Japan. In accordance with section 733(e)(2)(A) of the Act, the suspension of liquidation shall apply to unliquidated entries of shipments of subject merchandise from Sumitomo Chemical and all other exporters and producers from Japan that were entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the publication of this notice.

These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination. Normally, Commerce verifies information using standard procedures, including an on-site examination of original accounting, financial, and sales documentation. However, due to current travel restrictions in response to the global COVID–19 pandemic, Commerce is unable to conduct on-site verification in this investigation. Accordingly, we intend to verify the information relied upon in making the final determination through alternative means in lieu of an on-site verification.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance. A timeline for the submission of case briefs and written comments will be announced at a later date. Rebuttal briefs, limited to issues raised in these case briefs, may be submitted no later than seven days after the deadline date for case briefs.[6] Commerce has modified certain of its requirements for serving documents containing business proprietary information until further notice.[7] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of Commerce's regulations requires that a request by exporters for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On February 9, 2021, pursuant to 19 CFR 351.210(e), Sumitomo Chemical requested that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed six months.[8] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) The preliminary determination is affirmative; (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.

International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, then the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of methionine from Japan are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act, and 19 CFR 351.205(c).

Dated: February 24, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is methionine and dl-Hydroxy analogue of dl-methionine, also known as 2-Hydroxy 4-(Methylthio) Butanoic acid (HMTBa), regardless of purity, particle size, grade, or physical form. Methionine has the chemical formula $C_5H_{11}NO_2S$, liquid HMTBa has the chemical formula $C_5H_{10}O_3S$, and dry HMTBa has the chemical formula $(C_5H_9O_3S)_2Ca$.

[6] *See* 19 CFR 351.309; and 19 CFR 351.303 (for general filing requirements).

[7] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[8] *See* Sumitomo Chemical's Letter, ''Methionine from Japan Request to Extend the Deadline for the Final Determination,'' dated February 9, 2021.

Subject merchandise also includes methionine processed in a third country including, but not limited to, refining, converting from liquid to dry or dry to liquid form, or any other processing that would not otherwise remove the merchandise from the scope of this investigation if performed in the country of manufacture of the in-scope methionine or dl-Hydroxy analogue of dl-methionine.

The scope also includes methionine that is commingled (*i.e.,* mixed or combined) with methionine from sources not subject to this investigation. Only the subject component of such commingled products is covered by the scope of this investigation.

Excluded from this investigation is United States Pharmacopoeia (USP) grade methionine. In order to qualify for this exclusion, USP grade methionine must meet or exceed all of the chemical, purity, performance, and labeling requirements of the United States Pharmacopeia and the National Formulary for USP grade methionine.

Methionine is currently classified under subheadings 2930.40.00.00 and 2930.90.46.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Methionine has the Chemical Abstracts Service (CAS) registry numbers 583–91–5, 4857–44–7, 59–51–8 and 922–50–9. While the HTSUS subheadings and CAS registry number are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Scope of the Investigation
V. Scope Comments
VI. Preliminary Critical Circumstances Determination
VII. Discussion of the Methodology
VIII. Currency Conversion
IX. Recommendation

[FR Doc. 2021–04417 Filed 3–3–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–831]

Methionine From France: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that methionine from France is being, or is likely to be, sold in the United States at less than fair value (LTFV). Commerce also preliminarily determines that critical circumstances exist with respect to certain imports of subject merchandise. The period of investigation is July 1, 2019, through June 30, 2020. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable March 4, 2021.

FOR FURTHER INFORMATION CONTACT: Zachary Shaykin, 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) 482–2638.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce initiated this LTFV investigation on August 18, 2020.[1] On December 14, 2020, Commerce postponed the preliminary determination in this investigation and the revised deadline is now February 24, 2021.[2] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The products covered by this investigation is methionine from France. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] No interested parties commented on the scope of this investigation as it appeared in the *Initiation Notice.*[6] Commerce is not preliminarily modifying the scope language as it appeared in the *Initiation Notice. See* the scope in Appendix I to this notice.

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Pursuant to sections 776(a) and (b) of the Act, Commerce has preliminarily relied upon facts otherwise available, with adverse inferences, for Adisseo France SAS and Commentry (collectively, Adisseo France), the two companies selected for individual examination in this investigation.[7] For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

Preliminary Affirmative Determination of Critical Circumstances

On February 1, 2021, the petitioner[8] timely filed a critical circumstances allegation, pursuant to section 733(e)(1) of the Act and 19 CFR 351.206(c)(1), alleging that critical circumstances exist with respect to imports of the subject merchandise from France.

Section 733(e)(1) of the Act provides that Commerce will preliminarily determine that critical circumstances exist in an LTFV investigation if there is a reasonable basis to believe or suspect that: (A) There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and (B) there have been massive imports of the

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[1] *See Methionine from France, Japan, and Spain: Initiation of Less-Than-Fair-Value Investigations,* 85 FR 52324 (August 25, 2020) (*Initiation Notice*).

[2] *See Methionine From France, Japan and Spain: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 85 FR 80774 (December 14, 2020).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Methionine from France,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice.*

[6] Sumitomo's September 8, 2020 scope comments pertain to the product characteristics, and not the scope of the investigation.

[7] For the purposes of this investigation, we have considered Adisseo France's responses to Commerce's requests for information on behalf of both Commentry and Adisseo France SAS. For a full discussion on respondent selection in this investigation, *see* the Preliminary Determination Memorandum at 2.

[8] The petitioner is Novus International, Inc.

subject merchandise over a relatively short period.

In accordance with section 733(e) of the Act and 19 CFR 351.206, Commerce preliminarily determines that critical circumstances exist with respect to imports of methionine produced and exported by Adisseo France. Furthermore, we preliminarily determine that critical circumstances do not exist with respect to imports of methionine produced and exported by all other producers and exporters from France. For a full description of Commerce's preliminary critical circumstances determination, *see* the Preliminary Decision Memorandum.

All-Others Rate

Section 733(d)(1)(A)(ii) of the Act provides that in the preliminary determination Commerce shall determine an estimated weighted-average dumping margin for all other producers and exporters not individually examined. Pursuant to section 735(c)(5)(A) of the Act, this rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters or producers individually investigated, excluding rates that are zero, *de minimis,* or determined entirely under section 776 of the Act. Pursuant to section 735(c)(5)(B) of the Act, if the estimated weighted-average dumping margins established for all exporters and producers individually examined are zero, *de minimis,* or determined based entirely on facts otherwise available, Commerce may use any reasonable method to establish the estimated weighted-average dumping margin for all other producers or exporters.

Commerce has preliminarily determined the estimated weighted-average dumping margin for Adisseo France entirely under section 776 of the Act. Pursuant to section 735(c)(5)(B) of the Act, Commerce's normal practice under these circumstances has been to calculate the all-others rate as a simple average of the alleged dumping margins from the petition. However, because there is only one dumping margin alleged in the Petition (*i.e.,* 16.17 percent),[9] we used that rate as the estimated weighted-average dumping margin for all other producers and exporters. For a full description of the methodology underlying Commerce's analysis, *see* the Preliminary Decision Memorandum.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Exporter or producer	Estimated weighted-average dumping margin (percent)
Adisseo France SAS and Commentry	43.82
All Others	16.17

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit as follows: (1) The cash deposit rate for Adisseo France will be equal to the company-specific estimated weighted-average dumping margin determined in this preliminary determination; (2) if the exporter is not the respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin.

Section 733(e)(2) of the Act provides that, given an affirmative determination of critical circumstances, the suspension of liquidation shall apply to unliquidated entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the later of: (a) The date which is 90 days before the date on which the suspension of liquidation was first ordered; or (b) the date on which notice of initiation of the investigation was published. As noted above, Commerce preliminarily finds that critical circumstances exist for imports of subject merchandise produced and exported by Adisseo France. In accordance with section 733(e)(2)(A) of the Act, the suspension of liquidation shall apply to unliquidated entries of shipments of methionine that were produced and exported by Adisseo France that were entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the publication date of this notice in the **Federal Register**.

These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Commerce intends to disclose to interested parties any calculations performed in connection with this preliminary determination within five days of its public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Verification

Because Adisseo France did not provide all of the information requested by Commerce and affirmatively stated that it would no longer participate in this investigation, we will not conduct verification as part of this investigation.

Public Comment

Case briefs or other written comments on non-scope issues may be submitted to the Assistant Secretary for Enforcement and Compliance no later than 21 days after the date of publication of the preliminary determination.[10] Rebuttal briefs, limited to issues raised in these case briefs, may be submitted no later than seven days after the deadline date for case briefs.[11] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Commerce has modified certain of its requirements for serving documents containing business proprietary information until further notice.[12]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of

[9] *See* Petitioner's Letter, ''Petitions for the Imposition of Antidumping Duties: Methionine from France, Japan, and Spain,'' dated July 29, 2020 (Petition); *see also Initiation Notice,* 85 FR at 52327, and accompanying France-specific Initiation Checklist.

[10] *See* 19 CFR 351.309(c)(1)(i); and 19 CFR 351.303 (for general filing requirements). Commerce has exercised its discretion under 19 CFR 351.309(c)(1)(i) to alter the time limit for submission of case briefs.

[11] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006 (March 26, 2020); and *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020) (collectively, *Temporary Rule*).

[12] *See Temporary Rule.*

Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date of the hearing.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of Commerce's regulations requires that a request by exporters for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On February 5, 2021, pursuant to 19 CFR 351.210(e), Adisseo France requested a postponement of the final determination of this investigation in the case of an affirmative determination by Commerce.[13] Furthermore, pursuant to section 733(d) of the Act and 19 CFR 351.210(e)(2), Adisseo France agreed to an extension of provisional measures in this investigation from a period of four to no more than six months.[14] The petitioner submitted an opposition to Adisseo France's postponement because of Adisseo France's withdrawal from the investigation.[15]

Ordinarily, in accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), Commerce will grant an extension if: (1) The preliminary determination is affirmative; (2) the requesting exporter, and in this case producer, accounts for a significant proportion of exports of subject merchandise; and (3) no compelling reasons for denial exist. In this investigation, Commerce has determined that Adisseo France's withdrawal provides a compelling reason to deny Adisseo France's request for postponement, because Adisseo France represents both mandatory respondents and has withdrawn from this investigation.[16] Furthermore, Adisseo France has indicated that it will no longer respond to Commerce's requests for information.[17] Therefore, because Commerce will not receive further information from Adisseo France for the remainder of this investigation nor conduct verification, Commerce will not be postponing its final determination in this investigation. Moreover, because the final determination will not be postponed, Commerce will not be extending provisional measures. Accordingly, Commerce will make its final determination no later than 75 days after the date of publication of this preliminary determination, pursuant to section 735(a)(1) of the Act.

International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of methionine from France are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act, and 19 CFR 351.205(c).

Dated: February 24, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is methionine and dl-Hydroxy analogue of dl-methionine, also known as 2-Hydroxy 4-(Methylthio) Butanoic acid (HMTBa), regardless of purity, particle size, grade, or physical form. Methionine has the chemical formula $C_5H_{11}NO_2S$, liquid HMTBa has the chemical formula $C_5H_{10}O_3S$, and dry HMTBa has the chemical formula $(C_5H_9O_3S)_2Ca$.

Subject merchandise also includes methionine processed in a third country including, but not limited to, refining, converting from liquid to dry or dry to liquid form, or any other processing that would not otherwise remove the merchandise from the scope of these investigations if performed in the country of manufacture of the in-scope methionine or dl-Hydroxy analogue of dl-methionine.

The scope also includes methionine that is commingled (*i.e.,* mixed or combined) with methionine from sources not subject to these investigations. Only the subject component of such commingled products is covered by the scope of these investigations.

Excluded from this investigation is United States Pharmacopoeia (USP) grade methionine. In order to qualify for this exclusion, USP grade methionine must meet or exceed all of the chemical, purity, performance, and labeling requirements of the United States Pharmacopeia and the National Formulary for USP grade methionine.

Methionine is currently classified under subheadings 2930.40.0000 and 2930.90.4600 of the Harmonized Tariff Schedule of the United States (HTSUS). Methionine has the Chemical Abstracts Service (CAS) registry numbers 583–91–5, 4857–44–7, 59–51–8 and 922–50–9. While the HTSUS subheadings and CAS registry numbers are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Scope of Investigation
V. Scope Comments
VI. Return of Record Information
VII. Application of Facts Available and Use of Adverse Inferences
VIII. All-Others Rate
IX. Critical Circumstances
X. Recommendation

[FR Doc. 2021–04415 Filed 3–3–21; 8:45 am]

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[13] *See* Adisseo France's Letter, ''Methionine from France: Request for Postponement of Final Determination and Provisional Measures Period,'' dated February 5, 2021, at 1.

[14] *Id.* at 2.

[15] *See* Petitioner's Letter, ''Methionine from France: Opposition to Extension of Final Determination,'' dated February 9, 2021.

[16] *See* Adisseo France's Letter, ''Methionine from France: Withdrawal from Investigation and Withdrawal of Proprietary Information,'' dated January 22, 2021.

[17] *Id.* at 2.

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Scope Rulings

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

SUMMARY: The Department of Commerce (Commerce) hereby publishes a list of scope rulings and anti-circumvention determinations made during the period October 1, 2020–December 31, 2020. We intend to publish future lists after the close of the next calendar quarter.

DATES: Applicable March 4, 2021.

FOR FURTHER INFORMATION CONTACT: Marcia E. Short, AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: 202–482–1560.

SUPPLEMENTARY INFORMATION:

Background

Commerce regulations provide that it will publish in the **Federal Register** a list of scope rulings on a quarterly basis.[1] Our most recent notification of scope rulings was published on December 2, 2020.[2] This current notice covers all scope rulings and anti-circumvention determinations made by Enforcement and Compliance from October 1, 2020 through December 31, 2020.

Scope Rulings Made October 1, 2020 Through December 31, 2020

People's Republic of China (China)

A–570–092: Mattresses From China

Requestor: Excelligence Learning Corporation. The compact crib mattress is not covered by the scope of the antidumping duty (AD) order on mattresses from China because it does not meet the scope's dimensional requirements for length or width to be considered a youth mattress; October 1, 2020.

A–570–112 and C–570–113: Certain Collated Steel Staples From China

Requestor: Sailrite Enterprises, Inc. Sailrite's 80-Series collated stainless steel and galvanized steel staples are outside of the scope of the AD and countervailing duty (CVD) orders because they have a nominal diameter of 0.028 inches, which falls outside the 0.0355 and 0.0830 inch scope specified in the scope of the orders; October 14, 2020.

A–570–899: Certain Artist Canvas From China

Requestor: Permalite, Inc. (Permalite). Permalite's inkjet printable canvas is outside the scope of the AD order on certain artist canvas from China because the priming/coating of the raw woven polyester cloth occurs in Thailand; October 21, 2020.

A–570–979 and C–570–980: Crystalline Silicon Photovoltaic Cells From China

Requestor: SunSpark Technology Inc. Solar cells and panels/modules produced in Vietnam from raw wafers imported from China (*i.e.,* wafers that do not yet have a p/n junction) are not within the scope of the AD and CVD orders on solar cells from China; October 23, 2020.

A–570–042 and C–570–043: Stainless Steel Sheet and Strip From China

Requestor: Concept2, Inc. Flywheel Housing Perforated Screens (FHPS), imported by Concept2 Inc., are not covered by the scope of the AD and CVD orders on stainless steel sheet and strip from China based on the totality of our analysis of the plain language of the scope and the criteria set forth under 19 CFR 351.225(k)(1) and (2); November 24, 2020.

A–570–952 and C–570–953: Narrow Woven Ribbons From China

Requestor: Spin Master, Inc. The woven polyester ribbons contained within ''Cool Maker Hollywood Hair Studio'' role play kit and the ''Cool Maker Hollywood Hair Studio Refill Pack'' imported by Spin Master, Inc. are within the scope of the AD and CVD orders on narrow woven ribbons with woven selvedge from China; December 8, 2020.

A–570–916 and C–570–917: Laminated Woven Sacks From China

Requestor: HL Packaging Group Inc. Two models of reusable shopping bags imported by HL Packaging Group Inc. are covered by the scope of the AD and CVD orders on laminated woven sacks from China because they meet the physical description identified in the scope; December 23, 2020.

Notification to Interested Parties

Interested parties are invited to comment on the completeness of this list of completed scope inquiries and anti-circumvention determinations made during the period October 1, 2020, through December 31, 2020. Contact information for the submission of such comment is provided above. This notice is published in accordance with 19 CFR 351.225(o).

Dated: February 26, 2021.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2021–04478 Filed 3–3–21; 8:45 am]

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[1] *See* 19 CFR 351.225(o).

[2] *See Notice of Scope Rulings,* 85 FR 77494 (December 2, 2020).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RIN 0648–XA858]

Taking of Marine Mammals Incidental to Specific Activities; Taking of Marine Mammals Incidental to Pile Driving and Removal Activities During Construction of the Hoonah Marine Industrial Center Cargo Dock Project, Hoonah, Alaska

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

ACTION: Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible renewal.

SUMMARY: NMFS has received a request from the City of Hoonah (City) for authorization to take marine mammals incidental to pile driving and removal activities during construction upgrades of a cargo dock at the city-owned Hoonah Marine Industrial Center (HMIC) in Port Frederick Inlet on Chichagof Island in Hoonah, Alaska. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-year renewal that could be issued under certain circumstances and if all requirements are met, as described in Request for Public Comments at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorizations and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than April 5, 2021.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service and should be sent by electronic mail to *ITP.Egger@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 must not exceed a 25-megabyte file size, including all attachments. 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: Stephanie Egger, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, or for anyone who is unable to comment via electronic mail, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. 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 incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment. This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

Summary of Request

On October 28, 2020 NMFS received a request from the City for an IHA to take marine mammals incidental to pile driving and removal during construction upgrades of a cargo dock at the HMIC in Port Frederick Inlet on Chichagof Island in Hoonah, Alaska. The application was deemed adequate and complete on February 2, 2021. The applicant's request is for take of nine species of marine mammals by Level B harassment and five species by Level A harassment. Neither the City nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

Description of Proposed Activity

Overview

The purpose of this project is to make upgrades to the HMIC. Upgrades to the site include the installation of three breasting dolphins, a sheet pile bulk cargo dock, fender piles, and a catwalk. The proposed upgrades are needed to continue safely accommodating barges and other vessels delivering essential goods to the City.

The City is only accessible by air and water. Small amounts of cargo are transported into the community by plane; however, the majority is delivered weekly by barges from April through September (AML 2020). When weather permits, front load barges utilize a gravel landing located next to the existing City dock. The gravel landing provides a makeshift location to unload heavy cargo using a ramp and forklifts. During winter months, inclement weather events, and for more frequent deliveries, locals utilizes the Alaska Marine Highway System (AMHS) ferries and the local ferry terminal.

The existing gravel landing at HMIC was not originally designed for barges and requires an additional ramp and favorable weather conditions to safely unload cargo. Even during favorable weather, the space and depth places the barges and crew at risk, and the landing cannot safely accommodate the fleet of barges delivering to Hoonah. With the decrease in AMHS ferry service (due to State funding cuts) it is imperative that a reliable way to receive goods in the City is available.

The HMIC cargo dock is one component of the HMIC, which is a phased approach to enhance the Hoonah waterfront and to provide infrastructure to support the cruise ship industry and various other maritime industries (see Figure 4 of the application). The purpose of HMIC cargo dock project is to make improvements to the existing gravel landing to enable barges to land during all conditions. The project is needed because the existing facility cannot provide consistent and safe berthing for barges. Once the project is completed, the City will be able to reliably receive goods year-round and in all weather conditions. Currently, Alaska Marine Line barges offers seasonal ramp barge service into the City; however, this project will allow for year-round, weekly deliveries by ocean going barges.

Dates and Duration

The applicant is requesting an IHA to conduct pile driving and removal over 110 working days (not necessarily consecutive) beginning in spring and extending through the summer of 2021 as needed. Approximately 50 days of vibratory and 28 days of impact hammering will occur. An additional 35 days of drilling/down-the-hole (DTH) will occur to stabilize the piles. These are discussed in further detail below. The total construction duration accounts for the time required to mobilize materials and resources and construct the project. The duration also accounts for potential delays in material deliveries, equipment maintenance, inclement weather, and shutdowns that may occur to prevent impacts to marine mammals.

Specific Geographic Region

The proposed project at the HMIC is located in Port Frederick Inlet, approximately 0.8 kilometers (km) (0.5 miles) northwest of downtown Hoonah 0.24 km (0.15 miles) east of the State of Alaska Ferry Terminal in Southeast Alaska; T43S, R61E, S20, Copper River Meridian, USGS Quadrangle Juneau A5 NE; latitude 58.11549 and longitude −135.4547 (see Figure 1 below and see also Figure 1, 2, 3, and Appendix A, Sheet 1 of the application).

Port Frederick is a 24-km inlet that dips into northeast Chichagof Island from Icy Strait, leading to Neka Bay and Salt Lake Bay. The inlet varies between 4 and almost 6 km wide with a depth of up to 150 meters (m) (see Figure 6 of the application). Near the proposed project, the inlet is 12 to 28 m deep (NOAA 2018). NMFS's ShoreZone Mapper details the proposed project site as a semi-protected/partially mobile/sediment or rock and sediment habitat class with gravel beaches environmental sensitivity index (NMFS 2020).

Figure 1. Project Location, Hoonah, Alaska.

Detailed Description of Specific Activity

The project would involve installing breasting dolphins, a solid fill sheet pile dock, and fender.

Construction of the three breasting dolphins would include:

- Installation of 10 temporary 30-inch (in) diameter steel piles as templates to guide proper installation of permanent piles (these piles would be removed prior to project completion); and
- Installation of 9 permanent 36-in diameter steel piles
  - Breasting Dolphin 1—(1) vertical 36-in steel pile and (2) 36-in batter steel piles
  - Breasting Dolphin 2—(1) vertical 36-in steel pile and (2) 36-in batter steel pile
  - Breasting Dolphin 3—(1) vertical 36-in steel pile and (2) 36-in batter steel pile

Construction of the bulk cargo dock would include (see Figure 4; Appendix A: Sheets 3–4 of the application):

- Installation of 20 temporary 30-in steel piles as templates to guide proper installation of permanent H-piles (these piles would be removed prior to project completion);
- Installation of 12 permanent H-piles to guide proper installation of sheets;
- Installation of 500 permanent sheet piles (130 linear feet); and
- Filling the area within sheet piles with 9,600 cubic yards of fill

Installation of the fender piles would include (see Figure 4; Appendix A: Sheet 3 of the application):

- Installation of 20 temporary 30-in steel piles as templates to guide proper installation of permanent fender piles (these piles would be removed prior to project completion); and
- Installation of 6 permanent 20-in fender piles in front of sheet pile cargo dock

Construction Sequence

In-water construction of the HMIC cargo dock components is expected to occur via the following sequence:

(1) Vibrate twenty 30-in temporary piles to use as a guide to install H-piles for the cargo dock.

(2) Vibrate and impact 12 H-piles to depth to hold the sheets into place.

(3) Remove the temporary piles.

(4) Using the H-piles as a guide, vibrate and impact 500 sheets into place to create a barrier prior to placing fill.

(5) Using an excavator place 9,600 cubic yards of fill within the newly constructed cargo dock frame.

After the completion of the cargo dock, the barge will move over to install the six fender piles at the existing city dock face using the following sequence:

(1) Vibrate 20 temporary 30-in piles a minimum of ten feet into bedrock to create a template to guide installation of the permanent piles.

(2) Weld a frame around the temporary piles.

(3) Within the frame: Vibrate, impact, and socket six permanent 20-in fender piles into place.

(4) Remove the frame and temporary piles.

(5) Perform this sequence at the other six fender pile locations.

The three breasting dolphins will be constructed as the barge moves off shore and will install temporary and permanent piles as follows:

(1) Vibrate 10 temporary 30-in piles a minimum of ten feet into bedrock to

create a template to guide installation of the permanent piles.

(2) Weld a frame around the temporary piles.

(3) Within the frame: Vibrate, impact, and socket one vertical and two batter 36-in pile into place.

(4) Remove the frame and temporary piles.

(5) Perform this sequence at the second and third location working farther from the shoreline.

Please see Table 1 below for the specific amount of time required to install and remove piles.

Installation and Removal of Temporary (Template) Piles

Temporary 30-in steel piles would be installed and removed using a vibratory hammer (Table 1).

Installation of Permanent Piles

The permanent H-piles, 20-in, and 36-in piles would be installed through sand and gravel with a vibratory hammer until advancement stops. Then, the pile will be driven to depth with an impact hammer. If design tip elevation is still not achieved, the contractor will utilize a drill to secure the pile. (Note: This DTH method can also be referred to as DTH drilling. It is referred to as DTH throughout this document.) Pile depths are expected to be approximately 40 to 70 feet (ft) below the mudline and estimated to take approximately 1.25–10.5 hours (hrs) per pile to complete.

The permanent sheets would be installed using a vibratory hammer and impact hammer following the same criteria as above to achieve design tip elevation (Table 1). It is expected that it will take around 20 minutes to install each sheet.

TABLE 1—PILE DRIVING AND REMOVAL ACTIVITIES

	Project component					
	Temporary pile installation	Temporary pile removal	Permanent pile installation			
Vibratory Hammer						
Diameter of Steel Pile (inches)	30	30	36	H-piles	Sheets	20.
# of Piles	50	50	9	12	500 (130lf)	6.
Max # Piles Vibrated per Day	4	4	4	4	30 sheets	3.
Vibratory Time per Pile (min)	15	15	15	15	15	15.
Vibratory Time per Day (min)	60	60	60	60	450 (7.5 hr)	45.
Number of Days	12.5	12.5	2.25	3	17	2.
Vibratory Time Total	12 hrs 30 mins	12 hrs 30 mins	2 hr 15 mins	3 hrs	292 hrs	1 hr 30 min.
Impact Hammer						
Diameter of Steel Pile (inches)			36	H-piles	Sheets	20.
# of Piles			9	12	500 (130lf)	6.
Max # Piles Impacted per Day			2	5	5 sheets	2.
Impact Time per Pile (min)			15	5	5	5.
Impact Time per Day (min)			30	20	25	10.
Number of Days			4.5 day	3	17 days	3.
Impact Time Total			2 hr 15 mins	1 hr	1 hr 30 mins	30 min.
Drilling/DTH						
Diameter of Steel Pile (inches)			36	H-Piles		20.
Total Quantity			9	12		6.
Anchor Diameter			33	20		20.
Max # Piles Anchored per Day			2	2		2.
Time per Pile			5–10 hrs	3–4 hrs		1 hr.
Actual Time Spent Driving per Pile			60 min	60 min		60 min.
Time per Day			12 hrs (max)	12 hrs (max)		12 hrs (max).
Actual Time Spent Driving per Day			72 mins (1 hr 12 mins; max).	2 hrs (max)		1 hr (max).
Blows per Pile			27,000–54,000	20,000		15,000.
Number of Days			15 days	17 days		3 days.
Drilling Total Time			45–90 hours	20 hours		4 hours.

In addition to the activities described above, the proposed action will involve other in-water construction and heavy machinery activities. Other types of in-water work including with heavy machinery will occur using standard barges, tug boats, and positioning piles on the substrate via a crane (*i.e.,* ''stabbing the pile''). Workers will be transported from shore to the barge work platform by a 7.62 m (25 ft) skiff with a 125–250 horsepower motor. The travel distance will be less than 30.5 m (100 ft). There could be multiple shore-to-barge trips during the day; however, the area of travel will be relatively small and close to shore. We do not expect any of these other in-water construction and heavy machinery activities to take marine mammals. Therefore, these other in-water construction and heavy machinery activities will not be discussed further.

For further details on the proposed action and project components, please refer to Section 1.2 of the application.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see Proposed Mitigation and Proposed Monitoring and Reporting).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS's Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's

website (*https://www.fisheries.noaa.gov/find-species*).

Table 2 lists all species with expected potential for occurrence in the project area and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. Tagged sperm whales have been tracked within the Gulf of Alaska, and multiple whales have been tracked in Chatham Strait, in Icy Strait, and in the action area in 2014 and 2015 (*http://seaswap.info/whaletrackerAccessed4/15/19*). However, the known sperm whale habitat (these shelf-edge/slope waters of the Gulf of Alaska) are far outside of the action area. It is unlikely that sperm whales will occur in the action area where pile driving activities will occur because they are generally found in far deeper waters. Therefore, sperm whales are not being proposed for take authorization and not discussed further. For taxonomy, we follow Committee on Taxonomy (2020). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS's stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS's U.S. Pacific and Alaska SARs (Carretta *et al.,* 2020; Muto *et al.,* 2020). All MMPA stock information presented in Table 2 is the most recent available at the time of publication and is available in the 2019 SARs (Caretta *et al.,* 2020; Muto *et al.,* 2020) and draft 2020 SARs (available online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports*).

TABLE 2—MARINE MAMMAL OCCURRENCE IN THE PROJECT AREA

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Eschrichtiidae:						
Gray Whale	*Eschrichtius robustus*	Eastern N Pacific	-, -, N	26,960 (0.05, 25,849, 2016)	801	131
Family Balaenopteridae (rorquals):						
Minke Whale	*Balaenoptera acutorostrata*	Alaska	-, -, N	N/A (see SAR, N/A, see SAR)	UND	0
Humpback Whale	*Megaptera novaeangliae*	Central N Pacific (Hawaii and Mexico DPS).	-, -, Y	10,103 (0.3, 7,891, 2006)	83	26
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae:						
Killer Whale	*Orcinus orca*	Alaska Resident	-, -, N	2,347 (N/A, 2347, 2012)	24	1
		Northern Resident	-, -, N	302 (N/A, 302, 2018)	2.2	0.2
		West Coast Transient	-, -, N	349 (na/349; 2018)	3.5	0.4
Pacific White-Sided Dolphin.	*Lagenorhynchus obliquidens*	N Pacific	-, -, N	26,880 (N/A, N/A, 1990)	UND	0
Family Phocoenidae (porpoises):						
Dall's Porpoise	*Phocoenoides dalli*	AK	-, -, N	83,400 (0.097, N/A, 1991)	UND	38
Harbor Porpoise	*Phocoena phocoena*	Southeast Alaska	-, -, Y	see SAR (see SAR, see SAR, 2012).	see SAR	34
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (Eared Seals and Sea Lions):						
Steller Sea Lion	*Eumetopias jubatus*	Western DPS	E, D, Y	52,932 (see SAR, 52,932, 2019).	318	255
		Eastern DPS	T, D, Y	43,201 a (see SAR, 43,201, 2017).	2592	112
Family Phocidae (earless seals):						
Harbor Seal	*Phoca vitulina*	Glacier Bay/Icy Strait	-, -, N	7,455 (see SAR, 6,680, 2017)	120	104

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *www.nmfs.noaa.gov/pr/sars/.* CV is coefficient of variation; Nmin is the minimum estimate of stock abundance. In some cases, CV is not applicable [explain if this is the case].

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

All species that could potentially occur in the proposed survey areas are included in Table 2. In addition, the Northern sea otter (*Enhydra lutris kenyoni*) may be found in the project area. However, sea otters are managed by the U.S. Fish and Wildlife Service and are not considered further in this document.

Minke Whale

In the North Pacific Ocean, minke whales occur from the Bering and Chukchi seas south to near the Equator (Leatherwood *et al.,* 1982). In the northern part of their range, minke whales are believed to be migratory, whereas, they appear to establish home ranges in the inland waters of Washington and along central California (Dorsey *et al.* 1990). Minke whales are observed in Alaska's nearshore waters during the summer months (National Park Service (NPS) 2018). Minke whales are usually sighted individually or in small groups of 2–3, but there are reports of loose aggregations of hundreds of animals (NMFS 2018d). Minke whales are rare in the action area, but they could be encountered. During the construction of the first Icy Strait cruise ship berth, a single minke was observed during the 135-day monitoring period (June 2015 through January 2016) (BergerABAM 2016). During Berth II construction there was also only one reported sighting of a minke whale throughout the duration of monitoring (June 2019–October 2019; SolsticeAK 2020).

No abundance estimates have been made for the number of minke whales in the entire North Pacific. However, some information is available on the numbers of minke whales in some areas of Alaska. Line-transect surveys were conducted in shelf and nearshore waters (within 30–45 nautical miles of land) in 2001–2003 from the Kenai Fjords in the Gulf of Alaska to the central Aleutian Islands. Minke whale abundance was estimated to be 1,233 (CV = 0.34) for this area (Zerbini *et al.,* 2006). This estimate has also not been corrected for animals missed on the trackline. The majority of the sightings were in the Aleutian Islands, rather than in the Gulf of Alaska, and in water shallower than 200 m. So few minke whales were seen during three offshore Gulf of Alaska surveys for cetaceans in 2009, 2013, and 2015 that a population estimate for this species in this area could not be determined (Rone *et al.,* 2017).

Humpback Whale

The humpback whale is distributed worldwide in all ocean basins and a broad geographical range from tropical to temperate waters in the Northern Hemisphere and from tropical to near-ice-edge waters in the Southern Hemisphere. The humpback whales that forage throughout British Colombia and Southeast Alaska undertake seasonal migrations from their tropical calving and breeding grounds in winter to their high-latitude feeding grounds in summer. They may be seen at any time of year in Alaska, but most animals winter in temperate or tropical waters near Hawaii. In the spring, the animals migrate back to Alaska where food is abundant. The Central North Pacific stock of humpback whales are found in the waters of Southeast Alaska and consist of two distinct population segments (DPSs) listed under the ESA, the Hawaii DPS and the Mexico DPS.

Within Southeast Alaska, humpback whales are found throughout all major waterways and in a variety of habitats, including open-ocean entrances, open-strait environments, near-shore waters, area with strong tidal currents, and secluded bays and inlets. They tend to concentrate in several areas, including northern Southeast Alaska. Patterns of occurrence likely follow the spatial and temporal changes in prey abundance and distribution with humpback whales adjusting their foraging locations to areas of high prey density (Clapham 2000).

Humpback whales may be found in and around Chichagof Island, Icy Strait, and Port Frederick Inlet at any given time. While many humpback whales migrate to tropical calving and breeding grounds in winter, they have been observed in Southeast Alaska in all months of the year (Bettridge *et al.,* 2015). Diet for humpback whales in the Glacier Bay/Icy Strait area mainly consists of small schooling fish (capelin, juvenile walleye pollock, sand lance, and Pacific herring) rather than *euphausiids* (krill). They migrate to the northern reaches of Southeast Alaska (Glacier Bay) during spring and early summer following these fish and then move south towards Stephens Passage in early fall to feed on krill, passing the project area on the way (Krieger and Wing 1986). Over 32 years of humpback whale monitoring in the Glacier Bay/Icy Strait area reveals a substantial decline in population since 2014; a total of 164 individual whales were documented in 2016 during surveys conducted from June-August, making it the lowest count since 2008 (Neilson *et al.,* 2017).

During construction of the first Icy Strait cruise ship berth from June 2015 through January 2016, humpback whales were observed in the action area on 84 of the 135 days of monitoring; most often in September and October. Up to 18 humpback sightings were reported on a single day (October 2, 2015), and a total of 226 Level B harassments were recorded during project construction (June 2015 through January 2016) (BergerABAM 2016). Additionally, during construction of Icy Strait cruise ship Berth II in 2019, humpback whales were observed in the action area on 45 of the 51 days of monitoring; most often in July and September. Up to 24 humpback sightings were reported on a single day (July 30, 2019) during project construction (SolsticeAK 2020). In the project vicinity, humpback whales typically occur in groups of 1–2 animals, with an estimated maximum group size of 8 animals.

On October 9, 2019, a proposed rule to designate critical habitat for humpback whales was published in the **Federal Register** (84 FR 54354). Proposed critical habitat for Mexico DPS humpback whales was divided into ten units and assigned a conservation rating based upon available data for the unit. Unit 10 encompasses Southeast Alaska, including Port Frederick and Icy Strait. The area is of medium conservation importance on a scale from very low to very high.

Gray Whale

Gray whales are found exclusively in the North Pacific Ocean. The Eastern North Pacific stock of gray whales inhabit the Chukchi, Beaufort, and Bering Seas in northern Alaska in the summer and fall and California and Mexico in the winter months, with a migration route along the coastal waters of Southeast Alaska. Gray whales have also been observed feeding in waters off Southeast Alaska during the summer (NMFS 2018e).

The migration pattern of gray whales appears to follow a route along the western coast of Southeast Alaska, traveling northward from British Columbia through Hecate Strait and Dixon Entrance, passing the west coast of Chichagof Island from late March to May (Jones *et al.* 1984, Ford *et al.* 2013). Since the project area is on the east coast of Chichagof Island it is less likely there will be gray whales sighted during project construction; however, the possibility exists.

During the 2016 construction of the first cruise ship terminal at Icy Strait Point and 2019 construction of cruise ship Berth II, no gray whales were seen monitoring periods (BergerABAM 2016; SolsticeAK 2020).

Killer Whale

Killer whales have been observed in all oceans and seas of the world, but the highest densities occur in colder and more productive waters found at high latitudes. Killer whales are found throughout the North Pacific and occur along the entire Alaska coast, in British Columbia and Washington inland waterways, and along the outer coasts of Washington, Oregon, and California (NMFS 2018f).

The Alaska Resident stock occurs from Southeast Alaska to the Aleutian Islands and Bering Sea. The Northern Resident stock occurs from Washington State through part of Southeast Alaska; and the West Coast Transient stock occurs from California through Southeast Alaska (Muto *et al.,* 2018) and are thought to occur frequently in Southeast Alaska (Straley 2017).

Transient killer whales can pass through the waters surrounding Chichagof Island, in Icy Strait and Glacier Bay, feeding on marine mammals. Because of their transient nature, it is difficult to predict when they will be present in the area. Whales from the Alaska Resident stock and the Northern Resident stock are thought to primarily feed on fish. Like the transient killer whales, they can pass through Icy Strait at any given time (North Gulf Oceanic Society 2018).

Killer whales were observed on 11 days during construction of the first Icy Strait cruise ship berth during the135-day monitoring period (June 2015 through January 2016). Killer whales were observed a few times a month. Usually a singular animal was observed, but a group containing 8 individuals was seen in the action area on one occasion, for a total of 24 animals observed during in-water work (BergerABAM 2016). During construction of the second Icy Strait cruise ship Berth II in 2019 (51 days), killer whales were observed on 8 days. Usually a single animal or pairs were observed, but a group containing 5 individuals was seen in the action area on one occasion. A total of 20 animals observed during in-water work on Berth II (SolsticeAK 2020).

Pacific White-Sided Dolphin

Pacific white-sided dolphins are a pelagic species. They are found throughout the temperate North Pacific Ocean, north of the coasts of Japan and Baja California, Mexico (Muto *et al.,* 2018). They are most common between the latitudes of 38° North and 47° North (from California to Washington). The distribution and abundance of Pacific white-sided dolphins may be affected by large-scale oceanographic occurrences, such as El Niño, and by underwater acoustic deterrent devices (NPS 2018a).

No Pacific white-sided dolphins were observed during construction of the first cruise ship berth during the135-day monitoring period (June 2015 through January 2016) (BergerABAM 2016). However, a pod of two Pacific white-sided dolphins were observed during construction of the second cruise ship Berth II (June 2019 through October 2019) (SolsticeAK 2020). They are rare in the action area, likely because they are pelagic and prefer more open water habitats than are found in Icy Strait and Port Frederick Inlet. Pacific white-sided dolphins have been observed in Alaska waters in groups ranging from 20 to 164 animals, with the sighting of 164 animals occurring in Southeast Alaska near Dixon Entrance (Muto *et al.,* 2018).

Dall's Porpoise

Dall's porpoises are widely distributed across the entire North Pacific Ocean. They show some migration patterns, inshore and offshore and north and south, based on morphology and type, geography, and seasonality (Muto *et al.,* 2018). They are common in most of the larger, deeper channels in Southeast Alaska and are rare in most narrow waterways, especially those that are relatively shallow and/or with no outlets (Jefferson *et al.,* 2019). In Southeast Alaska, abundance varies with season.

Jefferson *et al.* (2019) recently published a report with survey data spanning from 1991 to 2012 that studied Dall's porpoise density and abundance in Southeast Alaska. They found Dall's porpoise were most abundant in spring, observed with lower numbers in summer, and lowest in fall. Surveys found Dall's porpoise to be common in Icy Strait and sporadic with very low densities in Port Frederick (Jefferson *et al.,* 2019). During a 16-year survey of cetaceans in Southeast Alaska, Dall's porpoises were commonly observed during spring, summer, and fall in the nearshore waters of Icy Strait (Dahlheim *et al.,* 2009). Dall's porpoises were observed on 2 days during the 135-day monitoring period (June 2015 through January 2016) of the construction of the first cruise ship berth (BergerABAM 2016). Both were single individuals transiting within the waters of Port Frederick in the vicinity of Halibut Island. During the second cruise ship Berth II construction a total of 21 Dall's porpoises were observed on 8 days (SolsticeAK 2020). Dall's porpoises generally occur in groups from 2–12 individuals (NMFS 2018g).

Harbor Porpoise

In the eastern North Pacific Ocean, the Bering Sea and Gulf of Alaska harbor porpoise stocks range from Point Barrow, along the Alaska coast, and the west coast of North America to Point Conception, California. The Southeast Alaska stock ranges from Cape Suckling, Alaska to the northern border of British Columbia. Within the inland waters of Southeast Alaska, harbor porpoises' distribution is clustered with greatest densities observed in the Glacier Bay/Icy Strait region and near Zarembo and Wrangell Islands and the adjacent waters of Sumner Strait (Dahlheim *et al.,* 2015). Harbor porpoises also were observed primarily between June and September during construction of the Hoonah Berth I cruise ship terminal project. Harbor porpoises were observed on 19 days during the 135-day monitoring period (June 2015 through January 2016) (BergerABAM 2016) and seen either singularly or in groups from two to four animals. During the test pile program conducted at the Berth II project site in May 2018, eight harbor porpoises where observed over a 7-hour period (SolsticeAK 2018).

There is no official stock abundance associated with the SARs for harbor porpoise. Both aerial and vessel based surveys have been conducted for this species. Aerial surveys of this stock were conducted in June and July 1997 and resulted in an observed abundance estimate of 3,766 harbor porpoise (Hobbs and Waite 2010) and the surveys included a subset of smaller bays and inlets. Correction factors for observer perception bias and porpoise availability at the surface were used to develop an estimated corrected abundance of 11,146 harbor porpoise in the coastal and inside waters of Southeast Alaska (Hobbs and Waite 2010). Vessel based spanning the 22-year study (1991–2012) found the relative abundance of harbor porpoise varied in the inland waters of Southeast Alaska. Abundance estimated in 1991–1993 (N = 1,076; percent CI = 910–1,272) was higher than the estimate obtained for 2006–2007 (N = 604; 95 percent CI = 468–780) but comparable to the estimate for 2010–2012 (N = 975; 95 percent CI = 857–1,109; Dahlheim *et al.,* 2015). These estimates assume the probability of detection directly on the trackline to be unity (g(0) = 1) because estimates of g(0) could not be computed for these surveys. Therefore, these abundance estimates may be biased low to an unknown degree. A range of possible g(0) values for harbor porpoise vessel surveys in other regions is 0.5–0.8 (Barlow 1988, Palka 1995), suggesting that as much as 50 percent of the porpoise can be missed, even by experienced observers.

Further, other vessel based survey data (2010–2012) for the inland waters of Southeast Alaska, calculated abundance estimates for the concentrations of harbor porpoise in the northern and southern regions of the inland waters (Dahlheim *et al.* 2015). The resulting abundance estimates are 398 harbor porpoise (CV = 0.12) in the northern inland waters (including Cross Sound, Icy Strait, Glacier Bay, Lynn

Canal, Stephens Passage, and Chatham Strait) and 577 harbor porpoise (CV = 0.14) in the southern inland waters (including Frederick Sound, Sumner Strait, Wrangell and Zarembo Islands, and Clarence Strait as far south as Ketchikan). Because these abundance estimates have not been corrected for g(0), these estimates are likely underestimates.

The vessel based surveys are not complete coverage of harbor porpoise habitat and not corrected for bias and likely underestimate the abundance. Whereas, the aerial survey in 1997, although outdated, had better coverage of the range and is likely to be more of an accurate representation of the stock abundance (11,146 harbor porpoise) in the coastal and inside waters of Southeast Alaska.

Harbor Seal

Harbor seals range from Baja California north along the west coasts of Washington, Oregon, California, British Columbia, and Southeast Alaska; west through the Gulf of Alaska, Prince William Sound, and the Aleutian Islands; and north in the Bering Sea to Cape Newenham and the Pribilof Islands. They haul out on rocks, reefs, beaches, and drifting glacial ice and feed in marine, estuarine, and occasionally fresh waters. Harbor seals are generally non-migratory and, with local movements associated with such factors as tide, weather, season, food availability and reproduction.

Distribution of the Glacier Bay/Icy Strait stock, the only stock considered in this application, ranges along the coast from Cape Fairweather and Glacier Bay south through Icy Strait to Tenakee Inlet on Chichagof Island (Muto *et al.,* 2018).

The Glacier Bay/Icy Strait stock of harbor seals are common residents of the action area and can occur on any given day in the area, although they tend to be more abundant during the fall months (Womble and Gende 2013). A total of 63 harbor seals were seen during 19 days of the 135-day monitoring period (June 2015 through January 2016) (BergerABAM 2016), while none were seen during the 2018 test pile program (SolsticeAK 2018). Harbor seals were primarily observed in summer and early fall (June to September). Harbor seals were seen singulary and in groups of two or more, but on one occasion, 22 individuals were observed hauled out on Halibut Rock, across Port Frederick approximately 2,414 m (1.5 miles) from the location of pile installation activity (BergerABAM 2016). In 2019, a total of 33 harbor seals were seen during the Berth II project (SolsticeAK 2020).

There are two known harbor seal haulouts within the project area. According to the AFSC list of harbor seal haulout locations, the closest listed haulout (id 1,349: Name CF39A) is located in Port Frederick, approximately 3,400 m west of the project area (AFSC 2018). The second haulout (id: 8; name: CE79A) is approximately 10,200 meters south of the project area (AFSC 2020).

Steller Sea Lion

Steller sea lions range along the North Pacific Rim from northern Japan to California, with centers of abundance in the Gulf of Alaska and Aleutian Islands (Loughlin *et al.,* 1984).

Of the two Steller sea lion populations in Alaska, the Eastern DPS includes sea lions born on rookeries from California north through Southeast Alaska and the Western DPS includes those animals born on rookeries from Prince William Sound westward, with an eastern boundary set at 144° W (NMFS 2018h). Both WDPS and EDPS Steller sea lions are considered in this application because the WDPS are common within the geographic area under consideration (north of Summer Strait) (Fritz *et al.,* 2013, NMFS 2013).

Steller sea lions are not known to migrate annually, but individuals may widely disperse outside of the breeding season (late-May to early-July), leading to intermixing of stocks (Jemison *et al.* 2013; Allen and Angliss 2015).

Steller sea lions are common in the inside waters of Southeast Alaska. They are residents of the project vicinity and are common year-round in the action area, moving their haulouts based on seasonal concentrations of prey from exposed rookeries nearer the open Pacific Ocean during the summer to more protected sites in the winter (Alaska Department of Fish & Game (ADF&G) 2018). During the construction of the existing Icy Strait cruise ship berth a total of 180 Steller sea lions were observed on 47 days of the 135 monitoring days, amounting to an average of 1.3 sightings per day (BergerABAM 2016). Steller sea lions were frequently observed in groups of two or more individuals, but lone individuals were also observed regularly (BergerABAM 2016). During a test pile program performed at the project location by the Hoonah Cruise Ship Dock Company in May 2018, a total of 15 Steller sea lions were seen over the course of 7 hours in one day (SolsticeAK 2018). During construction of Berth II, a total of 197 Steller sea lion sightings over 42 days in 2019 were reported, amounting to an average of 4.6 sightings per day (SolsticeAK2020). They can occur in groups of 1–10 animals, but may congregate in larger groups near rookeries and haulouts (NMFS 2018h). No documented rookeries or haulouts are near the project area.

Critical habitat has been defined in Southeast Alaska at major haulouts and major rookeries (50 CFR 226.202). The nearest rookery is on the White Sisters Islands near Sitka and the nearest major haulouts are at Benjamin Island, Cape Cross, and Graves Rocks. The White Sisters rookery is located on the west side of Chichagof Island, about 72 km southwest of the project area. Benjamin Island is about 60 km northeast of Hoonah. Cape Cross and Graves Rocks are both about 70 km west of Hoonah. Steller sea lions are known to haul out on land, docks, buoys, and navigational markers.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 3.

TABLE 3—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information. Nine marine mammal species (seven cetacean and two pinniped (one otariid and one phocid) species) have the reasonable potential to occur during the proposed activities. Please refer to Table 2. Of the cetacean species that may be present, three are classified as low-frequency cetaceans (*i.e.,* all mysticete species), two are classified as mid-frequency cetaceans (*i.e.,* all delphinid species), and two are classified as high-frequency cetaceans (*i.e.,* harbor porpoise and Dall's porpoise).

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat. The Estimated Take section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analysis and Determination section considers the content of this section, the Estimated Take section, and the Proposed Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

Acoustic effects on marine mammals during the specified activity can occur from vibratory and impact pile driving as well as during DTH of the piles. The effects of underwater noise from the City's proposed activities have the potential to result in Level B behavioral harassment of marine mammals in the vicinity of the action area.

Description of Sound Sources

This section contains a brief technical background on sound, on the characteristics of certain sound types, and on metrics used in this proposal inasmuch as the information is relevant to the specified activity and to a discussion of the potential effects of the specified activity on marine mammals found later in this document. For general information on sound and its interaction with the marine environment, please see, *e.g.,* Au and Hastings (2008); Richardson *et al.* (1995); Urick (1983).

Sound travels in waves, the basic components of which are frequency, wavelength, velocity, and amplitude. Frequency is the number of pressure waves that pass by a reference point per unit of time and is measured in hertz (Hz) or cycles per second. Wavelength is the distance between two peaks or corresponding points of a sound wave (length of one cycle). Higher frequency sounds have shorter wavelengths than lower frequency sounds, and typically attenuate (decrease) more rapidly, except in certain cases in shallower water. Amplitude is the height of the sound pressure wave or the ''loudness'' of a sound and is typically described using the relative unit of the decibel (dB). A sound pressure level (SPL) in dB is described as the ratio between a measured pressure and a reference pressure (for underwater sound, this is 1 microPascal (μPa)), and is a logarithmic unit that accounts for large variations in amplitude; therefore, a relatively small change in dB corresponds to large changes in sound pressure. The source level (SL) represents the SPL referenced at a distance of 1 m from the source (referenced to 1 μPa), while the received level is the SPL at the listener's position (referenced to 1 μPa).

Root mean square (rms) is the quadratic mean sound pressure over the duration of an impulse. Root mean square is calculated by squaring all of the sound amplitudes, averaging the squares, and then taking the square root of the average (Urick, 1983). Root mean square accounts for both positive and negative values; squaring the pressures makes all values positive so that they may be accounted for in the summation of pressure levels (Hastings and Popper, 2005). This measurement is often used in the context of discussing behavioral effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units than by peak pressures.

Sound exposure level (SEL; represented as dB re 1 μPa^2-s) represents the total energy in a stated frequency band over a stated time interval or event, and considers both intensity and duration of exposure. The per-pulse SEL is calculated over the time window containing the entire pulse (*i.e.,* 100 percent of the acoustic energy). SEL is a cumulative metric; it can be accumulated over a single pulse, or calculated over periods containing multiple pulses. Cumulative SEL represents the total energy accumulated by a receiver over a defined time window or during an event. Peak sound pressure (also referred to as zero-to-peak sound pressure or 0-pk) is the maximum instantaneous sound pressure measurable in the water at a specified distance from the source, and is represented in the same units as the rms sound pressure.

When underwater objects vibrate or activity occurs, sound-pressure waves are created. These waves alternately compress and decompress the water as the sound wave travels. Underwater sound waves radiate in a manner similar to ripples on the surface of a pond and may be either directed in a beam or beams or may radiate in all directions

(omnidirectional sources), as is the case for sound produced by the pile driving activity considered here. The compressions and decompressions associated with sound waves are detected as changes in pressure by aquatic life and man-made sound receptors such as hydrophones.

Even in the absence of sound from the specified activity, the underwater environment is typically loud due to ambient sound, which is defined as environmental background sound levels lacking a single source or point (Richardson *et al.,* 1995). The sound level of a region is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.,* wind and waves, earthquakes, ice, atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic (*e.g.,* vessels, dredging, construction) sound. A number of sources contribute to ambient sound, including wind and waves, which are a main source of naturally occurring ambient sound for frequencies between 200 Hz and 50 kilohertz (kHz) (Mitson, 1995). In general, ambient sound levels tend to increase with increasing wind speed and wave height. Precipitation can become an important component of total sound at frequencies above 500 Hz, and possibly down to 100 Hz during quiet times. Marine mammals can contribute significantly to ambient sound levels, as can some fish and snapping shrimp. The frequency band for biological contributions is from approximately 12 Hz to over 100 kHz. Sources of ambient sound related to human activity include transportation (surface vessels), dredging and construction, oil and gas drilling and production, geophysical surveys, sonar, and explosions. Vessel noise typically dominates the total ambient sound for frequencies between 20 and 300 Hz. In general, the frequencies of anthropogenic sounds are below 1 kHz and, if higher frequency sound levels are created, they attenuate rapidly.

The sum of the various natural and anthropogenic sound sources that comprise ambient sound at any given location and time depends not only on the source levels (as determined by current weather conditions and levels of biological and human activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 decibels (dB) from day to day (Richardson *et al.,* 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals.

Sounds are often considered to fall into one of two general types: Pulsed and non-pulsed (defined in the following). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.,* Ward, 1997 in Southall *et al.,* 2007). Please see Southall *et al.* (2007) for an in-depth discussion of these concepts. The distinction between these two sound types is not always obvious, as certain signals share properties of both pulsed and non-pulsed sounds. A signal near a source could be categorized as a pulse, but due to propagation effects as it moves farther from the source, the signal duration becomes longer (*e.g.,* Greene and Richardson, 1988).

Pulsed sound sources (*e.g.,* airguns, explosions, gunshots, sonic booms, impact pile driving) produce signals that are brief (typically considered to be less than one second), broadband, atonal transients (ANSI, 1986, 2005; Harris, 1998; NIOSH, 1998; ISO, 2003) and occur either as isolated events or repeated in some succession. Pulsed sounds are all characterized by a relatively rapid rise from ambient pressure to a maximal pressure value followed by a rapid decay period that may include a period of diminishing, oscillating maximal and minimal pressures, and generally have an increased capacity to induce physical injury as compared with sounds that lack these features.

Non-pulsed sounds can be tonal, narrowband, or broadband, brief or prolonged, and may be either continuous or intermittent (ANSI, 1995; NIOSH, 1998). Some of these non-pulsed sounds can be transient signals of short duration but without the essential properties of pulses (*e.g.,* rapid rise time). Examples of non-pulsed sounds include those produced by vessels, aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems. The duration of such sounds, as received at a distance, can be greatly extended in a highly reverberant environment.

The impulsive sound generated by impact hammers is characterized by rapid rise times and high peak levels. Vibratory hammers produce non-impulsive, continuous noise at levels significantly lower than those produced by impact hammers. Rise time is slower, reducing the probability and severity of injury, and sound energy is distributed over a greater amount of time (*e.g.,* Nedwell and Edwards, 2002; Carlson *et al.,* 2005). DTH is believed to produce sound with both impulsive and continuous characteristics (*e.g.,* Denes *et al.,* 2016).

Acoustic Effects on Marine Mammals

We previously provided general background information on marine mammal hearing (see Description of Marine Mammals in the Area of Specified Activities). Here, we discuss the potential effects of sound on marine mammals.

Note that, in the following discussion, we refer in many cases to a review article concerning studies of noise-induced hearing loss conducted from 1996–2015 (*i.e.,* Finneran, 2015). For study-specific citations, please see that work. Anthropogenic sounds cover a broad range of frequencies and sound levels and can have a range of highly variable impacts on marine life, from none or minor to potentially severe responses, depending on received levels, duration of exposure, behavioral context, and various other factors. The potential effects of underwater sound from active acoustic sources can potentially result in one or more of the following: Temporary or permanent hearing impairment, non-auditory physical or physiological effects, behavioral disturbance, stress, and masking (Richardson *et al.,* 1995; Gordon *et al.,* 2004; Nowacek *et al.,* 2007; Southall *et al.,* 2007; Götz *et al.,* 2009). The degree of effect is intrinsically related to the signal characteristics, received level, distance from the source, and duration of the sound exposure. In general, sudden, high level sounds can cause hearing loss, as can longer exposures to lower level sounds. Temporary or permanent loss of hearing will occur almost exclusively for noise within an animal's hearing range. We first describe specific manifestations of acoustic effects before providing discussion specific to pile driving and removal activities.

Richardson *et al.* (1995) described zones of increasing intensity of effect that might be expected to occur, in relation to distance from a source and assuming that the signal is within an animal's hearing range. First is the area within which the acoustic signal would

be audible (potentially perceived) to the animal but not strong enough to elicit any overt behavioral or physiological response. The next zone corresponds with the area where the signal is audible to the animal and of sufficient intensity to elicit behavioral or physiological responsiveness. Third is a zone within which, for signals of high intensity, the received level is sufficient to potentially cause discomfort or tissue damage to auditory or other systems. Overlaying these zones to a certain extent is the area within which masking (*i.e.,* when a sound interferes with or masks the ability of an animal to detect a signal of interest that is above the absolute hearing threshold) may occur; the masking zone may be highly variable in size.

We describe the more severe effects (*i.e.,* certain non-auditory physical or physiological effects) only briefly as we do not expect that there is a reasonable likelihood that pile driving may result in such effects (see below for further discussion). Potential effects from explosive impulsive sound sources can range in severity from effects such as behavioral disturbance or tactile perception to physical discomfort, slight injury of the internal organs and the auditory system, or mortality (Yelverton *et al.,* 1973). Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to high level underwater sound or as a secondary effect of extreme behavioral reactions (*e.g.,* change in dive profile as a result of an avoidance reaction) caused by exposure to sound include neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage (Cox *et al.,* 2006; Southall *et al.,* 2007; Zimmer and Tyack, 2007; Tal *et al.,* 2015). The construction activities considered here do not involve the use of devices such as explosives or mid-frequency tactical sonar that are associated with these types of effects.

Threshold Shift—Marine mammals exposed to high-intensity sound, or to lower-intensity sound for prolonged periods, can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Finneran, 2015). TS can be permanent (permanent threshold shift (PTS)), in which case the loss of hearing sensitivity is not fully recoverable, or temporary (TTS), in which case the animal's hearing threshold would recover over time (Southall *et al.,* 2007). Repeated sound exposure that leads to TTS could cause PTS. In severe cases of PTS, there can be total or partial deafness, while in most cases the animal has an impaired ability to hear sounds in specific frequency ranges (Kryter, 1985).

When PTS occurs, there is physical damage to the sound receptors in the ear (*i.e.,* tissue damage), whereas TTS represents primarily tissue fatigue and is reversible (Southall *et al.,* 2007). In addition, other investigators have suggested that TTS is within the normal bounds of physiological variability and tolerance and does not represent physical injury (*e.g.,* Ward, 1997). Therefore, NMFS does not consider TTS to constitute auditory injury.

Relationships between TTS and PTS thresholds have not been studied in marine mammals, and there is no PTS data for cetaceans, but such relationships are assumed to be similar to those in humans and other terrestrial mammals. PTS typically occurs at exposure levels at least several decibels above (a 40-dB threshold shift approximates PTS onset; *e.g.,* Kryter *et al.,* 1966; Miller, 1974) that inducing mild TTS (a 6-dB threshold shift approximates TTS onset; *e.g.,* Southall *et al.* 2007). Based on data from terrestrial mammals, a precautionary assumption is that the PTS thresholds for impulse sounds (such as impact pile driving pulses as received close to the source) are at least 6 dB higher than the TTS threshold on a peak-pressure basis and PTS cumulative sound exposure level thresholds are 15 to 20 dB higher than TTS cumulative sound exposure level thresholds (Southall *et al.,* 2007). Given the higher level of sound or longer exposure duration necessary to cause PTS as compared with TTS, it is considerably less likely that PTS could occur.

TTS is the mildest form of hearing impairment that can occur during exposure to sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises, and a sound must be at a higher level in order to be heard. In terrestrial and marine mammals, TTS can last from minutes or hours to days (in cases of strong TTS). In many cases, hearing sensitivity recovers rapidly after exposure to the sound ends. Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals.

Marine mammal hearing plays a critical role in communication with conspecifics, and interpretation of environmental cues for purposes such as predator avoidance and prey capture. Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious. For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that occurs during a time where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin (*Tursiops truncatus*), beluga whale (*Delphinapterus leucas*), harbor porpoise, and Yangtze finless porpoise (*Neophocoena asiaeorientalis*)) and three species of pinnipeds (northern elephant seal, harbor seal, and California sea lion) exposed to a limited number of sound sources (*i.e.,* mostly tones and octave-band noise) in laboratory settings (Finneran, 2015). TTS was not observed in trained spotted (*Phoca largha*) and ringed (*Pusa hispida*) seals exposed to impulsive noise at levels matching previous predictions of TTS onset (Reichmuth *et al.,* 2016). In general, harbor seals and harbor porpoises have a lower TTS onset than other measured pinniped or cetacean species (Finneran, 2015). Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species. There are no data available on noise-induced hearing loss for mysticetes. For summaries of data on TTS in marine mammals or for further discussion of TTS onset thresholds, please see Southall *et al.* (2007), Finneran and Jenkins (2012), Finneran (2015), and NMFS (2018).

Behavioral Effects—Behavioral disturbance may include a variety of effects, including subtle changes in behavior (*e.g.,* minor or brief avoidance of an area or changes in vocalizations), more conspicuous changes in similar behavioral activities, and more sustained and/or potentially severe reactions, such as displacement from or abandonment of high-quality habitat. Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.,* Richardson *et al.,* 1995; Wartzok *et al.,* 2003; Southall *et al.,* 2007; Weilgart, 2007; Archer *et al.,* 2010). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors

(Ellison *et al.,* 2012), and can vary depending on characteristics associated with the sound source (*e.g.,* whether it is moving or stationary, number of sources, distance from the source). Please see Appendices B–C of Southall *et al.* (2007) for a review of studies involving marine mammal behavioral responses to sound.

Habituation can occur when an animal's response to a stimulus wanes with repeated exposure, usually in the absence of unpleasant associated events (Wartzok *et al.,* 2003). Animals are most likely to habituate to sounds that are predictable and unvarying. It is important to note that habituation is appropriately considered as a ''progressive reduction in response to stimuli that are perceived as neither aversive nor beneficial,'' rather than as, more generally, moderation in response to human disturbance (Bejder *et al.,* 2009). The opposite process is sensitization, when an unpleasant experience leads to subsequent responses, often in the form of avoidance, at a lower level of exposure. As noted, behavioral state may affect the type of response. For example, animals that are resting may show greater behavioral change in response to disturbing sound levels than animals that are highly motivated to remain in an area for feeding (Richardson *et al.,* 1995; NRC, 2003; Wartzok *et al.,* 2003). Controlled experiments with captive marine mammals have showed pronounced behavioral reactions, including avoidance of loud sound sources (Ridgway *et al.,* 1997; Finneran *et al.,* 2003). Observed responses of wild marine mammals to loud pulsed sound sources (typically airguns or acoustic harassment devices) have been varied but often consist of avoidance behavior or other behavioral changes suggesting discomfort (Morton and Symonds, 2002; see also Richardson *et al.,* 1995; Nowacek *et al.,* 2007). However, many delphinids approach low-frequency airgun source vessels with no apparent discomfort or obvious behavioral change (*e.g.,* Barkaszi *et al.,* 2012), indicating the importance of frequency output in relation to the species' hearing sensitivity.

Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, l*et al*one the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder, 2007; Weilgart, 2007; NRC, 2005). However, there are broad categories of potential response, which we describe in greater detail here, that include alteration of dive behavior, alteration of foraging behavior, effects to breathing, interference with or alteration of vocalization, avoidance, and flight.

Changes in dive behavior can vary widely and may consist of increased or decreased dive times and surface intervals as well as changes in the rates of ascent and descent during a dive (*e.g.,* Frankel and Clark, 2000; Costa *et al.,* 2003; Ng and Leung, 2003; Nowacek *et al.;* 2004; Goldbogen *et al.,* 2013a, 2013b). Variations in dive behavior may reflect interruptions in biologically significant activities (*e.g.,* foraging) or they may be of little biological significance. The impact of an alteration to dive behavior resulting from an acoustic exposure depends on what the animal is doing at the time of the exposure and the type and magnitude of the response.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.,* bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.,* Croll *et al.,* 2001; Nowacek *et al.;* 2004; Madsen *et al.,* 2006; Yazvenko *et al.,* 2007). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal.

Variations in respiration naturally vary with different behaviors and alterations to breathing rate as a function of acoustic exposure can be expected to co-occur with other behavioral reactions, such as a flight response or an alteration in diving. However, respiration rates in and of themselves may be representative of annoyance or an acute stress response. Various studies have shown that respiration rates may either be unaffected or could increase, depending on the species and signal characteristics, again highlighting the importance in understanding species differences in the tolerance of underwater noise when determining the potential for impacts resulting from anthropogenic sound exposure (*e.g.,* Kastelein *et al.,* 2001, 2005, 2006; Gailey *et al.,* 2007; Gailey *et al.,* 2016).

Marine mammals vocalize for different purposes and across multiple modes, such as whistling, echolocation click production, calling, and singing. Changes in vocalization behavior in response to anthropogenic noise can occur for any of these modes and may result from a need to compete with an increase in background noise or may reflect increased vigilance or a startle response. For example, in the presence of potentially masking signals, humpback whales and killer whales have been observed to increase the length of their songs (Miller *et al.,* 2000; Fristrup *et al.,* 2003; Foote *et al.,* 2004), while right whales have been observed to shift the frequency content of their calls upward while reducing the rate of calling in areas of increased anthropogenic noise (Parks *et al.,* 2007). In some cases, animals may cease sound production during production of aversive signals (Bowles *et al.,* 1994).

Avoidance is the displacement of an individual from an area or migration path as a result of the presence of a sound or other stressors, and is one of the most obvious manifestations of disturbance in marine mammals (Richardson *et al.,* 1995). For example, gray whales are known to change direction—deflecting from customary migratory paths—in order to avoid noise from airgun surveys (Malme *et al.,* 1984). Avoidance may be short-term, with animals returning to the area once the noise has ceased (*e.g.,* Bowles *et al.,* 1994; Goold, 1996; Stone *et al.,* 2000; Morton and Symonds, 2002; Gailey *et al.,* 2007). Longer-term displacement is possible, however, which may lead to changes in abundance or distribution patterns of the affected species in the affected region if habituation to the presence of the sound does not occur (*e.g.,* Blackwell *et al.,* 2004; Bejder *et al.,* 2006; Teilmann *et al.,* 2006).

A flight response is a dramatic change in normal movement to a directed and rapid movement away from the perceived location of a sound source. The flight response differs from other avoidance responses in the intensity of the response (*e.g.,* directed movement, rate of travel). Relatively little information on flight responses of marine mammals to anthropogenic signals exist, although observations of flight responses to the presence of

predators have occurred (Connor and Heithaus, 1996). The result of a flight response could range from brief, temporary exertion and displacement from the area where the signal provokes flight to, in extreme cases, marine mammal strandings (Evans and England, 2001). However, it should be noted that response to a perceived predator does not necessarily invoke flight (Ford and Reeves, 2008), and whether individuals are solitary or in groups may influence the response.

Behavioral disturbance can also impact marine mammals in more subtle ways. Increased vigilance may result in costs related to diversion of focus and attention (*i.e.,* when a response consists of increased vigilance, it may come at the cost of decreased attention to other critical behaviors such as foraging or resting). These effects have generally not been demonstrated for marine mammals, but studies involving fish and terrestrial animals have shown that increased vigilance may substantially reduce feeding rates (*e.g.,* Beauchamp and Livoreil, 1997; Fritz *et al.,* 2002; Purser and Radford, 2011). In addition, chronic disturbance can cause population declines through reduction of fitness (*e.g.,* decline in body condition) and subsequent reduction in reproductive success, survival, or both (*e.g.,* Harrington and Veitch, 1992; Daan *et al.,* 1996; Bradshaw *et al.,* 1998). However, Ridgway *et al.* (2006) reported that increased vigilance in bottlenose dolphins exposed to sound over a five-day period did not cause any sleep deprivation or stress effects.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hour cycle). Disruption of such functions resulting from reactions to stressors such as sound exposure are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.,* 2007). Note that there is a difference between multi-day substantive behavioral reactions and multi-day anthropogenic activities. For example, just because an activity lasts for multiple days does not necessarily mean that individual animals are either exposed to activity-related stressors for multiple days or, further, exposed in a manner resulting in sustained multi-day substantive behavioral responses.

Stress Responses—An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (*e.g.,* Seyle, 1950; Moberg, 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness.

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction, altered metabolism, reduced immune competence, and behavioral disturbance (*e.g.,* Moberg, 1987; Blecha, 2000). Increases in the circulation of glucocorticoids are also equated with stress (Romano *et al.,* 2004).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and ''distress'' is the cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other functions. This state of distress will last until the animal replenishes its energetic reserves sufficient to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well-studied through controlled experiments and for both laboratory and free-ranging animals (*e.g.,* Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker, 2000; Romano *et al.,* 2002b) and, more rarely, studied in wild populations (*e.g.,* Romano *et al.,* 2002a). For example, Rolland *et al.* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as ''distress.'' In addition, any animal experiencing TTS would likely also experience stress responses (NRC, 2003).

Auditory Masking—Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.,* 1995; Erbe *et al.,* 2016). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.,* snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.,* shipping, sonar, seismic exploration) in origin. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (*e.g.,* signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (*e.g.,* sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions.

Under certain circumstances, marine mammals experiencing significant masking could also be impaired from maximizing their performance fitness in survival and reproduction. Therefore, when the coincident (masking) sound is man-made, it may be considered harassment when disrupting or altering critical behaviors. It is important to distinguish TTS and PTS, which persist after the sound exposure, from masking, which occurs during the sound exposure. Because masking (without resulting in TS) is not associated with abnormal physiological function, it is not considered a physiological effect, but rather a potential behavioral effect.

The frequency range of the potentially masking sound is important in determining any potential behavioral impacts. For example, low-frequency signals may have less effect on high-frequency echolocation sounds produced by odontocetes but are more likely to affect detection of mysticete communication calls and other

potentially important natural sounds such as those produced by surf and some prey species. The masking of communication signals by anthropogenic noise may be considered as a reduction in the communication space of animals (*e.g.,* Clark *et al.,* 2009) and may result in energetic or other costs as animals change their vocalization behavior (*e.g.,* Miller *et al.,* 2000; Foote *et al.,* 2004; Parks *et al.,* 2007; Di Iorio and Clark, 2009; Holt *et al.,* 2009). Masking can be reduced in situations where the signal and noise come from different directions (Richardson *et al.,* 1995), through amplitude modulation of the signal, or through other compensatory behaviors (Houser and Moore, 2014). Masking can be tested directly in captive species (*e.g.,* Erbe, 2008), but in wild populations it must be either modeled or inferred from evidence of masking compensation. There are few studies addressing real-world masking sounds likely to be experienced by marine mammals in the wild (*e.g.,* Branstetter *et al.,* 2013).

Masking affects both senders and receivers of acoustic signals and can potentially have long-term chronic effects on marine mammals at the population level as well as at the individual level. Low-frequency ambient sound levels have increased by as much as 20 dB (more than three times in terms of SPL) in the world's ocean from pre-industrial periods, with most of the increase from distant commercial shipping (Hildebrand, 2009). All anthropogenic sound sources, but especially chronic and lower-frequency signals (*e.g.,* from vessel traffic), contribute to elevated ambient sound levels, thus intensifying masking.

Potential Effects of the City's Activity—As described previously, the City proposes to conduct pile driving, including impact and vibratory driving (inclusive of DTH). The effects of pile driving on marine mammals are dependent on several factors, including the size, type, and depth of the animal; the depth, intensity, and duration of the pile driving sound; the depth of the water column; the substrate of the habitat; the standoff distance between the pile and the animal; and the sound propagation properties of the environment. With both types, it is likely that the pile driving could result in temporary, short term changes in an animal's typical behavioral patterns and/or avoidance of the affected area. These behavioral changes may include (Richardson *et al.,* 1995): Changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where sound sources are located; and/or flight responses.

The biological significance of many of these behavioral disturbances is difficult to predict, especially if the detected disturbances appear minor. However, the consequences of behavioral modification could be expected to be biologically significant if the change affects growth, survival, or reproduction. Significant behavioral modifications that could lead to effects on growth, survival, or reproduction, such as drastic changes in diving/surfacing patterns or significant habitat abandonment are extremely unlikely in this area (*i.e.,* shallow waters in modified industrial areas).

Whether impact or vibratory driving, sound sources would be active for relatively short durations, with relation to potential for masking. The frequencies output by pile driving activity are lower than those used by most species expected to be regularly present for communication or foraging. We expect insignificant impacts from masking, and any masking event that could possibly rise to Level B harassment under the MMPA would occur concurrently within the zones of behavioral harassment already estimated for vibratory and impact pile driving, and which have already been taken into account in the exposure analysis.

Anticipated Effects on Marine Mammal Habitat

The proposed activities would not result in permanent impacts to habitats used directly by marine mammals. The project location is within an area that is currently used by large shipping vessels and in between two existing, heavily-traveled docks, and within an active marine commercial and tourist area.

The proposed activities may have potential short-term impacts to food sources such as forage fish. The proposed activities could also affect acoustic habitat (see masking discussion above), but meaningful impacts are unlikely. There are no known foraging hotspots, or other ocean bottom structures of significant biological importance to marine mammals present in the marine waters in the vicinity of the project area. Therefore, the main impact issue associated with the proposed activity would be temporarily elevated sound levels and the associated direct effects on marine mammals, as discussed previously. The most likely impact to marine mammal habitat occurs from pile driving effects on likely marine mammal prey (*i.e.,* fish) near where the piles are installed. Impacts to the immediate substrate during installation and removal of piles are anticipated, but these would be limited to minor, temporary suspension of sediments, which could impact water quality and visibility for a short amount of time, but which would not be expected to have any effects on individual marine mammals. Impacts to substrate are therefore not discussed further.

Effects to Prey—Sound may affect marine mammals through impacts on the abundance, behavior, or distribution of prey species (*e.g.,* crustaceans, cephalopods, fish, zooplankton). Marine mammal prey varies by species, season, and location and, for some, is not well documented. Here, we describe studies regarding the effects of noise on known marine mammal prey.

Fish utilize the soundscape and components of sound in their environment to perform important functions such as foraging, predator avoidance, mating, and spawning (*e.g.,* Zelick *et al.,* 1999; Fay, 2009). Depending on their hearing anatomy and peripheral sensory structures, which vary among species, fishes hear sounds using pressure and particle motion sensitivity capabilities and detect the motion of surrounding water (Fay *et al.,* 2008). The potential effects of noise on fishes depends on the overlapping frequency range, distance from the sound source, water depth of exposure, and species-specific hearing sensitivity, anatomy, and physiology. Key impacts to fishes may include behavioral responses, hearing damage, barotrauma (pressure-related injuries), and mortality.

Fish react to sounds which are especially strong and/or intermittent low-frequency sounds, and behavioral responses such as flight or avoidance are the most likely effects. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. The reaction of fish to noise depends on the physiological state of the fish, past exposures, motivation (*e.g.,* feeding, spawning, migration), and other environmental factors. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving on fish, although several are based on studies in support of large, multiyear bridge construction projects (*e.g.,* Scholik and Yan, 2001, 2002; Popper and Hastings, 2009).

Several studies have demonstrated that impulse sounds might affect the distribution and behavior of some fishes, potentially impacting foraging opportunities or increasing energetic costs (*e.g.,* Fewtrell and McCauley, 2012; Pearson *et al.,* 1992; Skalski *et al.,* 1992; Santulli *et al.,* 1999; Paxton *et al.,* 2017). However, some studies have shown no or slight reaction to impulse sounds (*e.g.,* Pena *et al.,* 2013; Wardle *et al.,* 2001; Jorgenson and Gyselman, 2009; Cott *et al.,* 2012). More commonly, though, the impacts of noise on fish are temporary.

SPLs of sufficient strength have been known to cause injury to fish and fish mortality. However, in most fish species, hair cells in the ear continuously regenerate and loss of auditory function likely is restored when damaged cells are replaced with new cells. Halvorsen *et al.* (2012a) showed that a TTS of 4–6 dB was recoverable within 24 hours for one species. Impacts would be most severe when the individual fish is close to the source and when the duration of exposure is long. Injury caused by barotrauma can range from slight to severe and can cause death, and is most likely for fish with swim bladders. Barotrauma injuries have been documented during controlled exposure to impact pile driving (Halvorsen *et al.,* 2012b; Casper *et al.,* 2013).

The action area supports marine habitat for prey species including large populations of anadromous fish including Pacific salmon (five species), Cutthroat (*Oncorhynchus clarkia*) and Steelhead Trout (*O. mykiss irideus*), and Dolly Varden and other species of marine fish such as halibut, Northern Rock Sole (*Lepidopsetta polyxystra*), sculpins, Pacific Cod (*Gadus macrocephalus*), herring, and Eulachon (*Thaleichthys pacificus*) (NMFS 2020i). The most likely impact to fish from pile driving activities at the project areas would be temporary behavioral avoidance of the area. The duration of fish avoidance of an area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. In general, impacts to marine mammal prey species are expected to be minor and temporary due to the expected short daily duration of individual pile driving events and the relatively small areas being affected.

The following essential fish habitat (EFH) species may occur in the project area during at least one phase of their lifestage: Chum Salmon (*Oncorhynchus keta*), Pink Salmon (*O. gorbuscha*), Coho Salmon (*O. kisutch*), Sockeye Salmon (*O. nerka*), and Chinook Salmon (*O. tshawytscha*). No habitat areas of particular concern or EFH areas protected from fishing are identified near the project area (NMFS 2020h). The closest documented anadromous fish steams to the project area are Halibut Creek (AWC: 114–34–10200) approximately 5,100 m north west of the proposed project site and Humpback Creek (AWC: 114–34–10100) is approximately 7,600 m southwest of the proposed project site (ADF&G 2020a).

The area impacted by the project is relatively small compared to the available habitat in Port Frederick Inlet and does not include habitat of particular importance relative to available habitat overall. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity. As described in the preceding, the potential for the City's construction to affect the availability of prey to marine mammals or to meaningfully impact the quality of physical or acoustic habitat is considered to be insignificant. Effects to habitat will not be discussed further in this document.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determination.

Except with respect to certain activities not pertinent here, section 3(18) of 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).

Take of marine mammals incidental to the City's pile driving and removal activities (as well as during DTH) could occur as a result of Level A and Level B harassment. Below we describe how the potential take is estimated. As described previously, no mortality is anticipated or proposed to be authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimate.

Acoustic Thresholds

Using the best available science, NMFS has developed acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB re 1 μPa (rms) for continuous (*e.g.,* vibratory pile driving and DTH) and above 160 dB re 1 μPa (rms) for impulsive sources (*e.g.,* impact pile driving). The City's proposed activity includes the use of continuous (vibratory pile driving, DTH) and impulsive (impact pile driving) sources, and therefore the 120 and 160 dB re 1 μPa (rms) are applicable.

Level A harassment—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different

marine mammal groups (based on hearing sensitivity) as a result of exposure to noise. The technical guidance identifies the received levels, or thresholds, above which individual marine mammals are predicted to experience changes in their hearing sensitivity for all underwater anthropogenic sound sources, and reflects the best available science on the potential for noise to affect auditory sensitivity by:

- Dividing sound sources into two groups (*i.e.,* impulsive and non-impulsive) based on their potential to affect hearing sensitivity;
- Choosing metrics that best address the impacts of noise on hearing sensitivity, *i.e.,* sound pressure level (peak SPL) and sound exposure level (SEL) (also accounts for duration of exposure); and
- Dividing marine mammals into hearing groups and developing auditory weighting functions based on the science supporting that not all marine mammals hear and use sound in the same manner.

These thresholds were developed by compiling and synthesizing the best available science, and are provided in Table 4 below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2018 Technical Guidance, which may be accessed at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

The City's proposed activities includes the use of continuous non-impulsive (vibratory pile driving, DTH) and impulsive (impact pile driving, DTH) sources, and therefore the 120 and 160 dB re 1 μPa (rms) criteria are applicable. DTH pile installation includes drilling (non-impulsive sound) and hammering (impulsive sound) to penetrate rocky substrates (Denes *et al.* 2016; Denes *et al.* 2019; Reyff and Heyvaert 2019). DTH pile installation was initially thought be a primarily non-impulsive noise source. However, Denes *et al.* (2019) concluded from a study conducted in Virginia, nearby the location for this project, that DTH should be characterized as impulsive based on Southall *et al.* (2007), who stated that signals with a >3 dB difference in sound pressure level in a 0.035-second window compared to a 1-second window can be considered impulsive. Therefore, DTH pile installation is treated as both an impulsive and non-impulsive noise source. In order to evaluate Level A harassment, DTH pile installation activities are evaluated according to the impulsive criteria and using 160 dB rms. Level B harassment isopleths are determined by applying non-impulsive criteria and using the 120 dB rms threshold which is also used for vibratory driving. This approach ensures that the largest ranges to effect for both Level A and Level B harassment are accounted for in the take estimation process.

TABLE 4—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

[Auditory injury]

Hearing group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	*Cell 2:* $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	*Cell 4:* $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	*Cell 6:* $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	*Cell 8:* $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	*Cell 10:* $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μPa, and cumulative sound exposure level (L_E) has a reference value of 1μPa^{2}s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript ''flat'' is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds, which include source levels and transmission loss coefficient.

Sound Propagation

Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

$$TL = B * \log_{10}(R_1/R_2),$$

where:

B = transmission loss coefficient (assumed to be 15)

R_1 = the distance of the modeled SPL from the driven pile, and

R_2 = the distance from the driven pile of the initial measurement.

This formula neglects loss due to scattering and absorption, which is assumed to be zero here. The degree to which underwater sound propagates away from a sound source is dependent on a variety of factors, most notably the water bathymetry and presence or absence of reflective or absorptive conditions including in-water structures and sediments. Spherical spreading occurs in a perfectly unobstructed (free-field) environment not limited by depth or water surface, resulting in a 6 dB reduction in sound level for each doubling of distance from the source (20*log(range)). Cylindrical spreading occurs in an environment in which sound propagation is bounded by the water surface and sea bottom, resulting in a reduction of 3 dB in sound level for each doubling of distance from the source (10*log(range)). As is common practice in coastal waters, here we assume practical spreading loss (4.5 dB

reduction in sound level for each doubling of distance). Practical spreading is a compromise that is often used under conditions where water depth increases as the receiver moves away from the shoreline, resulting in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions.

Sound Source Levels

The intensity of pile driving sounds is greatly influenced by factors such as the type of piles, hammers, and the physical environment in which the activity takes place. There are source level measurements available for certain pile types and sizes from the similar environments recorded from underwater pile driving projects in Alaska (*e.g.,* JASCO Reports—Denes *et al.,* 2016 and Austin *et al.,* 2016) that were evaluated and used as proxy sound source levels to determine reasonable sound source levels likely result from the City's pile driving and removal activities (Table 5). Many source levels used were more conservation as the values were from larger pile sizes.

TABLE 5—PROPOSED SOUND SOURCE LEVELS

Activity	Sound source level at 10 meters	Sound source
Vibratory Pile Driving/Removal		
20-in fender pile permanent	161.9 SPL	The 20-in fender and 30-inch-diameter source level for vibratory driving are proxy from median measured source levels from pile driving of 30-inch-diameter piles to construct the Ketchikan Ferry Terminal (Denes *et al.* 2016, Table 72).
30-in steel pile temporary installation	161.9 SPL	
30-in steel pile removal	161.9 SPL	
36-in steel pile permanent	168.2 SPL	The 36-in-diameter pile source level is proxy from median measured source levels from pile driving of 48-in diameter piles for the Port of Anchorage test pile project (Austin *et al.* 2016, Table 16).
H-pile installation permanent	168 SPL	The H-pile source level is proxy from median measured source levels from vibratory pile driving of H piles for the Port of Anchorage test pile project (Yurk *et al.* 2015 as cited in Denes *et al.* 2016, Appendix H Table 2).
Sheet pile installation	160 SPL	The sheet source level is proxy from median measured source levels from vibratory pile driving of 24-in sheets for Berth 30 at the Port of Oakland, CA (Buehler *et al.* 2015; Table I.6–2).
Impact Pile Driving		
36-in steel pile permanent	186.7 SEL/198.6 SPL	The 36-in diameter pile source level is a proxy from median measured source level from impact hammering of 48-in piles for the Port of Anchorage test pile project (Austin *et al.,* 2016, Tables 9 and 16).
20-in fender pile installation permeant	161 SEL/174.8 SPL	The 20-in diameter pile source levels are proxy from median measured source levels from vibratory driving of 24-in piles for the Kodiak Ferry Terminal project (Denes *et al.* 2016).
H-pile installation permanent and Sheet pile installation.	163 SEL/177 SPL	H-Pile and Sheets Impacting source levels are proxy from median measured source levels from pile driving H-piles and sheets for the Port of Anchorage test pile project (Yurk *et al.* 2015 as cited in Denes *et al.* 2016, Appendix H Table 1).
DTH Pile Installation		
36-in steel pile permanent	164 SEL/166 SPL	The DTH sound source proxy of 164 dB SEL is from 42-in piles, Reyff 2020 and Denes *et al.* 2019; while the 154 dB SEL is based on 24-in piles, Denes *et al.* 2016.
20-in fender pile installation temporary	154 SEL/166 SPL	
H-pile installation permanent (20-in hole)	154 SEL/166 SPL	

Level A Harassment

When the NMFS Technical Guidance (2016) was published, in recognition of the fact that ensonified area/volume could be more technically challenging to predict because of the duration component in the new thresholds, we developed a User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to help predict takes. We note that because of some of the assumptions included in the methods used for these tools, we anticipate that isopleths produced are typically going to be overestimates of some degree, which may result in some degree of overestimate of Level A harassment take. However, these tools offer the best way to predict appropriate isopleths

when more sophisticated 3D modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools, and will qualitatively address the output where appropriate. For stationary sources (such as from impact and vibratory pile driving and DTH), NMFS User Spreadsheet (2020) predicts the closest distance at which, if a marine mammal remained at that distance the whole duration of the activity, it would not incur PTS. Inputs used in the User Spreadsheet (Tables 6 and 7), and the resulting isopleths are reported below (Table 8).

TABLE 6—NMFS TECHNICAL GUIDANCE (2020) USER SPREADSHEET INPUT TO CALCULATE PTS ISOPLETHS FOR VIBRATORY PILE DRIVING

User spreadsheet input—vibratory pile driving spreadsheet tab A.1 vibratory pile driving used						
	30-in piles (temporary install)	30-in piles (temporary removal)	20-in fender piles (permanent)	36-in piles (permanent)	H-piles (permanent)	Sheet piles (permanent)
Source Level (RMS SPL)	161.9	161.9	161.9	168.2	168	160
Weighting Factor Adjustment (kHz)	2.5	2.5	2.5	2.5	2.5	2.5
Number of piles within 24-hr period	4	4	4	4	4	30
Duration to drive a single pile (min)	15	15	15	15	15	15
Propagation (xLogR)	15	15	15	15	15	15
Distance of source level measurement (meters) +	10	10	10	10	11	10

TABLE 7—NMFS TECHNICAL GUIDANCE (2020) USER SPREADSHEET INPUT TO CALCULATE PTS ISOPLETHS FOR IMPACT PILE DRIVING

User spreadsheet input—impact pile driving spreadsheet tab E.1 impact pile driving used							
	36-in piles (permanent)	36-in pile (DTH)	20-in fender piles (permanent)	20-in fender pile (DTH)	H-pile (permanent)	H-pile (DTH)	Sheet piles (permanent)
Source Level (Single Strike/shot SEL)	186.7	164	161	154	163	154	163
Weighting Factor Adjustment (kHz)	2	2	2	2	2	2	2
Number of strikes per pile	100	.....	35	.....	35	.....	35
Strike rate (avg. strikes per second)	.....	15	.....	15	.....	15	.....
Number of piles per day	2	2	2	2	5	2	5
Propagation (xLogR)	15	15	15	15	15	15	15
Distance of source level measurement (meters) +	10	10	10	10	15	10	15

TABLE 8—NMFS TECHNICAL GUIDANCE (2020) USER SPREADSHEET OUTPUTS TO CALCULATE LEVEL A HARASSMENT PTS ISOPLETHS

User spreadsheet output		PTS isopleths (meters)				
		Level A harassment				
Activity	Sound source level at 10 m	Low-frequency cetaceans	Mid-frequency cetaceans	High-frequency cetaceans	Phocid	Otariid
Vibratory Pile Driving/Removal						
20-in steel fender pile installation	161.9 SPL	7.8	0.7	11.6	4.8	0.3
30-in steel pile temporary installation	161.9 SPL	7.8	0.7	11.6	4.8	0.3
30-in steel pile removal	161.9 SPL	7.8	0.7	11.6	4.8	0.3
36-in steel permanent installation	168.2 SPL	20.6	1.8	30.5	12.5	0.9
H-pile installation	168 SPL	22.0	2.0	32.5	13.4	0.9
Sheet pile installation	160 SPL	22.4	2.0	33.2	13.6	1.0
Impact Pile Driving						
36-in steel permanent installation	186.7 SEL/198.6 SPL	602.7	21.4	717.9	322.5	23.5
20-in fender pile installation	161 SEL/174.8 SPL	5.8	0.2	6.9	3.1	0.21
H-pile installation	163 SEL/177 SPL	21.8	0.8	25.9	11.6	0.8
Sheet pile installation	163 SEL/177 SPL	21.8	0.8	25.9	11.6	0.8
DTH						
36-in steel permanent installation	164 SEL/166 SPL	1,225.6	43.6	1,459.9	655.9	47.8
20-in steel fender pile installation	154 SEL/166 SPL	264.1	9.4	314.5	141.3	10.3
H-pile installation	154 SEL/166 SPL	264.1	9.4	314.5	141.3	10.3

Level B Harassment

Utilizing the practical spreading loss model, the City determined underwater noise will fall below the behavioral effects threshold of 120 dB rms for marine mammals at the distances shown in Table 9 for vibratory pile driving/removal, and DTH. With these radial distances, and due to the occurrence of landforms (See Figure 5 and 8 of the IHA Application), the largest Level B harassment zone calculated for vibratory pile driving for 36-in steel piles and H-piles were larger than the 15,700 m from the source where land masses block sound transmission. For DTH, the largest radial distance was 11,659 m. For calculating the Level B harassment zone for impact driving, the practical spreading loss model was used with a behavioral threshold of 160 dB rms. The maximum radial distance of the Level B harassment zone for impact piling equaled 3,744 m for 36-in piles m. Table 9 below provides all Level B harassment radial distances (m) during the City's proposed activities.

TABLE 9—RADIAL DISTANCES (METERS) TO RELEVANT BEHAVIORAL ISOPLETHS

Activity	Received level at 10 meters	Level B harassment zone (m) *
Vibratory Pile Driving/Removal		
20-in steel fender pile installation	161.9 SPL	6,215 (calculated 6,213).
30-in steel temporary installation	161.9 SPL	6,215 (calculated 6,213).
30-in steel removal	161.9 SPL	6,215 (calculated 6,213).
36-in steel permanent installation	168.2 SPL	15,700[a] (calculated 16,343).
H-pile installation	168 SPL	15,700[a] (calculated 17,434).
Sheet pile installation	160 SPL	4,645 (calculated 4,642).
Impact Pile Driving		
20-in fender pile installation	161 SEL/ 174.8 SPL	100 (calculated 97).
36-in steel permanent installation	186.7 SEL/198.6 SPL	3,745 (calculated 3,744).
H-pile and Sheet pile installation	163 SEL/ 177 SPL	205 (calculated 204).
DTH		
20-in steel fender pile installation	166 SPL	11,660 (calculated 11,659).
36-in steel temporary installation	166 SPL	11,660 (calculated 11,659).
H-pile installation	166 SPL	11,660 (calculated 11,659).

* Numbers rounded up to nearest 5 meters. These specific rounded distances are for monitoring purposes rather than take estimation.
[a] Although the calculated distance to Level B harassment thresholds extends these distances, all Level B harassment zones are truncated at 15,700m from the source where land masses block sound transmission.

Marine Mammal Occurrence and Take Calculation and Estimation

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations. Potential exposures to impact pile driving, vibratory pile driving/removal and DTH noises for each acoustic threshold were estimated using group size estimates and local observational data. As previously stated, take by Level B harassment as well as small numbers of take by Level A harassment will be considered for this action. Take by Level B and Level A harassment are calculated differently for some species based on monthly or daily sightings data and average group sizes within the action area using the best available data. Take by Level A harassment is being proposed for three species (Dall's and harbor porpoise and harbor seal) where the Level A harassment isopleths are larger for pile driving of 36-in steel piles and DTH of 36-in piles, and is based on average group size multiplied by the number of days of impact pile driving for 36-in piles and DTH of 36-in piles. Distances to Level A harassment thresholds for other project activities (vibratory pile driving/removal, DTH and impact driving of smaller pile sizes) are considerably smaller compared to impact pile driving of 36-in piles and DTH for 36-in piles, and mitigation is expected to avoid Level A harassment from these other activities.

Minke Whales

There are no density estimates of minke whales available in the project area. These whales are usually sighted individually or in small groups of two or three, but there are reports of loose aggregations of hundreds of animals (NMFS 2018). One minke whale was sighted each year during the Hoonah cruise ship Berth I project (June 2015–January 2016; BergerABAM 2016) and during the Hoonah Berth II project (June 2019–October 2019; SolsticeAK 2020).To be conservative based on group size, we predict that three minke whales in a group could be sighted each month over the 4-month project period for a total of 12 minke whale takes proposed for authorization by Level B harassment. No take by Level A harassment is proposed for authorization or anticipated to occur due to their rarer occurrence in the project area.

Humpback Whales

There are no density estimates of humpback whales available in the project area. During the previous Hoonah Berth I project, humpback whales were observed on 84 of the 135 days of monitoring; most often in September and October (BergerABAM 2016). Additionally, during construction of the Hoonah Berth II project in 2019, humpback whales were observed in the action area on 45 of the 51 days of monitoring; most often in July and September. Up to 24 humpback sightings were reported on a single day (July 30, 2019), and a total of 108 observations were recorded in harassment zones during project construction (SolsticeAK 2020).

Based on a group size of eight animals, the general maximum group size observed in Southeast Alaska in all months of the year, NMFS estimates that 8 humpback whales could occur for each day of the project (110 days) for a total of 880 takes by Level B harassment. Under the MMPA, humpback whales are considered a single stock (Central

North Pacific); however, we have divided them here to account for DPSs listed under the ESA. Using the stock assessment from Muto *et al.* 2020 for the Central North Pacific stock (10,103 whales) and calculations in Wade *et al.* 2016; 9,487 whales are expected to be from the Hawaii DPS and 606 from the Mexico DPS. Therefore, for purposes of consultation under the ESA, we anticipate that 53 of those takes would be of individuals from the Mexico DPS (0.0601 proportion of the total takes). No take by Level A harassment is proposed for authorization or anticipated to occur due to their large size and ability to be visibly detected in the project area if an animal should approach the Level A harassment zone.

Gray Whales

There are no density estimates of gray whales available in the project area. Gray whales travel alone or in small, unstable groups, although large aggregations may be seen in feeding and breeding grounds (NMFS 2018e). Observations in Glacier Bay and nearby waters recorded two gray whales documented over a 10-year period (Keller *et al.,* 2017). None were observed during Hoonah Berth I or II project monitoring (BergerABAM 2016, SolsticeAK 2020). We estimate a one gray whale x onesighting per month over the 4-month work period for a total of four gray whale takes proposed for authorization by Level B harassment. No take by Level A harassment is proposed for authorization or anticipated to occur due to their rarer occurrence in the project area, but also their large size and ability to be visibly detected in the project area if an animal should approach the Level A harassment zone.

Killer Whales

There are no density estimates of killer whales available in the project area. Killer whales occur commonly in the waters of the project area, and could include members of several designated stocks that may occur in the vicinity of the proposed project area. Whales are known to use the Icy Strait corridor to enter and exit inland waters and are observed in every month of the year, with certain pods being observed inside Port Frederick passing directly in front of Hoonah. Group size of resident killer whale pods in the Icy Strait area ranges from 42 to 79 and occur in every month of the year (Dahlheim pers. comm. to NMFS 2015). As determined during a line-transect survey by Dalheim *et al.* (2008), the greatest number of transient killer whale observed occurred in 1993 with 32 animals seen over 2 months for an average of 16 sightings per month. Killer whales were observed infrequently during construction of Hoonah Berth I project. Usually a singular animal was observed, but a group containing eight individuals was seen in the project area on one occasion. A total of 24 animals were observed during in-water work for the Hoonah Bert I project (BergerABAM 2016). During construction of the Hoonah Berth II project, killer whales were observed on 8 days. Usually a single animal or pairs were observed, but a group containing five individuals was seen in the project area on one occasion. A total of 20 animals were observed during in-water work on Hoonah Berth II project (SolsticeAK 2020). Using the largest group size for resident killer whales as discussed above, NMFS estimates that 79 killer whales (residents and transients) could occur each month during the 4-month project period for a total of 316 takes by Level B harassment. No take by Level A harassment is proposed for authorization or anticipated to occur to the ability to visibly detect these large whales and in most cases the small size of the Level A harassment zones.

Pacific White-Sided Dolphin

There are no density estimates of Pacific white-sided dolphins available in the project area. Pacific white-sided dolphins have been observed in Alaska waters in groups ranging from 20 to 164 animals, with the sighting of 164 animals occurring in Southeast Alaska near Dixon Entrance (Muto *et al.,* 2018). There were no Pacific white-sided dolphins observed during the 135-day monitoring period during the Hoonah Berth I project; however, a pod of two Pacific white-sided dolphins was observed during construction of the Hoonah Bert II project (SolsticeAK 2020). Using the largest group size for Pacific white-sided dolphins as discussed above, NMFS estimates 164 Pacific white-sided dolphins may be seen every other month over the 4-month project period for a total of 328 takes by Level B harassment. No take by Level A harassment is proposed or anticipated to occur as the largest Level A harassment isopleths calculated were 43.6 m during DTH of 36-in piles and 21.4 m during impact pile driving of 36-in piles. The remaining isopleths were all under 10 m.

Dall's Porpoise

Little information is available on the abundance of Dall's porpoise in the inland waters of Southeast Alaska. Dall's porpoise are most abundant in spring, observed with lower numbers in the summer, and lowest numbers in fall. Jefferson *et al.,* 2019 presents abundance estimates for Dall's porpoise in these waters and found the abundance in summer (N = 2,680, CV = 19.6 percent), and lowest in fall (N = 1,637, CV = 23.3 percent). Dall's porpoise are common in Icy Strait and sporadic with very low densities in Port Frederick (Jefferson *et al.,* 2019). Dahlheim *et al.* (2008) observed 346 Dall's porpoise in Southeast Alaska (inclusive of Icy Strait) during the summer (June/July) of 2007 for an average of 173 animals per month as part of a 17-year study period. During the previous Hoonah Berth I project, only two Dall's porpoise were observed, and were transiting within the waters of Port Frederick in the vicinity of Halibut Island. A total of 21 Dall's porpoises were observed on eight days during the Hoonah Berth II project in group sizes of 2 to 12 porpoise (SolsticeAK 2020).Therefore, NMFS' estimates 12 Dall's porpoise a week may be seen during the 4-month project period for a total of 192 takes by Level B harassment. Because the calculated Level A harassment isopleths are larger for high-frequency cetaceans during DTH of 36-in piles (1,459.9 m) and 36-in impact pile driving (717.9 m) and the applicant would have a reduced shutdown zone at 200 m, NMFS predicts that some take by Level A harassment may occur. It is estimated that two Dall's porpoise could be taken by Level A harassment every 5 days over a 20-day period (15 days of DTH of 36-in piles + 5 days of 36-in impact pile driving) for a total of 8 takes by Level A harassment.

Harbor Porpoise

Dahlheim *et al.* (2015) observed 332 resident harbor porpoises occur in the Icy Strait area, and harbor porpoise are known to use the Port Frederick area as part of their core range. During the Hoonah Berth I project monitoring, a total of 32 harbor porpoise were observed over 19 days during the 4-month project. The harbor porpoises were observed in small groups with the largest group size reported was four individuals and most group sizes consisting of three or fewer animals. During the test pile program conducted at the Berth II project site in May 2018, eight harbor porpoises where observed over a 7-hour period (SolsticeAK 2018). During the Hoonah Berth II project, 120 harbor porpoises were observed June through October. The largest group size reported was eight individuals, and most group sizes consisting of four or fewer animals (SolsticeAK 2020). NMFS estimates that four harbor porpoises per day could occur in the project area over the 4-month project period (110 days)

for a total of 440 takes by Level B harassment. Because the calculated Level A harassment isopleths are larger for high-frequency cetaceans during DTH of 36-in piles (1,459.9 m) and 36-in impact pile driving (717.9 m) and the applicant would have a reduced shutdown zone at 200 m, NMFS predicts that some take by Level A harassment may occur. It is estimated that four harbor porpoise could be taken by Level A harassment every 5 days over a 20-day period (15 days of DTH of 36-in piles + 5 days of 36-in impact pile driving) for a total of 16 takes by Level A harassment.

Harbor Seal

There are no density estimates of harbor seals available in the project area. Keller *et al.* (2017) observed an average of 26 harbor seal sightings each month between June and August of 2014 in Glacier Bay and Icy Strait. During the monitoring of the Hoonah Berth I project, harbor seals typically occur in groups of one to four animals and a total of 63 seals were observed during 19 days of the 135-day monitoring period. In 2019, a total of 33 harbor seals were seen during the Hoonah Berth II project. Only solo individuals where sighted during that time (SolsticeAK 2020). NMFS estimates that three harbor seals per group, and two groups a day, could occur in the project area each month during the 4-month project period (110 days) for a total of 660 takes by Level B harassment. Because the calculated Level A harassment isopleths are larger for phocids during DTH of 36-in piles (655.9 m) and 36-in impact pile driving (322.5 m), compared with the proposed shutdown zone at 200 m, NMFS predicts that some take by Level A harassment may occur. It is estimated that one group of three harbor seals a day could be taken by Level A harassment over a 20-day period (15 days of DTH of 36-in piles + 5 days of 36-in impact pile driving) for a total of 60 takes by Level A harassment.

Steller Sea Lion

There are no density estimates of Steller sea lions available in the project area. NMFS expects that Steller sea lion presence in the action area will vary due to prey resources and the spatial distribution of breeding versus non-breeding season. In April and May, Steller sea lions are likely feeding on herring spawn in the action area. Then, most Steller sea lions likely move to the rookeries along the outside coast (away from the action area) during breeding season, and would be in the action area in greater numbers in August and later months (J. Womble, NPS, pers. comm. to NMFS AK Regional Office, March 2019). However, Steller sea lions are also opportunistic predators and their presence can be hard to predict.

Steller sea lions typically occur in groups of 1–10 animals, but may congregate in larger groups near rookeries and haulouts. The previous Hoonah Berth I project observed a total of 180 Steller sea lion sightings over 135 days in 2015, amounting to an average of 1.3 sightings per day (BergerABAM 2016). During a test pile program performed at the project location by the Hoonah Cruise Ship Dock Company in May 2018, a total of 15 Steller sea lions were seen over the course of 7 hours in one day (SolsticeAK 2018). During construction of the Hoonah Berth II project, a total of 197 Steller sea lion sightings over 42 days were reported, amounting to an average of 4.6 sightings per day (SolsticeAK 2020). NMFS estimates that five Steller sea lions per day could occur in the project area each month during the 4-month project period (110 days) for a total of 550 takes by Level B harassment, with 39 of those anticipated being from the Western DPS (0.0702 proportion of the total animals (L. Jemison draft unpublished Steller sea lion data, 2019). There is some evidence of Steller sea lions remaining in areas where there is a reliable food source. Should a Steller sea lion go undetected by a Protected Species Observer (PSO) and later observed within the Level A harassment zone, the City proposes mitigation measures (*e.g.,* shutdowns), and it would be unlikely that an animal would accumulate enough exposure for PTS to occur. Therefore, no take by Level A harassment is proposed or anticipated to occur as the largest Level A isopleths calculated were 47.8 m during DTH of 36-in piles and 23.5 m during impact pile driving of 36-in piles. The remaining isopleths were approximately 10 m or less.

Table 10 below summarizes the proposed estimated take for all the species described above as a percentage of stock abundance.

TABLE 10—PROPOSED TAKE ESTIMATES AS A PERCENTAGE OF STOCK ABUNDANCE

Species	Stock (N_{EST})	Level A harassment	Level B harassment	Percent of stock
Minke Whale	N/A	0	12	N/A.
Humpback Whale	Central North Pacific	0	880	8.7.
Gray Whale	Eastern North Pacific (27,000)	0	4	Less than 1 percent.
Killer Whale	Alaska Resident (2,347)		256	[a] 10.9
	Northern Resident (302)	0	33	[a] 10.9
	West Coast Transient (243)		27	[a] 11.1.
			(Total 316)	
Pacific White-Sided Dolphin	North Pacific (26,880)	0	328	Less than 1 percent.
Dall's Porpoise	Alaska (83,400) §[b]	8	144	Less than 1 percent.
Harbor Porpoise	NA	16	440	NA.
Harbor Seal	Glacier Bay/Icy Strait (7,455)	60	660	8.9.
Steller Sea Lion	Eastern U.S. (43,201)	0	511	
	Western U.S. (53,624)		39	1.2
			(Total 550)	Less than 1 percent.

[a] Take estimates are weighted based on calculated percentages of population for each distinct stock, assuming animals present would follow same probability of presence in project area.

[b] Jefferson *et al.* 2019 presents the first abundance estimates for Dall's porpoise in the waters of Southeast Alaska with highest abundance recorded in spring (N = 5,381, CV = 25.4 percent), lower numbers in summer (N = 2,680, CV = 19.6 percent), and lowest in fall (N = 1,637, CV = 23.3 percent). However, NMFS currently recognizes a single stock of Dall's porpoise in Alaskan waters and an estimate of 83,400 Dall's porpoises is used by NMFS for the entire stock (Muto *et al.,* 2020).

Proposed Mitigation

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned) the likelihood of effective implementation (probability implemented as planned); and

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

General

The City would follow mitigation procedures as outlined in their Marine Mammal Monitoring Plan and as described below. In general, if poor environmental conditions restrict visibility full visibility of the shutdown zone, pile driving installation and removal as well as DTH would be delayed.

Training

The City must ensure that construction supervisors and crews, the monitoring team, and relevant City staff are trained prior to the start of construction activity subject to this IHA, so that responsibilities, communication procedures, monitoring protocols, and operational procedures are clearly understood. New personnel joining during the project must be trained prior to commencing work.

Avoiding Direct Physical Interaction

The City must avoid direct physical interaction with marine mammals during construction activity. If a marine mammal comes within 10 m of such activity, operations must cease and vessels must reduce speed to the minimum level required to maintain steerage and safe working conditions, as necessary to avoid direct physical interaction.

Shutdown Zones

For all pile driving/removal and DTH activities, the City would establish a shutdown zone for a marine mammal species that is greater than its corresponding Level A harassment zone; except for a few circumstances during impact pile driving and DTH, where the shutdown zone is smaller (reduced to 200 m) than the Level A harassment zone for high frequency cetaceans and phocids due to the practicability of shutdowns on the applicant and to the potential difficulty of observing these animals in the larger Level A harassment zones. The calculated PTS isopleths were rounded up to a whole number to determine the actual shutdown zones that the applicant will operate under (Table 11). The purpose of a shutdown zone is generally to define an area within which shutdown of the activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area).

TABLE 11—PILE DRIVING SHUTDOWN ZONES DURING PROJECT ACTIVITIES

Pile size, type, and method	Shutdown zones				
	Low-frequency cetaceans	Mid-frequency cetaceans	High-frequency cetaceans	Phocid	Otariid
Vibratory Pile Driving/Removal					
20-in steel fender pile installation	10	10	15	10	10
30-in steel pile temporary installation	10	10	15	10	10
30-in steel pile removal	10	10	15	10	10
36-in steel permanent installation	25	10	35	15	10
H-pile installation	35	10	35	15	10
Sheet pile installation	25	10	35	15	10
Impact Pile Driving					
36-in steel permanent installation	625	25	*200	*200	25
20-in fender pile installation	10	10	10	10	10
H-pile installation	25	10	30	15	10
Sheet pile installation	25	10	30	15	10
DTH					
36-in steel permanent installation	1,230	45	*200	*200	50
20-in steel fender pile installation	265	10	*200	145	15

TABLE 11—PILE DRIVING SHUTDOWN ZONES DURING PROJECT ACTIVITIES—Continued

Pile size, type, and method	Shutdown zones				
	Low-frequency cetaceans	Mid-frequency cetaceans	High-frequency cetaceans	Phocid	Otariid
H-pile installation	265	10	*200	145	15

*Due to practicability of the applicant to shutdown and the difficulty of observing some species and low occurrence of some species in the project area, such as high frequency cetaceans or pinnipeds out to this distance, the shutdown zones were reduced and Level A harassment takes were requested during DTH and for impact pile driving of 36-in piles.

Soft Start

The City must use soft start techniques when impact pile driving. Soft start requires contractors to provide an initial set of three strikes from the hammer at reduced energy, followed by a 30-second waiting period. Then two subsequent reduced-energy strike sets would occur. A soft start must be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer. Soft start is not required during vibratory pile driving and removal activities.

Vessels

Vessels would adhere to the Alaska Humpback Whale Approach Regulations when transiting for project activities (see 50 CFR 216.18, 223.214, and 224.103(b)). These regulations require that all vessels:

- Not approach within 91.44 m (100 yd) of a humpback whale, or cause a vessel or other object to approach within 91.44 m (100 yd) of a humpback whale;
- Not place vessel in the path of oncoming humpback whales causing them to surface within 91.44 m (100 yd) of vessel;
- Not disrupt the normal behavior or prior activity of a whale; and
- Operate at a slow, safe speed when near a humpback whale (safe speed is defined in regulation (see 33 CFR 83.06)).

Based on our evaluation of the applicant's proposed measures, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth, requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density).
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas).
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors.
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks.
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat).
- Mitigation and monitoring effectiveness.

Monitoring Zones

The City will establish and observe monitoring zones for Level B harassment as presented in Table 9. The monitoring zones for this project are areas where SPLs are equal to or exceed 120 dB rms (for vibratory pile driving/removal and DTH) and 160 dB rms (for impact pile driving). These zones provide utility for monitoring conducted for mitigation purposes (*i.e.,* shutdown zone monitoring) by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring of the Level B harassment zones enables observers to be aware of and communicate the presence of marine mammals in the project area, but outside the shutdown zone, and thus prepare for potential shutdowns of activity.

Pre-Start Clearance Monitoring

Pre-start clearance monitoring must be conducted during periods of visibility sufficient for the lead PSO to determine the shutdown zones clear of marine mammals. Pile driving and DTH may commence when the determination is made.

Visual Monitoring

Monitoring must take place from 30 minutes (min) prior to initiation of pile driving and DTH activity (*i.e.,* pre-start clearance monitoring) through 30 min post-completion of pile driving and DTH activity. If a marine mammal is observed entering or within the shutdown zones, pile driving and DTH activity must be delayed or halted. If pile driving or DTH is delayed or halted due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily exited and been visually confirmed beyond the shutdown zone or 15 min have passed without re-detection of the animal. Pile driving and DTH activity must be halted upon observation of either a species for which incidental take is not authorized or a species for which incidental take has been authorized but the authorized

number of takes has been met, entering or within the harassment zone.

PSO Monitoring Locations and Requirements

The City must establish monitoring locations as described in the Marine Mammal Monitoring Plan. The City must monitor the project area to the extent possible based on the required number of PSOs, required monitoring locations, and environmental conditions. Monitoring would be conducted by PSOs from on land and from a vessel. For all pile driving and DTH activities, a minimum of one observer must be assigned to each active pile driving and DTH location to monitor the shutdown zones. Three PSOs must be onsite during all in-water activities as follows: PSO 1 stationed at the pile site on the existing City Dock, PSO 2 stationed on Halibut Island facing south and PSO 3 stationed on a vessel running a transect through southern portion of the project area in Port Frederick. These observers must record all observations of marine mammals, regardless of distance from the pile being driven or during DTH.

In addition, PSOs will work in shifts lasting no longer than 4 hrs with at least a 1-hr break between shifts, and will not perform duties as a PSO for more than 12 hrs in a 24-hr period (to reduce PSO fatigue).

Monitoring of pile driving shall be conducted by qualified, NMFS-approved PSOs. The City shall adhere to the following conditions when selecting PSOs:

- PSOs must be independent (*i.e.,* not construction personnel) and have no other assigned tasks during monitoring periods.
- At least one PSO must have prior experience performing the duties of a PSO during construction activities pursuant to a NMFS-issued incidental take authorization.
- Other PSOs may substitute other relevant experience, education (degree in biological science or related field), or training.
- Where a team of three PSOs are required, a lead observer or monitoring coordinator shall be designated. The lead observer must have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization.
- PSOs must be approved by NMFS prior to beginning any activity subject to this IHA.

The City shall ensure that the PSOs have the following additional qualifications:

- Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface with ability to estimate target size and distance; use of binoculars may be necessary to correctly identify the target;
- Experience and ability to conduct field observations and collect data according to assigned protocols;
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior;
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary; and
- Sufficient training, orientation, or experience with the construction operations to provide for personal safety during observations.

Notification of Intent To Commence Construction

The City shall inform NMFS OPR and the NMFS Alaska Region Protected Resources Division one week prior to commencing construction activities.

Interim Monthly Reports

During construction, the City will submit brief, monthly reports to the NMFS Alaska Region Protected Resources Division that summarize PSO observations and recorded takes. Monthly reporting will allow NMFS to track the amount of take (including any extrapolated takes), to allow reinitiation of consultation in a timely manner, if necessary. The monthly reports will be submitted by email to *akr.section7@nooa.gov.* The reporting period for each monthly PSO report will be the entire calendar month, and reports will be submitted by close of business on the 10th day of the month following the end of the reporting period.

Final Report

The City must submit a draft report on all monitoring conducted under this IHA within 90 calendar days of the completion of monitoring or 60 calendar days prior to the requested issuance of any subsequent IHA for construction activity at the same location, whichever comes first. A final report must be prepared and submitted within 30 days following resolution of any NMFS comments on the draft report. If no comments are received from NMFS within 30 days of receipt of the draft report, the report shall be considered final. All draft and final marine mammal monitoring reports must be submitted to *PR.ITP.MonitoringReports@noaa.gov* and *ITP.Egger@noaa.gov.* The report must contain the informational elements described in the Marine Mammal Monitoring Plan and, at minimum, must include:

- Dates and times (begin and end) of all marine mammal monitoring;
- Construction activities occurring during each daily observation period, including:
  - How many and what type of piles were driven and by what method (*e.g.,* impact, vibratory, DTH);
  - Total duration of driving time for each pile (vibratory driving) and number of strikes for each pile (impact driving); and
  - For DTH, duration of operation for both impulsive and non-pulse components.
- PSO locations during marine mammal monitoring;
- (Environmental conditions during monitoring periods (at beginning and end of PSO shift and whenever conditions change significantly), including Beaufort sea state and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance;
- Upon observation of a marine mammal, the following information:
  - PSO who sighted the animal and PSO location and activity at time of sighting;
  - Time of sighting;
  - Identification of the animal (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified), PSO confidence in identification, and the composition of the group if there is a mix of species;
  - Distance and bearing of each marine mammal observed to the pile being driven for each sighting (if pile driving and DTH was occurring at time of sighting);
  - Estimated number of animals (min/max/best);
  - Estimated number of animals by cohort (adults, juveniles, neonates, group composition etc.;

○ Animal's closest point of approach and estimated time spent within the harassment zone.

○ Description of any marine mammal behavioral observations (*e.g.,* observed behaviors such as feeding or traveling), including an assessment of behavioral responses to the activity (*e.g.,* no response or changes in behavioral state such as ceasing feeding, changing direction, flushing, or breaching);

▪ Detailed information about implementation of any mitigation (*e.g.,* shutdowns and delays), a description of specific actions that ensued, and resulting changes in behavior of the animal, if any; and

▪ All PSO datasheets and/or raw sightings data.

Reporting of Injured or Dead Marine Mammals

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, the City must report the incident to the Office of Protected Resources (*PR.ITP.MonitoringReports@noaa.gov*), NMFS (301–427–8401) and to the Alaska regional stranding network (877–925–7773) as soon as feasible. If the death or injury was clearly caused by the specified activity, the City must immediately cease the specified activities until NMFS OPR is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of this IHA. The City must not resume their activities until notified by NMFS. The report must include the following information:

▪ Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);

▪ Species identification (if known) or description of the animal(s) involved;

▪ Condition of the animal(s) (including carcass condition if the animal is dead);

▪ Observed behaviors of the animal(s), if alive;

▪ If available, photographs or video footage of the animal(s); and

▪ General circumstances under which the animal was discovered.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact 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 (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

As stated in the proposed mitigation section, shutdown zones that are larger than the Level A harassment zones will be implemented in the majority of construction days, which, in combination with the fact that the zones are so small to begin with, is expected to avoid the likelihood of Level A harassment for six of the nine species. For the other three species (harbor seals, Dall's and harbor porpoises), a small amount of Level A harassment has been conservatively proposed because the Level A harassment zones are larger than the proposed shutdown zones during impact pile driving of 36-in piles and during DTH. However, given the nature of the activities and sound source and the unlikelihood that animals would stay in the vicinity of the pile-driving for long, any PTS incurred would be expected to be of a low degree and unlikely to have any effects on individual fitness.

Exposures to elevated sound levels produced during pile driving activities may cause behavioral responses by an animal, but they are expected to be mild and temporary. Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from other similar activities, will likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring) (*e.g.,* Thorson and Reyff, 2006; Lerma, 2014). Most likely, individuals will simply move away from the sound source and be temporarily displaced from the areas of pile driving, although even this reaction has been observed primarily only in association with impact pile driving. These reactions and behavioral changes are expected to subside quickly when the exposures cease.

To minimize noise during pile driving, the City will use pile caps (pile softening material). Much of the noise generated during pile installation comes from contact between the pile being driven and the steel template used to hold the pile in place. The contractor will use high-density polyethylene or ultra-high-molecular- weight polyethylene softening material on all templates to eliminate steel on steel noise generation.

During all impact driving, implementation of soft start procedures and monitoring of established shutdown zones will be required, significantly reducing the possibility of injury. Given sufficient notice through use of soft start (for impact driving), marine mammals are expected to move away from an irritating sound source prior to it becoming potentially injurious. In addition, PSOs will be stationed within the action area whenever pile driving/removal and DTH activities are underway. Depending on the activity, the City will employ the use of three PSOs to ensure all monitoring and shutdown zones are properly observed.

The HMIC Cargo Dock would likely not impact any marine mammal habitat since its proposed location is within an area that is currently used by large shipping vessels and in between two existing, heavily-traveled docks, and within an active marine commercial and tourist area. There are no known pinniped haulouts or other biologically important areas for marine mammals near the action area. In addition, impacts to marine mammal prey species are expected to be minor and temporary. Overall, the area impacted by the project is very small compared to the available habitat around Hoonah. The most likely impact to prey will be temporary behavioral avoidance of the immediate area. During pile driving/removal and DTH activities, it is expected that fish and marine mammals would temporarily move to nearby locations and return to the area following cessation of in-water construction activities. Therefore, indirect effects on marine mammal prey during the construction are not expected to be substantial.

In summary and as described above, the following factors primarily support

our preliminary determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality is anticipated or authorized;
- Minimal impacts to marine mammal habitat/prey are expected;
- The action area is located and within an active marine commercial and tourist area;
- There are no rookeries, or other known areas or features of special significance for foraging or reproduction in the project area;
- Anticipated incidents of Level B harassment consist of, at worst, temporary modifications in behavior; and
- The required mitigation measures (*i.e.* shutdown zones) are expected to be effective in reducing the effects of the specified activity.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under Section 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

Seven of the nine marine mammal stocks proposed for take are approximately 11 percent or less of the stock abundance. There are no official stock abundances for harbor porpoise and minke whales; however, as discussed in greater detail in the Description of Marine Mammals in the Area of Specified Activities, we believe for the abundance information that is available, the estimated takes are likely small percentages of the stock abundance. For harbor porpoise, the abundance for the Southeast Alaska stock is likely more represented by the aerial surveys that were conducted as these surveys had better coverage and were corrected for observer bias. Based on this data, the estimated take could potentially be approximately 4 percent of the stock abundance. However, this is unlikely and the percentage of the stock taken is likely lower as the proposed take estimates are conservative and the project occurs in a small footprint compared to the available habitat in Southeast Alaska. For minke whales, in the northern part of their range they are believed to be migratory and so few minke whales have been seen during three offshore Gulf of Alaska surveys that a population estimate could not be determined. With only twelve proposed takes for this species, the percentage of take in relation to the stock abundance is likely to be very small.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

In order to issue an IHA, NMFS must find that the specified activity will not have an ''unmitigable adverse impact'' on the subsistence uses of the affected marine mammal species or stocks by Alaskan Natives. NMFS has defined ''unmitigable adverse impact'' in 50 CFR 216.103 as an impact resulting from the specified activity: (1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (i) Causing the marine mammals to abandon or avoid hunting areas; (ii) Directly displacing subsistence users; or (iii) Placing physical barriers between the marine mammals and the subsistence hunters; and (2) That cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

In September 2020, the Indigenous People's Council for Marine Mammals (IPCoMM), the Alaska Sea Otter and Steller Sea Lion Commission, Huna Totem Corporation, and the Hoonah Indian Association (HIA) were contacted to determine potential project impacts on local subsistence activities. No comments were received from IPCoMM or the Alaska Sea Otter and Steller Sea Lion Commission. On September 14, 2020, Huna Totem Corporation expressed support for the project and indicated that they do not anticipate any marine mammal or subsistence.

The proposed project is not likely to adversely impact the availability of any marine mammal species or stocks that are commonly used for subsistence purposes or to impact subsistence harvest of marine mammals in the region because construction activities are localized and temporary; mitigation measures will be implemented to minimize disturbance of marine mammals in the project area; and the project will not result in significant changes to availability of subsistence resources.

Based on the description of the specified activity, the measures described to minimize adverse effects on the availability of marine mammals for subsistence purposes, and the proposed mitigation and monitoring measures, NMFS has preliminarily determined that there will not be an unmitigable adverse impact on subsistence uses from the City's proposed activities.

Therefore, we believe there are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. NMFS has preliminarily determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species, in this case with the Alaska Regional Office (AKRO).

NMFS is proposing to authorize take of Mexico DPS humpback whales, and Western DPS Steller sea lions which are listed under the ESA. The Permit and Conservation Division has requested initiation of Section 7 consultation with the AKRO for the issuance of this IHA. NMFS will conclude the ESA consultation prior to reaching a

determination regarding the proposed issuance of the authorization.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to the City for conducting for the proposed pile driving and removal activities as well as DTH during construction of the Hoonah Marine Industrial Center Cargo Dock Project, Hoonah Alaska for one year, beginning March or April 2021, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.*

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this notice of proposed IHA for the proposed pile driving and removal activities as well as DTH during construction of the Hoonah Marine Industrial Center Cargo Dock Project. We also request at this time, comments on the potential for Renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for this IHA or a subsequent Renewal IHA.

On a case-by-case basis, NMFS may issue a one-time, 1-year Renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical, or nearly identical, activities as described in the Description of Proposed Activities section of this notice is planned or (2) the activities as described in the Description of Proposed Activities section of this notice would not be completed by the time the IHA expires and a Renewal would allow for completion of the activities beyond that described in the *Dates and Duration* section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed Renewal IHA effective date (recognizing that the Renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA);
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested Renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take); and

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

Upon review of the request for Renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: February 26, 2021.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2021–04431 Filed 3–3–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA845

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

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

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Greater Atlantic Region, NMFS, has made a preliminary determination that an Exempted Fishing Permit application contains all of the required information and warrants further consideration. The Exempted Fishing Permit would allow two commercial fishing vessels to use large mesh gillnet gear to collect pre-construction data on the abundance, size structure, and distribution of monkfish and winter skate in the South Fork Wind Farm work area and adjacent waters, under the direction of the Commercial Fisheries Research Foundation. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed Exempted Fishing Permits.

DATES: Comments must be received on or before March 19, 2021.

ADDRESSES: You may submit written comments by any of the following methods:

- *Email: nmfs.gar.efp@noaa.gov.* Include in the subject line ''CFRF South Fork Wind Farm Gillnet EFP.''

FOR FURTHER INFORMATION CONTACT: Louis Forristall, Marine Resources Management Specialist, 978–281–9321, *Louis.Forristall@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Commercial Fisheries Research Foundation (CFRF) submitted a complete application for an Exempted Fishing Permit (EFP) in support of its South Fork Wind Farm (SFWF) Gillnet Survey on October 16, 2020. The proposed research would use large-mesh gillnet gear in a Before-After-Control-Impact study design to collect pre-construction data on the abundance, size structure, and distribution of monkfish, winter skate, and other species in the SFWF lease area and adjacent waters.

This EFP would temporarily exempt up to two active vessels and six backup vessels from: Possession limits and minimum size requirements specified in 50 CFR 648 subparts A, B, and D through O for on-board sampling and donation of sampled catch; and gillnet tagging requirements in 50 CFR 648 subparts A and F, so gillnets used in the surveys can be marked with tags from CFRF.

A rotational sampling schedule would be used between a survey site inside the SFWF lease area and two reference survey areas outside the lease area. Individual surveys would sample one or two of these areas per trip, depending on the rotational schedule and steam time between the areas. Each survey would consist of four 1-day trips: Two trips to set the gear and two trips to retrieve gear and sample the catch. Survey trips would take place seasonally four times per month from April–June and again from October–December for each project year resulting in four sampling periods: October 2020–December 2020; April 2021–June 2021; October 2021–December 2021; and April 2022–June 2022. In total, 90 nets would be sampled after 48 hour soak times twice per month during the survey periods.

Vessels sampling gillnets under this EFP would declare out of fishery (DOF) to avoid using a monkfish day-at-sea (DAS) while carrying out the research activities covered by this EFP. Vessels operating as DOF and solely conducting

survey activities would not need to use monkfish DAS and a DAS exemption would be unnecessary. If vessels combine commercial activities with survey activities (*i.e.,* setting or hauling commercial gear) the operator would need to be declared into the monkfish DAS program. The proposed research area would fall within the bounds of the monkfish Southern Fishery Management Area (SFMA). Current effort controls for the SFMA were established in Framework Adjustment 12 to the Monkfish Fishery Management Plan (FMP). Framework 12 documented a decline in landings over the last ten years and decreased the SFMA Annual Catch Limit (ACL). Even with the decreased ACL in the SFMA, the limit is higher than landings in recent fishing years. Therefore, the fishing effort from this EFP would not be beyond the scope of what was considered in Framework 12. Additionally, this EFP would not result in a significant increase in catch from what was considered in the Supplemental Information Report completed for Framework Adjustment 8 to the Northeast Skate Complex FMP. A vessel conducting survey activities under this EFP would be required to adhere to its permit-based Vessel Trip Reporting requirements to ensure accurate catch accounting. Catch from this EFP will be counted against the monkfish and skate ACLs, but not against the in season Total Allowable Landings limits for the commercial skate fisheries.

Participating vessels would use gillnet strings with six, 300-foot net panels of 12-inch mesh and tie-downs. Gillnet strings would be compliant with all regulations, including the Atlantic Large Whale Take Reduction Plan, and will be using Future Oceans Marine Mammal Deterrent Devices (10Khz) to warn harbor porpoises of nearby nets. The EFP would exempt vessels from gillnet tagging requirements and all buoys would be labeled with ''CFRF'' and the EFP permit number to mark them as research gear.

CFRF staff would be on board for all sampling trips of survey nets. No catch from the survey nets would be landed for sale. From each haul, researchers would record the number and size for all species, and all organisms would be identified to the species level. Length frequency distribution would be recorded for dominant species in the catch up to 50 individuals, as well as for any endangered species. Stomach content analysis would be performed for commercially important species (monkfish, winter skate, gadids, black sea bass) to determine the prey composition for these species during the pre-construction period in the offshore wind lease area. A maximum of 5 individuals per species and 10 total animals per string will be sampled. Otoliths would be sampled from all fish that are sacrificed for biological sampling.

If a sturgeon is encountered, the protocols outlined in the observer on-deck reference guide will be followed. This will include photographing the animal, taking a fin clip unless it is a shortnose sturgeon, measuring fork length and weight if possible, recording any injuries or bruises, and returning the animal to the water as soon as these activities are completed.

Estimated catch of federally regulated species that would be expected under this EFP is shown in Table 1. Survey catch estimates were derived from commercial catch data for similar gillnet gear reported in NOAA Technical Memorandum NMFS–NE–254 2019 Discard Estimation, Precision and Sample Size Analyses for 14 Federally Managed Species Groups in the Waters off the Northeastern United States (*https://repository.library.noaa.gov/view/noaa/23007*). The gear configuration, location, and soak times of these trips is unknown, and would likely vary from what would be used under this EFP. It is also likely that the catch from this survey would be less than the estimates provided below because they are derived from fishing data from trips that often targeted these species directly with commercial fishing gear in areas where they are more abundant.

TABLE 1—ESTIMATED CATCH OF FEDERALLY REGULATED SPECIES PER SURVEY TRIP, AND TOTAL ESTIMATED CATCH

Species name/species group	Catch per area per trip	Estimated total survey catch
Skate Complex	1,516.5 lb (687.9 kg)	109,184.8 lb (49,525.4 kg)
Monkfish	606.1 lb (274.9 kg)	43,638.0 lb (19,793.9 kg)
Spiny Dogfish	140.1 lb (63.5 kg)	10,147.3 lb (4602.7 kg)
Fluke	7.2 lb (3.3 kg)	1,443.9 lb (654.9 kg)
Atlantic Halibut	6.7 lb (3.0 kg)	561.8 lb (254.8 kg)
Atlantic Cod	6.5 lb (2.9 kg)	520.5 lb (236.1 kg)
Pollock	3.5 lb (1.6 kg)	483.8 lb (219.4 kg)
Bluefish	1.8 lb (0.8 kg)	467.1 lb (211.9 kg)
Silver Hake	1.8 lb (0.8 kg)	248.4 lb (112.7 kg)
White Hake	1.3 lb (0.6 kg)	132.3 lb (60.0 kg)
Haddock	1.0 lb (0.5 kg)	127.1 lb (57.7 kg)
American Plaice	0.4 lb (0.2 kg)	126.4 lb (57.3 kg)
Scup	0.4 lb (0.2 kg)	90.4 lb (41.0 kg)
Winter Flounder	0.4 lb (0.2 kg)	73.2 lb (33.2 kg)
Tilefish	0.2 lb (0.1 kg)	29.5 lb (13.4 kg)
Golden Tilefish	0.2 lb (0.1 kg)	28.4 lb (12.9 kg)
Black Sea Bass	0.2 lb (0.1 kg)	28.0 lb (12.7 kg)

If approved, CFRF may request minor modifications and extensions to the EFP throughout the study. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

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

Dated: February 26, 2021.

Kelly Denit,

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

[FR Doc. 2021–04420 Filed 3–3–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA874]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

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

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Greater Atlantic Region, NMFS, has made a preliminary determination that an Exempted Fishing Permit (EFP) application contains all of the required information and warrants further consideration. The EFP would allow eight commercial fishing vessels to use fish pots to collect pre-construction data on the abundance, size structure, and distribution of scup and black sea bass in the South Fork Wind Farm (SFWF) work area and adjacent waters, under the direction of the Commercial Fisheries Research Foundation (CFRF). Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on the proposed EFP.

DATES: Comments must be received on or before March 19, 2021.

ADDRESSES: You may submit written comments by any of the following methods:

- *Email: nmfs.gar.efp@noaa.gov.* Include in the subject line ''CFRF South Fork Wind Farm Fish Pot EFP.''

FOR FURTHER INFORMATION CONTACT: Louis Forristall, Marine Resources Management Specialist, 978–281–9321, *Louis.Forristall@noaa.gov.*

SUPPLEMENTARY INFORMATION: The CFRF submitted a complete application for an EFP in support of its SFWF Fish Pot Survey on October 16, 2020. The proposed research would use scup traps in a Before-After-Control-Impact study design to collect pre-construction data on the abundance, size structure, and distribution of scup, black sea bass, and tautog in the SFWF area and adjacent waters.

This EFP would temporarily exempt 8 vessels (2 active, 6 reserve) during 14 2-day trips in statistical area 537 from: Possession limits and minimum size requirements specified in 50 CFR 648 subparts B and D through O for on-board sampling; trap escape vent and gear marking requirements in 50 CFR 648 subparts H and I, as well as § 697 subpart A; and trap limit requirements at § 697.19(b) to allow participating vessels to temporarily carry survey traps plus in addition to the vessel's allocated traps in Lobster Management Area 2.

The proposed research activity would sample 6 randomly selected locations in the SFWF work area located within NOAA Statistical Area 537. The proposed research would consist of 14 2-day survey trips that will take place over 2 seasonal periods: April 2021–October 2021 and April 2022–October 2022. Survey trips would take place each month over each of the 7-month seasonal periods. The first day would be used for setting pots and the second day for hauling pots and sampling catch.

On each survey trip, 25 pots will be set on 6 trawl lines (150 pots total) at randomly selected turbine locations at the SFWF. Each trawl line would soak for 24 hours. Between each survey within a season, pots will be left open underwater. Pots would be removed between each survey season.

The proposed research would use ventless scup traps that include an anti-ghost fish panel. The rigging lines will be 3/8 inch (.95 cm) pro flex sink and float rope attached to buoys. Buoy stick swivel ends and breakaway 600 pound (272 kg) swivel links would be used to reduce marine mammal entanglement.

During survey periods, the fishing vessel would redeploy the pot trawl at the sampling location. In between monthly survey trips, the pots will be un-baited and doors will be left open. On the first day of the next monthly survey, pots will be hauled, baited, and redeployed.

Estimated catch that would be expected under this EFP is shown below in Table 1. Survey catch estimates were derived from the Rhode Island Department of Management's ventless fish pot monitoring survey. The survey was conducted within Narraganset Bay, but used similar gear and fishing methods as the proposed activity.

TABLE 1—ESTIMATED CATCH PER SURVEY TRIP, AND TOTAL ESTIMATED CATCH

Species name/species group	Catch per area per trip	Estimated total survey catch
Scup	248.0 lbs (112.5 kg)	3,472.3 lbs (1575.0 kg).
Black Sea Bass	115.7 lbs (52.5 kg)	1,620.4 lbs (735.0 kg).
Tautog	20.1 lbs (9.1 kg)	324.1 lbs (147.0 kg).

If approved, CFRF may request minor modifications and extensions to the EFP throughout the study. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

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

Dated: February 26, 2021,

Kelly Denit,

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

[FR Doc. 2021–04435 Filed 3–3–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

U.S. Integrated Ocean Observing System (IOOS®) Advisory Committee

AGENCY: National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: Notice is hereby given of a virtual meeting of the U. S. Integrated Ocean Observing System (IOOS®) Advisory Committee (Committee).

DATES: The meeting will be held on March 17, 18, and 19, 2021 from 1:00 p.m. to 5:00 p.m. EDT. These times and the agenda topics described below are subject to change. Refer to the web page listed below for the most up-to-date agenda and dial-in information.

ADDRESSES: The meeting will be held virtually. Refer to the U.S. IOOS

Advisory Committee website at *http://ioos.noaa.gov/community/u-s-ioos-advisory-committee/* for the most up-to-date information.

FOR FURTHER INFORMATION CONTACT: Krisa Arzayus, Designated Federal Official, U.S. IOOS Advisory Committee, U.S. IOOS Program, 1315 East-West Highway, Silver Spring, MD 20910; Phone 240–533–9455; Fax 301–713–3281; Email *krisa.arzayus@noaa.gov* or visit the U.S. IOOS Advisory Committee website at *http://ioos.noaa.gov/community/u-s-ioos-advisory-committee/.* To register for the meeting, contact Laura Gewain, *laura.gewain@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Committee was established by the NOAA Administrator as directed by Section 12304 of the Integrated Coastal and Ocean Observation System Act, part of the Omnibus Public Land Management Act of 2009 (Pub. L. 111–11), and reauthorized under the Coordinated Ocean Observations and Research Act of 2020 (Pub. L. 116–271). The Committee advises the NOAA Administrator and the Interagency Ocean Observation Committee (IOOC) on matters related to the responsibilities and authorities set forth in section 12302 of the Integrated Coastal and Ocean Observation System Act of 2009 and other appropriate matters as the Under Secretary refers to the Committee for review and advice.

The Committee will provide advice on:

(A) Administration, operation, management, and maintenance of the System;

(B) expansion and periodic modernization and upgrade of technology components of the System;

(C) identification of end-user communities, their needs for information provided by the System, and the System's effectiveness in disseminating information to end-user communities and to the general public; and

(D) additional priorities, including—

(i) a national surface current mapping network designed to improve fine scale sea surface mapping using high frequency radar technology and other emerging technologies to address national priorities, including Coast Guard search and rescue operation planning and harmful algal bloom forecasting and detection that—

(I) is comprised of existing high frequency radar and other sea surface current mapping infrastructure operated by national programs and regional coastal observing systems;

(II) incorporates new high frequency radar assets or other fine scale sea surface mapping technology assets, and other assets needed to fill gaps in coverage on United States coastlines; and

(III) follows a deployment plan that prioritizes closing gaps in high frequency radar infrastructure in the United States, starting with areas demonstrating significant sea surface current data needs, especially in areas where additional data will improve Coast Guard search and rescue models;

(ii) fleet acquisition for unmanned maritime systems for deployment and data integration to fulfill the purposes of this subtitle;

(iii) an integrative survey program for application of unmanned maritime systems to the real-time or near real-time collection and transmission of sea floor, water column, and sea surface data on biology, chemistry, geology, physics, and hydrography;

(iv) remote sensing and data assimilation to develop new analytical methodologies to assimilate data from the System into hydrodynamic models;

(v) integrated, multi-State monitoring to assess sources, movement, and fate of sediments in coastal regions;

(vi) a multi-region marine sound monitoring system to be—

(I) planned in consultation with the Interagency Ocean Observation Committee, the National Oceanic and Atmospheric Administration, the Department of the Navy, and academic research institutions; and

(II) developed, installed, and operated in coordination with the National Oceanic and Atmospheric Administration, the Department of the Navy, and academic research institutions; and

(E) any other purpose identified by the Administrator or the Council.

The meeting will be open to public participation with a 10-minute public comment period on from 4:45pm to 5:00pm EDT each day of the meeting (check agenda on website to confirm time). The Committee expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of three (3) minutes. Written comments should be received by the Designated Federal Official by March 15, 2021, to provide sufficient time for Committee review. Written comments received after March 15, 2021, will be distributed to the Committee, but may not be reviewed prior to the meeting date. To submit written comments, please email your comments, your name as it appears on your driver's license, and the organization/company affiliation you represent to Krisa Arzayus, *Krisa.Arzayus@noaa.gov* and Laura Gewain, *Laura.Gewain@noaa.gov.*

Matters to be considered: The meeting will focus on updates from committee working groups on ongoing committee priorities, including the role of ocean observations in forecasting, strategy and vision for the System, partnerships for a successful System, and requirements for the System, in order to develop the next set of recommendations to NOAA and the IOOC. The latest version of the agenda will be posted at *http://ioos.noaa.gov/community/u-s-ioos-advisory-committee/.*

Special accomodations: These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Krisa Arzayus, Designated Federal Official at *Krisa.Arzayus@noaa.gov and Laura.Gewain@noaa.gov* or 240–533–9455 by March 10, 2021.

Krisa M. Arzayus,

Deputy Director, U.S. Integrated Ocean Observing System Office, National Ocean Service.

[FR Doc. 2021–04495 Filed 3–3–21; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Recruitment of First Responder Network Authority Board Members

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice.

SUMMARY: The National Telecommunications and Information Administration (NTIA) issues this Notice to initiate the annual process to seek expressions of interest from individuals who would like to serve on the Board of the First Responder Network Authority (FirstNet Authority Board or Board). The terms of 11 of the 12 non-permanent members to the FirstNet Authority Board will be available for appointment and reappointment in 2021.

DATES: To be considered for the calendar year 2021 appointments, expressions of interest must be electronically transmitted on or before April 5, 2021.

ADDRESSES: Applicants should submit expressions of interest as described below to: Michael Dame, Deputy Associate Administrator, Office of

Public Safety Communications, National Telecommunications and Information Administration, by email to *FirstNetBoardApplicant@ntia.doc.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Dame, Deputy Associate Administrator, Office of Public Safety Communications, National Telecommunications and Information Administration; telephone: (202) 482–1181; email: *mdame@ntia.gov.* Please direct media inquiries to NTIA's Office of Public Affairs, (202) 482–7002.

SUPPLEMENTARY INFORMATION:

I. Background and Authority

The Middle Class Tax Relief and Job Creation Act of 2012 (Act) created the First Responder Network Authority (FirstNet Authority) as an independent authority within NTIA. The Act charged the FirstNet Authority with ensuring the building, deployment, and operation of a nationwide, interoperable public safety broadband network, based on a single, national network architecture.[1] The FirstNet Authority holds the single nationwide public safety license granted for wireless public safety broadband deployment. The FirstNet Authority Board is responsible for providing overall policy direction and oversight of FirstNet to ensure that the nationwide network continuously meets the needs of public safety.

II. Structure

The FirstNet Authority Board is composed of 15 voting members. The Act names the Secretary of Homeland Security, the Attorney General of the United States, and the Director of the Office of Management and Budget as permanent members of the FirstNet Authority Board. The Secretary of Commerce (Secretary) appoints the 12 non-permanent members of the FirstNet Authority Board.[2]

The Act requires each Board member to have experience or expertise in at least one of the following substantive areas: Public safety, network, technical, and/or financial.[3] Additionally, the composition of the FirstNet Authority Board must satisfy the other requirements specified in the Act, including that: (i) At least three members have served as public safety professionals; (ii) at least three members represent the collective interests of states, localities, tribes, and territories; and (iii) its members reflect geographic and regional, as well as rural and urban, representation.[4] An individual Board member may satisfy more than one of these requirements. The current non-permanent FirstNet Authority Board members are (noting expiration of term):

- Robert Tipton Osterthaler, Board Chair, Business/technology executive, network (Term expired: January 2021)
- Matt Slinkard, Executive Assistant Chief of Police, City of Houston Police Department (Term expired: January 2021)
- David Zolet, CEO, CentralSquare (Term expired: January 2021)
- Vacant (Term expired: January 2021)
- Richard Carrizzo, Board Vice Chair, Fire Chief, Southern Platte Fire Protection District, MO (Term expires: August 2021)
- Neil E. Cox, Telecommunications/technology executive (Term expires: August 2021)
- Brian Crawford, SVP and Chief Administrative Officer for Willis-Knighton Health System/former Fire Chief and municipal government executive (Term expires: August 2021)
- Billy Hewes, Mayor of Gulfport, MS (Term expires: August 2021)
- Edward Horowitz, Venture capital/technology executive (Term expires: August 2021)
- Paul Patrick, Division Director, Family Health and Preparedness, Utah Department of Health (Term expires: August 2021)
- Brigadier General Welton Chase, Retired, U.S. Army, Army Information Technology/CEO, Chase Cyber Consulting (Term expires: September 2021)
- Karima Holmes, Senior Director, ShotSpotter, Inc. (Term expires: August 2022)

Any Board member whose term has expired may serve until such member's successor has taken office, or until the end of the calendar year in which such member's term has expired, whichever is earlier.[5] Board members will be appointed for a term of three years.[6] Board members may not serve more than two consecutive full three-year terms.[7] More information about the FirstNet Authority Board is available at *www.firstnet.gov/about/Board.*

III. Compensation and Status as Government Employees

FirstNet Authority Board members are appointed as special government employees. FirstNet Authority Board members are compensated at the daily rate of basic pay for level IV of the Executive Schedule (approximately $172,500 per year) for each day worked on the FirstNet Authority Board.[8] Each Board member must be a United States citizen, cannot be a registered lobbyist, and cannot be a registered agent of, employed by, or receive payments from, a foreign government.[9]

IV. Financial Disclosure and Conflicts of Interest

FirstNet Authority Board members must comply with certain federal conflict of interest statutes and ethics regulations, including some financial disclosure requirements. A FirstNet Authority Board member will generally be prohibited from participating on any particular FirstNet Authority matter that will have a direct and predictable effect on his or her personal financial interests or on the interests of the appointee's spouse, minor children, or non-federal employer.

V. Selection Process

At the direction of the Secretary, NTIA will conduct outreach to the public safety community, state and local organizations, and industry to solicit nominations for candidates to the Board who satisfy the statutory requirements for membership. In addition, the Secretary, through NTIA, will accept expressions of interest from any individual, or from any organization proposing a candidate who satisfies the statutory requirements for membership on the FirstNet Authority Board. To be considered for a calendar year 2021 appointment, expressions of interest must be electronically transmitted on or before April 5, 2021.

All parties submitting an expression of interest should submit the candidate's (i) full name, address, telephone number, email address; (ii) current resume; (iii) statement of qualifications that references how the candidate satisfies the Act's expertise, representational, and geographic requirements for FirstNet Authority Board membership, as described in this Notice; and (iv) a statement describing why the candidate wants to serve on the FirstNet Authority Board, affirming their ability and availability to take a regular and active role in the Board's work.

The Secretary will select FirstNet Authority Board candidates based on

[1] 47 U.S.C. 1422(b).

[2] 47 U.S.C. 1424(b).

[3] 47 U.S.C. 1424(b)(2)(B).

[4] 47 U.S.C. 1424(b)(2)(A).

[5] 47 U.S.C. 1424(c)(2)(B).

[6] However, [a]ny member appointed to fill a vacancy occurring prior to the expiration of the term for which that member's predecessor was appointed shall be appointed for the remainder of the predecessor's term. *See* 47 U.S.C. 1424(c)(2)(C).

[7] 47 U.S.C. 1424(c)(2)(A)(ii).

[8] 47 U.S.C. 1424(g).

[9] *See* Revised Guidance on Appointment of Lobbyists to Federal Advisory Committees, Boards, and Commissions, Office of Management and Budget, 79 FR 47482 (Aug. 13, 2014).

the eligibility requirements in the Act and recommendations submitted by NTIA. NTIA will recommend candidates based on an assessment of qualifications as well as demonstrated ability to work in a collaborative way to achieve the goals and objectives of the FirstNet Authority as set forth in the Act. NTIA may consult with FirstNet Authority Board members or executives in making its recommendation. Board candidates will be vetted through the Department of Commerce and are subject to an appropriate background check for security clearance.

Dated: March 1, 2021.

Kathy Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 2021–04473 Filed 3–3–21; 8:45 am]

BILLING CODE 3510–WL–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Generic Clearance for the Collection of Pilot and Test Data

AGENCY: Corporation for National and Community Service.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Corporation for National and Community Service, operating as AmeriCorps, has submitted a public information collection request (ICR) entitled Generic Clearance for the Collection of Pilot and Test Data for review and approval in accordance with the Paperwork Reduction Act.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by April 5, 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.

FOR FURTHER INFORMATION CONTACT: Copies of this ICR, with applicable supporting documentation, may be obtained by calling Amy Borgstrom at 202–422–2781 or by email to *aborgstrom@cns.gov.*

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of AmeriCorps, 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;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments

A 60-day Notice requesting public comment was published in the **Federal Register** on Monday, November 30 at 85: 76543. This comment period ended January 29, 2021. No comments were received.

Title of Collection: Generic Clearance for the Collection of Pilot and Test Data.

OMB Control Number: 3045–0163.

Type of Review: Renewal.

Respondents/Affected Public: Individuals and Households.

Total Estimated Number of Annual Responses: 350.

Total Estimated Number of Annual Burden Hours: 10,500 minutes.

Abstract: AmeriCorps seeks to renew the current information collection. The information collection will enable pilot testing of survey instruments in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By pilot testing we mean information that provides useful insights on how respondents interact with the instrument, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations regarding prospective studies. It will also allow feedback to contribute directly to the improvement of research program management.

The Agency will only submit a collection for approval under this generic clearance if it meets the following conditions:

- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;
- The collections are non-controversial and do not raise issues of concern to other Federal agencies;
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
- Personally identifiable information (PII) is collected only to the extent necessary and is not retained;
- Information gathered will be used only internally for general service improvement and program management purposes and is not intended for release outside of the agency;
- Information gathered will not be used for the purpose of substantially informing influential policy decisions; and
- Information gathered will yield qualitative information; the collections will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.

Feedback collected under this generic clearance provides useful information, but it does not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address the target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

As a general matter, information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. The information collection will be used in the same

manner as the existing application. AmeriCorps also seeks to continue using the current application until the revised application is approved by OMB. The current application is due to expire on March 31, 20201.

Dated: February 25, 2021.

Mary Hyde,

Director, Office of Research and Evaluation.

[FR Doc. 2021–04421 Filed 3–3–21; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF EDUCATION

Reopening; Applications for New Awards; Educational Technology, Media, and Materials for Individuals With Disabilities—Stepping-Up Technology Implementation

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) reopens the competition for fiscal year (FY) 2021, for certain prospective eligible applicants described elsewhere in this notice, under the Educational Technology, Media, and Materials for Individuals with Disabilities—Stepping-up Technology Implementation, Assistance Listing Number 84.327S. The Department takes this action to allow more time for the preparation and submission of applications by prospective eligible applicants affected by the severe winter weather in Louisiana, Oklahoma, and Texas.

DATES:

Deadline for Transmittal of Applications for Applicants Meeting the Eligibility Criteria in this Notice: March 8, 2021.

Deadline for Intergovernmental Review: May 5, 2021.

FOR FURTHER INFORMATION CONTACT: Terry Jackson, U.S. Department of Education, 400 Maryland Avenue SW, Room 5128, Potomac Center Plaza, Washington, DC 20202–5076. Telephone: (202) 245–6039. Email: *Terry.Jackson@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: On December 22, 2020, we published the notice inviting applications (NIA) for the FY 2021 Educational Technology, Media, and Materials for Individuals with Disabilities—Stepping-up Technology Implementation competition in the **Federal Register** (85 FR 83531). Under the NIA, applications were due on February 22, 2021.

We are reopening this competition for eligible applicants in affected areas in Louisiana, Oklahoma, and Texas to allow those applicants more time to prepare and submit their applications. For applicants that meet the eligibility criteria in this notice, we are reopening the competition until March 8, 2021. We are also extending the intergovernmental review deadline until May 5, 2021.

Eligibility: The reopening of the competition in this notice applies to eligible applicants under Educational Technology, Media, and Materials for Individuals with Disabilities—Stepping-up Technology Implementation, Assistance Listing Number 84.327S, that are located in an area for which the President has issued an emergency declaration (see *www.fema.gov/disasters/*), in Louisiana (FEMA Disaster designation 3556), Oklahoma (FEMA Disaster designation 3555), and Texas (FEMA Disaster designation 3554).

In accordance with the NIA, eligible applicants for this competition are limited to State educational agencies; local educational agencies (LEAs), including public charter schools that operate as LEAs under State law; institutions of higher education; other public agencies; private nonprofit organizations; freely associated States and outlying areas; Indian Tribes or Tribal organizations; and for-profit organizations.

Note: All information in the NIA for this competition remains the same, except for, with respect to eligible applicants, the deadline for the transmittal of applications and the deadline for intergovernmental review.

Program Authority: 20 U.S.C. 1474 and 1481.

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.

David Cantrell,

Deputy Director, Office of Special Education Programs, Delegated the authority to perform the functions and duties of the Assistant Secretary for the Office of Special Education and Rehabilitative Services.

[FR Doc. 2021–04444 Filed 3–3–21; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Reopening; Application Period for Certain Applicants Under the Fiscal Year (FY) 2021 Graduate Assistance in Areas of National Need Program Competition

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) reopens the competition for FY 2021, for certain eligible applicants described elsewhere in this notice, under the Graduate Assistance in Areas of National Need program, Assistance Listing Number 84.200A. The Department takes this action to allow more time for the preparation and submission of applications by eligible applicants affected by the severe winter weather in Louisiana, Oklahoma, and Texas, where the President has issued a disaster declaration. The reopening of the application deadline date for this competition is intended to help affected eligible applicants compete fairly with other eligible applicants under this competition.

DATES:

Deadline for Transmittal of Applications for Applicants Meeting the Eligibility Criteria in this Notice: March 15, 2021.

Deadline for Intergovernmental Review: May 25, 2021.

FOR FURTHER INFORMATION CONTACT: Rebecca Ell, U.S Department of Education, 400 Maryland Avenue SW, 2B214, Washington, DC 20202–4260. Telephone: (202) 453–6348. Email: *Rebecca.ell@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: On January 15, 2021, we published the notice inviting applications (NIA) for new awards for the FY 2021 Graduate Assistance in Areas of National Need competition in the **Federal Register** (86 FR 4024). Under the NIA, applications were due on March 1, 2021.

We are reopening this competition for eligible applicants in Louisiana, Oklahoma, and Texas, for which the President has issued a disaster declaration, to allow those applicants more time to prepare and submit applications. For applicants that meet the eligibility criteria in this notice, we are reopening the competition until March 15, 2021. We are also extending the intergovernmental review deadline until May 25, 2021.

Eligibility: The reopening of the competition in this notice applies to eligible applicants under the Graduate Assistance in Areas of National Need program, Assistance Listing Number 84.200A, that are located in an area for which the President has issued an emergency declaration (see *www.fema.gov/disasters/*), in Louisiana (FEMA Disaster designation 3556), Oklahoma (FEMA Disaster designation 3555), and Texas (FEMA Disaster designation 3554).

In accordance with the NIA, eligible applicants for this competition are:

(a) Any academic department of an institution of higher education (IHE) that provides a course of study that—

(i) Leads to a graduate degree in an area of national need; and

(ii) Has been in existence for at least four years at the time of an application for a grant under this competition; or

(b) An academic department of an IHE that—

(i) Satisfies the requirements of paragraph (a) of this section; and

(ii) Submits a joint application with one or more eligible non-degree-granting institutions that have formal arrangements for the support of doctoral dissertation research with one or more degree-granting institutions.

Note: All information in the NIA for this competition remains the same, except for, with respect to eligible applicants, the deadline for the transmittal of applications and the deadline for intergovernmental review.

Program Authority: 20 U.S.C. 1135–1135e.

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.

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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.

Tiwanda Burse,

Deputy Assistant Secretary for Management & Planning, Office of Postsecondary Education, Delegated authority to perform functions and duties of the Assistant Secretary for the Office of Postsecondary Education.

[FR Doc. 2021–04485 Filed 3–3–21; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2020–SCC–0182]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Higher Education Act (HEA) Title II Report Cards on State Teacher Credentialing and Preparation

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of a currently approved collection.

DATES: Interested persons are invited to submit comments on or before April 5, 2021.

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 information collection request by selecting ''Department of Education'' under ''Currently Under Review,'' then check ''Only Show ICR for Public Comment'' checkbox. Comments may also be sent to *ICDocketmgr@ed.gov.*

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Freddie Cross, (202) 453–7224.

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: Higher Education Act (HEA) Title II Report Cards on State Teacher Credentialing and Preparation.

OMB Control Number: 1840–0744.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: State, Local, and Tribal Governments; Private Sector.

Total Estimated Number of Annual Responses: 1,794.

Total Estimated Number of Annual Burden Hours: 267,588.

Abstract: This request is a revision that includes COVID–19 guidance and to approve the state report card and institution and program report cards required by the Higher Education Act of 1965, as amended in 2008 by the Higher Education Opportunity Act (HEOA).

States must report annually on criteria and assessments required for initial teacher credentials using a State Report Card (SRC), and institutions of higher education (IHEs) with teacher preparation programs (TPP), and TPPs outside of IHEs, must report on key program elements on an Institution and Program Report Card (IPRC). IHEs and TPPs outside of IHEs report annually to their states on program elements, including program numbers, type, enrollment figures, demographics, completion rates, goals and assurances to the state. States, in turn, must report on TPP elements to the Secretary of Education in addition to information on assessment pass rates, state standards, initial credential types and requirements, numbers of credentials issued, TPP classification as at-risk or low-performing. The information from states, institutions, and programs is published annually in The Secretary's Report to Congress on Teacher Quality. The Department plans to use the SRC and IPRC current instruments, unchanged, for the FY21 through FY23 data collections, in order to maintain continuity in the information available. There is no change in burden due to the addition of Institutions with Teacher Preparation Programs. The Department has included additional instruction to aid institutions in reporting data that may differ from usual data due to COVID restrictions.

Dated: March 1, 2021.

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. 2021–04489 Filed 3–3–21; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Withdrawal of Notice Inviting Applications and Cancellation of the Competition for the Equity Assistance Centers Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice; withdrawal.

SUMMARY: The U.S. Department of Education (Department) withdraws the notice inviting applications (NIA) and cancels the competition for fiscal year (FY) 2021 for the Equity Assistance Centers (EAC) program under Assistance Listing number (ALN) 84.004D. The Department intends to announce a new competition in FY 2022.

DATES: The notice published at 86 FR 2653 on January 13, 2021, is withdrawn and the competition canceled as of March 4, 2021.

FOR FURTHER INFORMATION CONTACT: Ed Vitelli, U.S. Department of Education, 400 Maryland Avenue SW, Room 3E106, Washington, DC 20202. Telephone: 202–453–6203. Email: *Edward.Vitelli@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:

Background

The EAC program is authorized under Title IV of the Civil Rights Act of 1964, 42 U.S.C. 2000c—2000c–2, 2000c–5, and the implementing regulations in 34 CFR part 270. This program awards grants through cooperative agreements to operate regional EACs that provide technical assistance (including training) at the request of school boards and other responsible governmental agencies in the preparation, adoption, and implementation of plans for the desegregation of public schools—which in this context means plans for equity (including desegregation based on race, national origin, sex, and religion)—and in the development of effective methods of coping with special educational problems occasioned by desegregation. Desegregation assistance, per 34 CFR 270.4, may include, among other activities: (1) Dissemination of information regarding effective methods of coping with special educational problems occasioned by desegregation; (2) assistance and advice in coping with these problems; and (3) training designed to improve the ability of teachers, supervisors, counselors, parents, community members, community organizations, and other elementary or secondary school personnel to deal effectively with special educational problems occasioned by desegregation. A project must provide technical assistance in all four of the desegregation assistance areas: Race, sex, national origin, and religion desegregation.

On January 13, 2021, the Department published in the **Federal Register** (86 FR 2653) an NIA for the FY 2021 EAC competition, ALN 84.004D.

On January 20, 2021, President Joseph R. Biden signed Executive Order 13985, titled ''Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.'' This Executive order directed the Federal Government to pursue a comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality.

On January 20, 2021, President Biden also signed Executive Order 13988, titled ''Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation.'' This Executive order directed the Federal Government to prevent and combat discrimination on the basis of gender identity or sexual orientation, and to fully enforce laws that prohibit discrimination on the basis of gender identity or sexual orientation.

On February 2, 2021, President Biden signed Executive Order 14012, titled ''Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans.'' This Executive order directed the Federal Government to ensure that laws and policies encourage full participation by immigrants, including refugees, in our civic life; that immigration processes and other benefits are delivered effectively and efficiently; and that the Federal Government eliminates sources of fear and other barriers that prevent immigrants from accessing government services available to them.

To allow the Department the opportunity to consider how best to align the EAC program with these Executive orders, to the extent statutorily permitted, the Department is withdrawing the NIA and cancelling this competition. The Department will propose to extend the project period for current grantees to ensure the continuity of the important services provided under the program. The Department intends to announce a new EAC competition for five-year grants in FY 2022.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79.

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.

Mark Washington,

Deputy Assistant Secretary, Office of Elementary and Secondary Education.

[FR Doc. 2021–04491 Filed 3–3–21; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Eligibility Designations and Applications for Waiving Eligibility Requirements; Programs Under Parts A and F of Title III and Programs Under Title V of the Higher Education Act of 1965, as Amended (HEA)

AGENCY: Office of Postsecondary Education, Department of Education (Department).

ACTION: Notice.

SUMMARY: The Department announces the process for designation of eligible institutions and invites applications for waivers of eligibility requirements for fiscal year (FY) 2021, for the following programs: 1. Programs authorized under title III, part A of the HEA: Strengthening Institutions Program (Part A SIP), Alaska Native and Native Hawaiian-Serving Institutions (Part A ANNH), Predominantly Black Institutions (Part A PBI), Native American-Serving Nontribal Institutions (Part A NASNTI), and Asian American and Native American Pacific Islander-Serving Institutions (Part A AANAPISI). 2. Programs authorized under title III, part F of the HEA: Hispanic-Serving Institutions STEM and Articulation (Part F HSI STEM and Articulation), Predominantly Black Institutions (Part F PBI), Alaska Native and Native Hawaiian-Serving Institutions (Part F ANNH), Native American-Serving Nontribal Institutions (Part F NASNTI), and Asian American and Native American Pacific Islander-Serving Institutions (Part F AANAPISI). 3. Programs authorized under title V of the HEA: Developing Hispanic-Serving Institutions (HSI) and Promoting Postbaccalaureate Opportunities for Hispanic Americans (PPOHA).

DATES:

Applications Available: March 4, 2021.

Deadline for Transmittal of Applications: April 5, 2021.

FOR FURTHER INFORMATION CONTACT: Christopher Smith, Institutional Service, U.S. Department of Education, 400 Maryland Avenue SW, Room 2B108, Washington, DC 20202. Telephone: (202) 453–7946 or (202) 262–7141. Email: *Christopher.Smith@ed.gov;* or Jason Cottrell, Institutional Service, U.S. Department of Education, 400 Maryland Avenue SW, Room 2B127, Washington, DC 20202. Telephone: (202) 453–7530 or (202) 262–1833. Email: *Jason.Cottrell@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 Programs: The Part A SIP, Part A ANNH, Part A PBI, Part A NASNTI, and Part A AANAPISI programs are authorized under title III, part A of the HEA. The Part F HSI STEM and Articulation, Part F PBI, Part F ANNH, Part F NASNTI, and Part F AANAPISI programs are authorized under title III, part F of the HEA. The HSI and PPOHA programs are authorized under title V of the HEA. Please note that certain programs addressed in this notice have the same or similar names as other programs that are authorized under a different statutory authority. For this reason, we specify the statutory authority as part of the acronym for certain programs.

Under the programs discussed above, institutions are eligible to apply for grants if they meet specific statutory and regulatory eligibility requirements. An institution of higher education that is designated as an eligible institution may also receive a waiver of certain non-Federal cost-sharing requirements for one year under the Federal Supplemental Educational Opportunity Grant (FSEOG) program authorized by title IV, part A of the HEA and the Federal Work-Study (FWS) program authorized by section 443 of the HEA. Qualified (eligible) institutions may receive the FSEOG and FWS waivers for one year even if they do not receive a grant under a title III or V grant program. An applicant that receives a grant from the Student Support Services (SSS) program that is authorized under section 402D of the HEA, 20 U.S.C. 1070a–14, may receive a waiver of the required non-Federal cost share for institutions for the duration of the grant. An applicant that receives a grant from the Undergraduate International Studies and Foreign Language (UISFL) program that is authorized under section 604 of the HEA, 20 U.S.C. 1124, may receive a waiver or reduction of the required non-Federal cost share for institutions for the duration of the grant.

Sections 312 and 502 of the HEA, 34 CFR 607.2–607.5, and 34 CFR 606.2–606.5 include most of the basic eligibility requirements for grant programs authorized under titles III and V of the HEA. Sections 312(b)(1)(B) and 502(a)(2)(A) of the HEA provide that, to be eligible for these programs, an institution of higher education's average ''educational and general expenditures'' (E&G) per full-time equivalent (FTE) undergraduate student must be less than the average E&G expenditures per FTE undergraduate student of institutions that offer similar instruction in that year.

The National Center for Education Statistics (NCES) calculates Core Expenses per FTE of institutions, a statistic like E&G per FTE. Both E&G per FTE and Core Expenses per FTE are based on regular operational expenditures of institutions (excluding auxiliary enterprises, independent operations, and hospital expenses). They differ only in that E&G per FTE is based on fall undergraduate enrollment, while Core Expenses per FTE is based on 12-month undergraduate enrollment for the academic year.

To avoid inconsistency in the data submitted to, and produced by, the Department, for the purpose of sections 312(b)(1)(B) and 502(a)(2)(A) of the HEA, E&G per FTE is calculated using the same methodology as Core Expenses per FTE. Accordingly, the Department will apply the NCES methodology for calculating Core Expenses per FTE. Institutions requesting an eligibility exemption determination must use the Core Expenses per FTE data reported to NCES' Integrated Postsecondary Education Data System (IPEDS) for the most currently available academic year, in this case academic year 2018–2019.

Special Note: To qualify as an eligible institution under the grant programs listed in this notice, your institution must satisfy several criteria. For most of these programs, these criteria include those that relate to the enrollment of needy students and to the Core Expenses per FTE student count for a specified base year. The most recent

data available in IPEDS for Core Expenses per FTE are for base year 2018–2019. To award FY 2021 grants in a timely manner, we will use these data to evaluate eligibility.

Accordingly, each institution interested in either applying for a new grant under the title III or V programs addressed in this notice, or requesting a waiver of the non-Federal cost share, must be designated as an eligible institution in FY 2021. Under the HEA, any institution interested in applying for a grant under any of these programs must first be designated as an eligible institution. (34 CFR 606.5 and 607.5).

Note: Please be advised that the list of institutions of higher education identified in the allocation table as eligible to receive an award under section 314(a)(2) of the Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (CRRSAA) only speaks to the eligibility of those institutions for the purposes of receiving funds under CRRSAA section 314(a)(2). The appearance of an institution on the section 314(a)(2) allocation table does not grant or otherwise indicate that the institution is currently eligible for funding under titles III, V, and VII of the HEA. An institution that seeks to meet the eligibility requirements for programs identified in this notice under titles III, V, and VII of the HEA must apply under the procedures contained in this notice.

Eligible Applicants:

The eligibility requirements for the programs authorized under part A of title III of the HEA are in sections 312 and 317–320 of the HEA (20 U.S.C. 1058, 1059d-1059g) and in 34 CFR 607.2 through 607.5. The regulations may be accessed at *www.ecfr.gov/cgi-bin/text-idx?SID=bc12bf5d685021e069cd1a15352b381a&mc=true&node=pt34.3.607&rgn=div5.* The eligibility requirements for the programs authorized by part F of title III of the HEA are in section 371 of the HEA (20 U.S.C. 1067q). There are currently no specific regulations for these programs.

The eligibility requirements for the title V HSI program are in part A of title V of the HEA and in 34 CFR 606.2 through 34 CFR 606.5. The regulations may be accessed at *www.ecfr.gov/cgi-bin/text-idx?SID=bc12bf5d685021e069cd1a15352b381a&mc=true&node=pt34.3.606&rgn=div5l.*

The requirements for the PPOHA program are in part B of title V of the HEA and in the notice of final requirements published in the **Federal Register** on July 27, 2010 (75 FR 44055), and in 34 CFR 606.2(a) and (b), and 606.3 through 606.5.

The Department has instituted a process known as the Eligibility Matrix (EM), under which we will use information submitted by institutions to IPEDS to determine which institutions meet the basic eligibility requirements for the programs authorized by title III or V of the HEA listed above. We will use enrollment and fiscal data from the 2018–2019 year submitted by institutions to IPEDS to make eligibility determinations for FY 2021. Beginning February XX, 2021, an institution will be able to review the Department's decision on whether it is eligible for the grant programs authorized by title III or V of the HEA through this process by checking the institution's eligibility in the eligibility system linked through the Department's Institutional Service Eligibility website: *http://www2.ed.gov/about/offices/list/ope/idues/eligibility.html.*

Please note that through this process, the Department does not certify, nor designate, an institution as a Historically Black College or University, Tribally Controlled College or University, Minority-Serving Institution, or Hispanic-Serving Institution. The Department's determination that an institution is eligible is solely for the purpose of the institution's ability to apply for and receive grants under certain programs as discussed in this notice.

The EM is part of the Department's eligibility data system. The EM is a read-only worksheet that lists all potentially eligible postsecondary institutions, as determined by the Department using the data described above. If the entry for your institution in the EM shows that your institution is eligible to apply for a grant for a particular program, and you plan to apply for a grant in that program, you will not need to apply for eligibility or for a waiver through the process described in this notice. Rather, you may print out the eligibility letter directly. However, if the EM does not show that your institution is eligible for a program in which you plan to apply for a grant, you must submit an application as discussed in this notice before the application deadline of April 5, 2021.

To check your institution's eligibility in the EM, go to *https://HEPIS.ed.gov,* and log into the system using your email address and password. If you are not sure whether you have an account in the system, click the ''New User'' button. If you have an account, it will walk you through setup. Note that it may take up to five business days to verify user identity and to complete new account setup, so please allow yourself enough time to complete the application. If the Grant Eligibility Application (GEA) system is open, click the link on your dashboard to check your institution's eligibility status by clicking the ''View pre-Eligibility Information'' button. Your institution's eligibility information will display.

If the EM does not show that your institution is eligible for a program, or if your institution does not appear in the eligibility system, or if you disagree with the eligibility determination reflected in the eligibility system, you can apply for a waiver or reconsideration through the process described in this notice. The application process is like previous years; you will choose the waiver option on the website at *https://HEPIS.ed.gov/* and submit your institution's application.

Enrollment of Needy Students: For programs under titles III and V (excluding the PBI programs), an institution is considered to have an enrollment of needy students if: (1) At least 50 percent of its degree-seeking students received financial assistance under the Federal Pell Grant, FSEOG, FWS, or the Federal Perkins Loan programs; or (2) the percentage of its undergraduate degree-seeking students who were enrolled on at least a half-time basis and received Federal Pell Grants exceeded the median percentage of undergraduate degree students who were enrolled on at least a half-time basis and received Federal Pell Grants at comparable institutions that offer similar instruction.

To qualify under criterion 2, an institution's Federal Pell Grant percentage for base year 2018–2019 must be more than the median for its category of comparable institutions provided in the 2018–2019 Average Pell Grant and Core Expenses per FTE Student Table in this notice. If your institution qualifies under the first criterion, under which at least 50 percent of its degree-seeking students received financial assistance under one of several Federal student aid programs (the Federal Pell Grant, FSEOG, FWS, or the Federal Perkins Loan programs), but not the second criterion, under which an institution's Federal Pell Grant percentage for base year 2018–2019 must be more than the average for its category of comparable institutions provided in the 2018–2019 Average Pell Grant and Core Expenses per FTE Student Table in this notice, you must submit an application including the requested data, which is not available in IPEDS.

For the definition of ''Enrollment of Needy Students,'' for purposes of the Part A PBI program, see section 318(b)(2) of the HEA, and for purposes

of the Part F PBI program, see section 371(c)(9) of the HEA.

Core Expenses per FTE Student: For the Title III, Part A SIP; Part A ANNH; Part A PBI; Part A NASNTI; Part A AANAPISI; Title III, Part F HSI STEM and Articulation; Part F PBI; Part F ANNH; Part F NASNTI; Part F AANAPISI; Title V, Part A HSI; and Title V, Part B PPOHA programs, an institution should compare its base year 2018–2019 Core Expenses per FTE student to the average Core Expenses per FTE student for its category of comparable institutions in the base year 2018–2019 Average Pell Grant and Average Core Expenses per FTE Student Table in this notice. The institution meets this eligibility requirement under these programs if its Core Expenses for the 2018–2019 base year are less than the average for its category of comparable institutions.

Core Expenses are defined as the total expenses for the essential education activities of the institution. Core Expenses for public institutions reporting under the Governmental Accounting Standards Board (GASB) requirements include expenses for instruction, research, public service, academic support, student services, institutional support, operation and maintenance of plant, depreciation, scholarships and fellowships, interest, and other operating and non-operating expenses. Core Expenses for institutions reporting under the Financial Accounting Standards Board (FASB) standards (primarily private, not-for-profit, and for-profit) include expenses for instruction, research, public service, academic support, student services, institutional support, net grant aid to students, and other expenses. Core Expenses do not include Federal student aid for the purposes of eligibility. For both FASB and GASB institutions, Core Expenses do not include expenses for auxiliary enterprises (*e.g.,* bookstores, dormitories), hospitals, and independent operations.

The following table identifies the relevant average Federal Pell Grant percentages for the base year 2018–2019 and the relevant Core Expenses per FTE student for the base year 2018–2019 for the four categories of comparable institutions:

Type of institution	Base year 2018–2019 median pell grant percentage	Base year 2018–2019 average core expenses per FTE student
Two-year Public Institutions	33	$14,679
Two-year Non-profit Private Institutions	57	17,529
Four-year Public Institutions	35	32,882
Four-year Non-profit Private Institutions	37	42,211

Waiver Information: Institutions that do not meet the needy student enrollment requirement or the Core Expenses per FTE requirement may apply to the Secretary for a waiver of these requirements, as described in sections 392 and 522 of the HEA, and the implementing regulations at 34 CFR 606.3(b), 606.4(c) and (d), 607.3(b), and 607.4(c) and (d).

Institutions requesting a waiver of the needy student enrollment requirement or the Core Expenses per FTE requirement must include in their application detailed evidence supporting the waiver request, as described in the instructions for completing the application.

The regulations governing the Secretary's authority to grant a waiver of the needy student requirement refers to ''low-income'' students or families, at 34 CFR 606.3(b)(2) and (3) and 607.3(b)(2) and (3). The regulations at 34 CFR 606.3(c) and 607.3(c) define ''low-income'' as an amount that does not exceed 150 percent of the amount equal to the poverty level, as established by the U.S. Census Bureau.

For the purposes of this waiver provision, the following table sets forth the low-income levels (at 150 percent) for various sizes of families:

2019 ANNUAL LOW–INCOME LEVELS

Size of family unit	Family income for the 48 contiguous states, DC, and outlying jurisdictions	Family income for Alaska	Family income for Hawaii
1	$18,735	$23,400	$21,570
2	25,365	31,995	29,190
3	31,695	39,990	36,810
4	38,625	48,285	44,430
5	45,255	56,580	52,050
6	51,885	64,875	59,670
7	58,515	73,170	67,290
8	65,145	81,465	74,910

Note: We use the 2019 annual low-income levels because those are the amounts that apply to the family income reported by students enrolled for the fall 2018 semester. For family units with more than eight members, add the following amount for each additional family member: $6,630 for the contiguous 48 States, the District of Columbia, and outlying jurisdictions; $8,295 for Alaska; and $7,620 for Hawaii.

The figures shown under family income represent amounts equal to 150 percent of the family income levels

established by the U.S. Census Bureau for determining poverty status. The poverty guidelines were published on February 1, 2019, in the **Federal Register** by the U.S. Department of Health and Human Services (84 FR 1167), with an effective date of January 11, 2019.

Information about ''metropolitan statistical areas'' referenced in 34 CFR 606.3(b)(4) and 607.3(b)(4) may be obtained at: *www.census.gov/prod/2010pubs/10smadb/appendixc.pdf* and *www.census.gov/prod/2008pubs/07ccdb/appd.pdf.*

Electronic Submission of Waiver Applications:

If your institution does not appear in the eligibility system as one that is eligible for the program under which you plan to apply for a grant, you must apply for a waiver of the eligibility requirements. To request a waiver, you must upload a narrative at: *https://HEPIS.ED.gov.*

Exception to the Electronic Submission Requirement: We discourage paper applications, but if electronic submission is not possible (*e.g.,* you do not have access to the internet), you must provide a written statement that you intend to submit a paper application. Send this written statement no later than two weeks before the application deadline date (14 calendar days or, if the 14th calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday).

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. Please send this statement to one of the persons listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

If you submit a paper application, you must mail your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Attention: Jason Cottrell, Ph.D., 400 Maryland Avenue SW, Room 2B127, Washington, DC 20202.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

We will not consider applications postmarked after the application deadline date.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR 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 certain title III programs in 34 CFR part 607, and for the HSI program in 34 CFR part 606. (e) The notice of final requirements for the PPOHA program published in the **Federal Register** on July 27, 2010 (75 FR 44055).

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian Tribes.

Note: The regulations in 34 CFR part 86 apply to institutions only.

Note: There are no program-specific regulations for the Part A PBI, Part A NASNTI, and Part A AANAPISI programs or any of the title III, part F programs. Also, there have been amendments to the HEA since the Department last issued regulations for the programs established under titles III and V of the statute. Accordingly, we encourage each potential applicant to read the applicable sections of the HEA to fully understand the eligibility requirements for the program for which they are applying.

II. Other Information

Accessible Format: On request to one of the program contact persons 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.

Tiwanda Burse,

Deputy Assistant Secretary for Management & Planning, Office of Postsecondary Education. Delegated authority to perform functions and duties of the Assistant Secretary for the Office of Postsecondary Education.

[FR Doc. 2021–04447 Filed 3–3–21; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Indian Education Discretionary Grants Programs—Professional Development Grants Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for new awards for fiscal year (FY) 2021 for Indian Education Discretionary Grants Programs—Professional Development Grants Program, Assistance Listing Number 84.299B. This notice relates to the approved information collection under OMB control number 1810–0580.

DATES:

Applications Available: March 4, 2021.

Deadline for Notice of Intent to Apply: March 19, 2021.

Date of Pre-Application Meeting: Friday, February 26, 2021, and Thursday, March 4, 2021.

Deadline for Transmittal of Applications: May 3, 2021.

Deadline for Intergovernmental Review: July 2, 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-2019-02-3/pdf/2019-02206.pdf.*

FOR FURTHER INFORMATION CONTACT: Angela Hernandez, U.S. Department of Education, 400 Maryland Avenue SW, Room 3W113, Washington, DC 20202–6335. Telephone: (202) 205–1909. Email: *angela.hernandez@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 purposes of the Indian Education Professional Development Grants program that are relevant to this competition are to increase the number of qualified Indian individuals in professions that serve Indians, and to provide training to qualified Indian individuals to become teachers and administrators.

Priorities: This competition includes two absolute priorities and two competitive preference priorities.

In accordance with 34 CFR 75.105(b)(2)(ii), these priorities are from the regulations in 34 CFR part 263, as revised in the notice of final regulations for this program published in the **Federal Register** on July 10, 2020 (85 FR 41372). Absolute Priorities 1 and 2 are from 34 CFR 263.6(b)(1) and (2). Competitive Preference Priorities 1 and 2 are from 34 CFR 263.6(a)(1) and (2).

Absolute Priorities: For FY 2021 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3), we consider only applications that meet one or both of these priorities.

Note: The Department may create two funding slates—one for applicants that meet Absolute Priority 1 and one for applicants that meet Absolute Priority 2. As a result, the Department may fund applications out of the overall rank order, provided applications of sufficient quality are submitted, but the Department is not bound to do so. The Department anticipates awarding approximately half of available funds to applicants that meet Absolute Priority 1 and approximately half to applicants that meet Absolute Priority 2, provided applications of sufficient quality are submitted, but the Department is not bound by these estimates. Applicants must clearly identify the specific absolute priority or priorities the proposed project addresses in the project abstract; an applicant that wishes to apply under both priorities should submit two separate applications.

These priorities are:

Absolute Priority 1: Pre-Service Training for Teachers.

Projects that—

(a) Provide support and training to Indian individuals to complete a pre-service education program before the end of the award period that enables the individuals to meet the requirements for full State certification or licensure as a teacher through—

(1) Training that leads to a degree in education;

(2) For States allowing a degree in a specific subject area, training that leads to a degree in the subject area;

(3) Training in a current or new specialized teaching assignment that requires a degree and in which a documented teacher shortage exists; or

(4) Training in the field of Native American language instruction;

(b) Provide induction services, during the award period, to participants after graduation, certification, or licensure, for two years, while participants are completing their work-related payback in schools in local educational agencies (LEAs) that serve a high proportion of Indian students; and

(c) Include goals for the—

(1) Number of participants to be recruited each year;

(2) Number of participants to continue in the project each year;

(3) Number of participants to graduate each year; and

(4) Number of participants to find qualifying employment within 12 months of completion.

Absolute Priority 2: Pre-service Administrator Training.

Projects that—

(a) Provide support and training to Indian individuals to complete a graduate degree in education administration that is provided before the end of the award period and that allows participants to meet the requirements for State certification or licensure as an education administrator;

(b) Provide induction services, during the award period, to participants after graduation, certification, or licensure, for two years, while administrators are completing their work-related payback as administrators in LEAs that serve a high proportion of Indian students; and

(c) Include goals for the—

(1) Number of participants to be recruited each year;

(2) Number of participants to continue in the project each year;

(3) Number of participants to graduate each year; and

(4) Number of participants to find qualifying employment within twelve months of completion.

Competitive Preference Priorities: For FY 2021 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i) we award an additional five points to an application that meets Competitive Preference Priority 1 or an additional three points to an application that meets Competitive Preference Priority 2. Applicants are eligible for points under either Competitive Preference Priority 1 or 2, not both; thus, the maximum number of points is 5.

These priorities are:

Competitive Preference Priority 1: Tribal Applicants (Zero or five points).

An application submitted by an Indian Tribe, Indian organization, or Tribal college or university (TCU) that is eligible to participate in the Professional Development program. A consortium application of eligible entities that meets the requirements of 34 CFR 75.127 through 75.129 and includes an Indian Tribe, Indian organization, or TCU will be considered eligible to receive preference under this priority only if the lead applicant for the consortium is the Indian Tribe, Indian organization, or TCU. In order to be considered a consortium application, the application must include the consortium agreement, signed by all parties.

Competitive Preference Priority 2: Consortium Applicants, Non-Tribal Lead (Zero or three points).

A consortium application of eligible entities that—

(a) Meets the requirements of 34 CFR 75.127 through 75.129 and includes an Indian Tribe, Indian organization, or TCU; and

(b) Is not eligible to receive a preference under Competitive Preference Priority 1.

Application Requirements: For FY 2021 and any subsequent year in which we make awards from the list of unfunded applications from this competition, applicants must meet the following application requirements from 34 CFR 263.5.

Each applicant must:

(a) Describe how it will—

(1) Recruit qualified Indian individuals, such as students who may

not be of traditional college age, to become teachers, principals, or school leaders;

(2) Use funds made available under the grant to support the recruitment, preparation, and professional development of Indian teachers or principals in LEAs that serve a high proportion of Indian students; and

(3) Assist participants in meeting the payback requirements under § 263.9(b);

(b) Submit one or more letters of support from LEAs that serve a high proportion of Indian students. Each letter must include—

(1) A statement that the LEA agrees to consider program graduates for employment;

(2) Evidence that the LEA meets the definition of ''LEA that serves a high proportion of Indian students''; and

(3) The signature of an authorized representative of the LEA;

(c) If applying as an Indian organization, demonstrate that the entity meets the definition of ''Indian organization'';

(d) If it is an affected LEA that is subject to the requirements of section 8538 of the Elementary and Secondary Education Act of 1965, as amended (ESEA), consult with appropriate officials from Tribe(s) or Tribal organizations approved by the Tribes located in the area served by the LEA prior to its submission of an application, as required under ESEA section 8538; and

(e) Comply with any other requirements in the application package.

Statutory Hiring Preference:

(a) Awards that are primarily for the benefit of Indians are subject to the provisions of section 7(b) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638). That section requires that, to the greatest extent feasible, a grantee—

(1) Give to Indians preferences and opportunities for training and employment in connection with the administration of the grant; and

(2) Give to Indian organizations and to Indian-owned economic enterprises, as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452(e)), preference in the award of contracts in connection with the administration of the grant.

(b) For purposes of this section, an Indian is a member of any federally recognized Indian Tribe.

Definitions: The following definitions are from the program regulations at 34 CFR 263.3.

BIE-funded school means a Bureau of Indian Education school, a contract or grant school, or a school for which assistance is provided under the Tribally Controlled Schools Act of 1988.

Dependent allowance means costs for the care of minor children under the age of 18 who reside with the training participant and for whom the participant has responsibility. The term does not include financial obligations for payment of child support required of the participant.

Full course load means the number of credit hours that the institution requires of a full-time student.

Full-time student means a student who—

(1) Is a candidate for a baccalaureate degree, graduate degree, or Native American language certificate, as appropriate for the project;

(2) Carries a full course load; and

(3) Is not employed for more than 20 hours a week.

Graduate degree means a post-baccalaureate degree awarded by an institution of higher education.

Indian means an individual who is—

(1) A member of an Indian Tribe or band, as membership is defined by the Indian Tribe or band, including any Tribe or band terminated since 1940, and any Tribe or band recognized by the State in which the Tribe or band resides;

(2) A descendant of a parent or grandparent who meets the requirements of paragraph (1) of this definition;

(3) Considered by the Secretary of the Interior to be an Indian for any purpose;

(4) An Eskimo, Aleut, or other Alaska Native; or

(5) A member of an organized Indian group that received a grant under the Indian Education Act of 1988 as it was in effect on October 19, 1994.

Indian organization means an organization that—

(1) Is legally established—

(i) By Tribal or inter-Tribal charter or in accordance with State or Tribal law; and

(ii) With appropriate constitution, by-laws, or articles of incorporation;

(2) Includes in its purposes the promotion of the education of Indians;

(3) Is controlled by a governing board, the majority of which is Indian;

(4) If located on an Indian reservation, operates with the sanction or by charter of the governing body of that reservation;

(5) Is neither an organization or subdivision of, nor under the direct control of, any institution of higher education or TCU; and

(6) Is not an agency of State or local government.

Induction services means services provided—

(1)(i) By educators, local traditional leaders, or cultural experts;

(ii) For the two years of qualifying employment; and

(iii) In LEAs that serve a high proportion of Indian students;

(2) To support and improve participants' professional performance and promote their retention in the field of education and teaching, and that include, at a minimum, these activities:

(i) High-quality mentoring, coaching, and consultation services for the participant to improve performance.

(ii) Access to research materials and information on teaching and learning.

(iii) Assisting new teachers with use of technology in the classroom and use of data, particularly student achievement data, for classroom instruction.

(iv) Clear, timely, and useful feedback on performance, provided in coordination with the participant's supervisor.

(v) Periodic meetings or seminars for participants to enhance collaboration, feedback, and peer networking and support.

In-service training means activities and opportunities designed to enhance the skills and abilities of individuals in their current areas of employment.

Institution of higher education (IHE) has the meaning given that term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).

Local educational agency (LEA) that serves a high proportion of Indian students means—

(1) An LEA, including a BIE-funded school, that serves a high proportion of Indian students in the LEA as compared to other LEAs in the State; or

(2) An LEA, including a BIE-funded school, that serves a high proportion of Indian students in the school in which the participant works compared to other LEAs in the State, even if the LEA as a whole in which the participant works does not have a high proportion of Indian students compared to other LEAs in the State.

Native American means ''Indian'' as defined in section 6151(3) of the Elementary and Secondary Education Act, as amended, which includes Alaska Native and members of federally-recognized or State-recognized Tribes; Native Hawaiian; and Native American Pacific Islander.

Native American language means the historical, traditional languages spoken by Native Americans.

Participant means an Indian individual who is being trained under the Professional Development program.

Payback means work-related service or cash reimbursement to the Department of Education for the training received under the Professional Development program.

Pre-service training means training to Indian individuals to prepare them to meet the requirements for licensing or certification in a professional field requiring at least a baccalaureate degree, or licensing or certification in the field of Native American language instruction.

Qualifying employment means employment in an LEA that serves a high proportion of Indian students.

Secretary means the Secretary of the Department of Education or an official or employee of the Department acting for the Secretary under a delegation of authority.

Stipend means that portion of an award that is used for room, board, and personal living expenses for full-time participants who are living at or near the institution providing the training.

Tribal college or university (TCU) has the meaning given that term in section 316(b) of the Higher Education Act of 1965 (20 U.S.C. 1059c(b)).

Tribal educational agency (TEA) means the agency, department, or instrumentality of an Indian Tribe that is primarily responsible for supporting Tribal students' elementary and secondary education.

Program Authority: 20 U.S.C. 7442.

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, 79, 81, 82, 84, 86, 97, 98, and 99. (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 263.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian Tribes.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $7,809,000.

Estimated Range of Awards: $300,000–$400,000.

Estimated Average Size of Awards: $350,000.

Maximum Award: We will not make an award exceeding $400,000 for the first, second, or third 12-month budget period. The last two 12-month budget periods will be limited to induction services only, at a cost not to exceed $120,000 per year. We will not make an award exceeding $120,000 for the fourth or fifth 12-month budget period.

Estimated Number of Awards: 22.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months. We will award grants for an initial period of not more than three years and may renew such grants for an additional period of not more than two years if we find that the grantee is achieving the objectives of the grant.

III. Eligibility Information

1. *Eligible Applicants:*

(a) An eligible applicant must be either—

(1) An IHE or a TCU;

(2) A State educational agency in consortium with an IHE or a TCU;

(3) An LEA in consortium with an IHE or a TCU;

(4) An Indian Tribe or Indian organization in consortium with an IHE or a TCU; or

(5) A BIE-funded school in consortium with at least one IHE or TCU that meets the requirements in paragraph (b).

(b) Eligibility of an applicant that is an IHE or a TCU, or an applicant requiring a consortium with an IHE or a TCU, requires that the IHE or TCU be accredited to provide the coursework and level of degree or Native American language certificate required by the project.

2. a. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

b. *Indirect Cost Rate Information:* This program uses a training indirect cost rate. This limits indirect cost reimbursement to an entity's actual indirect costs, as determined in its negotiated indirect cost rate agreement, or eight percent of a modified total direct cost base, whichever amount is less. For more information regarding training indirect cost rates, see 34 CFR 75.562. 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.* Note, however, that this training rate limitation does not apply to agencies of Indian Tribal governments.

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. *Other:* Projects funded under this competition should budget for a two-day Project Directors' meeting in Washington, DC during each year of the project period. This meeting may be held virtually if conditions warrant such format.

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. *Submission of Proprietary Information:* Given the types of projects that may be proposed in applications for the Indian Education Professional Development Grants program, your application may include business information that you consider proprietary. In 34 CFR 5.11 we define ''business information'' and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552, as amended).

Because we plan to make successful applications available to the public by posting them on our website, you may wish to request confidentiality of business information.

Consistent with Executive Order 12600, please designate in your application any information that you believe is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application, under ''Other Attachments Form,'' please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

4. *Funding Restrictions:* The allowable costs below are from 34 CFR 263.4.

A Professional Development program may include, as training costs, assistance to—

(1) Fully finance a student's educational expenses including tuition, books, and required fees; health insurance required by the IHE; stipend; dependent allowance; technology costs; program required travel; and instructional supplies; or

(2) Supplement other financial aid, including Federal funding other than loans, for meeting a student's educational expenses.

The maximum stipend amount is $1,800 per month for full-time students; grantees may also provide participants with a $300 allowance per month per dependent during an academic term. The Department will reduce any stipends in excess of this amount. Stipends may be paid only to full-time students.

Other costs that a Professional Development program may include, but that must not be included as training costs, include costs for—

(1) Collaborating with prospective employers within the grantees' local service area to create a pool of potentially available qualifying employment opportunities;

(2) In-service training activities such as providing mentorships linking experienced teachers at job placement sites with program participants;

(3) Assisting participants in identifying and securing qualifying employment opportunities in their fields of study following completion of the program;

(4) Teacher mentoring programs, professional guidance, and instructional support provided by educators, local traditional leaders, or cultural experts, as appropriate for teachers for up to their first three years of employment as teachers; and

(5) Programs designed to train traditional leaders and cultural experts to assist participants with relevant Native language and cultural mentoring, guidance, and support.

We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

5. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 30 pages and (2) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- *Use one of the following fonts:* Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the one-page abstract, the resumes, the bibliography, the letter(s) of support, or the signed consortium agreement. However, the recommended page limit does apply to all of the application narrative.

An application will not be disqualified if it exceeds the recommended page limit.

6. *Notice of Intent to Apply:* The Department will be able to review grant applications more efficiently if we know the approximate number of applicants that intend to apply. Therefore, we strongly encourage each potential applicant to notify us of their intent to submit an application. To do so, please email the program contact person listed under **FOR FURTHER INFORMATION CONTACT** with the subject line ''Intent to Apply,'' and include the applicant's name and a contact person's name and email address. Applicants that do not submit a notice of intent to apply may still apply for funding; applicants that do submit a notice of intent to apply are not bound to apply or bound by the information provided.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for ''Need for project'' and ''Quality of the management plan'' are from 34 CFR 75.210. The remaining selection criteria are from 34 CFR 263.7. The maximum score for all of these criteria is 100 points. The maximum score for each criterion is indicated in parentheses.

(a) *Need for project* (Maximum 5 points).

In determining the need for the proposed project, the Secretary considers the extent to which the proposed project will prepare personnel in specific fields in which shortages have been demonstrated through a job market analysis. (34 CFR 263.7(a)(1))

(b) *Significance* (Maximum 6 points). In determining the significance of the proposed project, the Secretary considers:

(1) (Up to 3 points) The potential of the proposed project to develop effective strategies for teaching Indian students and improving Indian student achievement, as demonstrated by a plan to share findings gained from the proposed project with parties who could benefit from such findings, such as other IHEs who are training teachers and administrators who will be serving Indian students.

(2) (Up to 3 points) The likelihood that the proposed project will build local capacity to provide, improve, or expand services that address the specific needs of Indian students. (34 CFR 263.7)

(c) *Quality of the project design* (Maximum 26 points). The Secretary considers the following factors in determining the quality of the design of the proposed project:

(1) (Up to 10 points) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are ambitious but also attainable and address—

(i) The number of participants expected to be recruited in the project each year;

(ii) The number of participants expected to continue in the project each year;

(iii) The number of participants expected to graduate; and

(iv) The number of participants expected to find qualifying employment within twelve months of completion.

(2) (Up to 10 points) The extent to which the proposed project has a plan for recruiting and selecting participants, including students who may not be of traditional college age, that ensures that program participants are likely to complete the program.

(3) (Up to 6 points) The extent to which the proposed project will incorporate the needs of potential employers, as identified by a job market analysis, by establishing partnerships and relationships with LEAs that serve a high proportion of Indian students and developing programs that meet their employment needs. (34 CFR 263.7)

(d) *Quality of project services* (Maximum 32 points). The Secretary considers the following factors in determining the quality of project services:

(1) (Up to 4 points) The likelihood that the proposed project will provide participants with learning experiences that develop needed skills for successful teaching and/or administration in LEAs that serve a high proportion of Indian students.

(2) (Up to 7 points) The extent to which the proposed project prepares participants to adapt teaching and/or

administrative practices to meet the breadth of Indian student needs.

(3) (Up to 7 points) The extent to which the applicant will provide job placement activities that reflect the findings of a job market analysis and needs of potential employers and that offer qualifying employment opportunities.

(4) (Up to 7 points) The extent to which the applicant will offer induction services that reflect the latest research on effective delivery of such services.

(5) (Up to 7 points) The extent to which the applicant will assist participants in meeting the service obligation requirements. (34 CFR 263.7)

(e) *Quality of project personnel.* (Maximum 13 points). The Secretary considers the following factors when determining the quality of the personnel who will carry out the proposed project:

(1) (Up to 5 points) The qualifications, including relevant training, experience, and cultural competence, of the project director and the amount of time this individual will spend directly involved in the project.

(2) (Up to 8 points) The qualifications, including relevant training, experience, and cultural competence, of key project personnel and the amount of time to be spent on the project and direct interactions with participants. (34 CFR 263.7)

(f) *Quality of the management plan.* (Maximum 18 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:

(1) (Up to 8 points) 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.

(2) (Up to 4 points) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project.

(3) (Up to 6 points) 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. (34 CFR 75.210)

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).

The Department will screen applications that are submitted in accordance with the requirements in this notice, and determine which applications are eligible to be read based on whether they have met the eligibility and application requirements established by this notice. The Department will use reviewers with knowledge and expertise on issues related to educator training and improving outcomes for Native American youth to score the selection criteria. The Department will thoroughly screen all reviewers for conflicts of interest to ensure a fair and competitive review.

Peer reviewers will read, prepare a written evaluation of, and score the assigned applications, based on the six selection criteria listed in the *Selection Criteria* section of this notice.

In reviewing applications, the Department will assign points for Competitive Preference Priorities 1 and 2 based on each application's adherence to the requirements of each.

Technical scoring. Reviewers will read, prepare a written evaluation, and assign a technical score to the applications assigned to their panel, using the selection criteria provided in this notice and the respective advisory scoring rubric in Appendix A. The Department will then prepare rank order(s) of applications based on their technical scores.

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this competition, the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions and, under 2 CFR 3474.10, 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 200.206(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.

5. *In General.* In accordance with the Office of Management and Budget's guidance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with:

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115—232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

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.*

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

5. *Performance Measures:* For the purposes of the Government Performance and Results Act of 1993 (GPRA) and Department reporting under 34 CFR 75.110, the Department has established the following performance measures: (1) The percentage of participants in administrator preparation projects who become principals, vice principals, or other school administrators in ''LEAs that serve a high proportion of Indian students''; (2) the percentage of participants in teacher preparation projects who become teachers in ''LEAs that serve a high proportion of Indian students''; (3) the percentage of program participants who meet State licensure requirements; (4) the percentage of program participants who complete their service requirement on schedule; (5) the cost per individual who successfully completes an administrator preparation program, takes a position in an ''LEA that serves a high proportion of Indian students,'' and completes the service requirement in such a district; and (6) the cost per individual who successfully completes a teacher preparation program, takes a position in an ''LEA that serves a high proportion of Indian students,'' and completes the service requirement in such a district.

These measures constitute the Department's indicators of success for this program. Consequently, we advise an applicant for a grant under this program to carefully consider these measures in conceptualizing the approach to, and evaluation for, its proposed project. Each grantee will be required to provide, in its annual performance and final reports, data about its progress in meeting these measures.

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 Washington,

Deputy Assistant Secretary, Office of Elementary and Secondary Education.

Appendix A—Selection Criteria Scoring Rubric

Reviewers will assign points to an application for each selection sub-criterion.

To help promote consistency across and within the panels that will review PD applications, the Department has created an advisory, non-binding scoring rubric for reviewers to aid them in scoring the selection criteria. The scoring rubric below shows the maximum number of points that may be assigned to each criterion and sub-criterion.

Selection criteria	Sub-criterion points	Criterion points
(a) Need for project (34 CFR 263.7(a)(1)). In determining the need for the proposed project, the Secretary considers the extent to which the proposed project will prepare personnel in specific fields in which shortages have been demonstrated through a job market analysis		5
(b) Significance (34 CFR 263.7). In determining the significance of the proposed project, the Secretary considers:		6
(1) The potential of the proposed project to develop effective strategies for teaching Indian students and improving Indian student achievement, as demonstrated by a plan to share findings gained from the proposed project with parties who could benefit from such findings, such as other IHEs who are training teachers and administrators who will be serving Indian students	3	
(2) The likelihood that the proposed project will build local capacity to provide, improve, or expand services that address the specific needs of Indian students	3	
(c) Quality of the project design (34 CFR 263.7). The Secretary considers the following factors in determining the quality of the design of the proposed project:		26
(1) (Up to 10 points) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are ambitious but also attainable and address—		
(i) The number of participants expected to be recruited in the project each year;.		
(ii) The number of participants expected to continue in the project each year;.		
(iii) The number of participants expected to graduate; and.		
(iv) The number of participants expected to find qualifying employment within twelve months of completion.	10	
(2) The extent to which the proposed project has a plan for recruiting and selecting participants, including students who may not be of traditional college age, that ensures that program participants are likely to complete the program	10	
(3) The extent to which the proposed project will incorporate the needs of potential employers, as identified by a job market analysis, by establishing partnerships and relationships with LEAs that serve a high proportion of Indian students and developing programs that meet their employment needs	6	
(d) Quality of project services (34 CFR 263.7). The Secretary considers the following factors in determining the quality of project services:		32
(1) The likelihood that the proposed project will provide participants with learning experiences that develop needed skills for successful teaching and/or administration in LEAs that serve a high proportion of Indian students	4	
(2) The extent to which the proposed project prepares participants to adapt teaching and/or administrative practices to meet the breadth of Indian student needs	7	
(3) The extent to which the applicant will provide job placement activities that reflect the findings of a job market analysis and needs of potential employers and that offer qualifying employment opportunities	7	
(4) The extent to which the applicant will offer induction services that reflect the latest research on effective delivery of such services	7	
(5) The extent to which the applicant will assist participants in meeting the service obligation requirements	7	
(e) Quality of project personnel (34 CFR 263.7). The Secretary considers the following factors when determining the quality of the personnel who will carry out the proposed project:		13
(1) The qualifications, including relevant training, experience, and cultural competence, of the project director and the amount of time this individual will spend directly involved in the project	5	
(2) (Up to 8 points) The qualifications, including relevant training, experience, and cultural competence, of key project personnel and the amount of time to be spent on the project and direct interactions with participants	8	
(f) Quality of the management plan. (34 CFR 75.210). 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:		18
(1) 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	8	
(2) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project	4	
(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	6	

While case-by-case determinations will be made, the reviewers will be asked to consider the general ranges below as a guide when awarding points.

Maximum point value	Quality of response		
	Low	Medium	High
3	0	1–2	3
4	0–1	2–3	4
5	0–1	2–3	4–5
6	0–2	3–4	5–6
7	0–2	3–5	6–7
8	0–2	3–5	6–8
10	0–3	4–7	8–10

[FR Doc. 2021–04492 Filed 3–3–21; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Reopening; Application Period for Certain Applicants Under the Fiscal Year (FY) 2021 Educational Opportunity Centers Program Competition

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) reopens the competition for FY 2021, for certain eligible applicants described elsewhere in this notice, under the Educational Opportunity Centers program, Assistance Listing Number 84.066A. The Department takes this action to allow more time for the preparation and submission of applications by eligible applicants affected by the severe winter weather in Louisiana, Oklahoma, and Texas, where the President has issued a disaster declaration. The reopening of the application deadline date for this competition is intended to help affected eligible applicants compete fairly with other eligible applicants under this competition.

DATES:

Deadline for Transmittal of Applications for Applicants Meeting the Eligibility Criteria in this Notice: March 15, 2021.

Deadline for Intergovernmental Review: May 25, 2021.

FOR FURTHER INFORMATION CONTACT: Rachael Wiley, Ed.D., U.S Department of Education, 400 Maryland Avenue SW, Room 2C146, Washington, DC 20202–4260. Telephone: (202) 453–6078. Email: *Rachael.Wiley@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: On January 13, 2021, we published the notice inviting applications (NIA) for new awards for the FY 2021 Educational Opportunity Centers competition in the **Federal Register** (86 FR 2658). Under the NIA, applications were due on March 1, 2021.

We are reopening this competition for eligible applicants from affected areas in Louisiana, Oklahoma, and Texas, for which the President has issued a disaster declaration, to allow those applicants more time to prepare and submit applications. For applicants that meet the eligibility criteria in this notice, we are reopening the competition until March 15, 2021. We are also extending the intergovernmental review deadline until May 25, 2021.

Eligibility: The reopening of the competition in this notice applies to eligible applicants under the Educational Opportunity Centers program, Assistance Listing Number 84.066A, that are located in an area for which the President has issued an emergency declaration (see www.fema.gov/disasters/), in Louisiana (FEMA Disaster designation 3556), Oklahoma (FEMA Disaster designation 3555), and Texas (FEMA Disaster designation 3554).

In accordance with the NIA, eligible applicants for this competition are institutions of higher education, public and private agencies or organizations, including community-based organizations with experience in serving disadvantaged youth, secondary schools, and combinations of such institutions, agencies, and organizations, for planning, developing, or carrying out one or more of the services identified under this program.

Note: All information in the NIA for this competition remains the same, except for, with respect to eligible applicants, the deadline for the transmittal of applications and the deadline for intergovernmental review.

Program Authority: 20 U.S.C. 1070a–11 and 1070a–16.

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.

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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.

Tiwanda Burse,

Deputy Assistant Secretary for Management & Planning, Office of Postsecondary Education, Delegated authority to perform functions and duties of the Assistant Secretary for the Office of Postsecondary Education.

[FR Doc. 2021–04487 Filed 3–3–21; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Application for New Awards; Promise Neighborhoods Program; Corrections

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice; corrections.

SUMMARY: The Department of Education published a document in the **Federal Register** of January 19, 2021 regarding applications (NIA) for the fiscal year (FY) 2021 Promise Neighborhoods (PN) Program competition, Assistance Listing Number 84.215N. The Department is amending the PN NIA by removing one of the competitive preference priorities and extending the deadline for transmittal of applications to April 19, 2021 and the deadline for intergovernmental review to June 21, 2021.

FOR FURTHER INFORMATION CONTACT: Adrienne Hawkins, U.S. Department of Education, 400 Maryland Avenue SW, Room 4W220, Washington, DC 20202–6135. Telephone: (202) 453–5638. Email: *Adrienne.Hawkins@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: If an applicant has already submitted an application, program staff will send notification of the opportunity to resubmit the application at the extended date. Applicants that have already timely submitted applications under the FY 2021 PN NIA competition may resubmit applications, but are not required to do so. If a new application is not submitted, the Department will use the application that was submitted by the original deadline and will review the application without regard to any response to the competitive preference priority that we are removing. If a new application is submitted, the Department will consider the

application that is last submitted and timely received.

All other requirements and conditions stated in the PN NIA remain the same.

Program Authority: 20 U.S.C. 7273–7274.

Corrections

1. In the **Federal Register** of January 19, 2021, in FR Doc. 2021–00907, on page 5154, in the second column, make the following corrections under the **DATES** caption:

(1) Following the heading ''Date of Pre-Application Meetings,'' revise the first sentence to read:

The Department will hold an additional pre-application meeting March 15, 2021 via webinar for prospective applicants.

(2) Following the heading ''Deadline for Transmittal of Application,'' remove ''March 5, 2021'' and add, in its place, ''April 19, 2021''.

(3) Following the heading ''Deadline for Intergovernmental Review,'' remove ''May 4, 2021'' and add, in its place, ''June 21, 2021''.

2. In the **Federal Register** of January 19, 2021, in FR Doc. 2021–00907, on page 5154, in the third column, make the following corrections under the ''*Priorities*'' heading:

(1) In the first paragraph, remove the word ''four'' and add, in its place, the word ''three.''

(2) Revise the second paragraph to read as follows:

Absolute Priorities 1 and 3 and Competitive Preference Priorities 1 and 3 are from the notice of final priorities, requirements, definitions, and selection criteria for this program published elsewhere in this issue of the **Federal Register** (NFP). Absolute Priority 2 and Competitive Preference Priority 2 are from the notice of final priorities published in the **Federal Register** on March 9, 2020 (85 FR 13640) (Administrative Priorities).

3. In the **Federal Register** of January 19, 2021, in FR Doc. 2021–00907, on page 5155, in the second line of the second column, remove the number ''10'' and add in its place the number ''7.''

4. In the **Federal Register** of January 19, 2021, in FR Doc. 2021–00907, on page 5155, in the second column:

(1) Remove the heading ''Competitive Preference Priority 2—Spurring Investment in Qualified Opportunity Zones (0 to 3 points)'' and the two paragraphs that follow the heading.

(2) In the heading ''Competitive Preference 3,'' remove the number ''3'' and add, in its place, the number ''2.''

(3) In the heading ''Competitive Preference 4,'' remove the number ''4'' and add, in its place, the number ''3.''

5. In the **Federal Register** of January 19, 2021, in FR Doc. 2021–00907, on page 5159, in the second column, at the end of the first paragraph, remove ''(g) The Opportunity Zones NFP.''

Mark Washington,

Deputy Assistant Secretary, Office of Elementary and Secondary Education.

[FR Doc. 2021–04493 Filed 3–3–21; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Assistance for Arts Education Program; Corrections

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice; corrections.

SUMMARY: The Department of Education published a document in the **Federal Register** of January 15, 2021, inviting applications (NIA) for the fiscal year (FY) 2021 Assistance for Arts Education (AAE) program competition, Assistance Listing Number 84.351A. The Department is amending the NIA by removing one of the competitive preference priorities and extending the deadline date for transmittal of applications to April 15, 2021, and the deadline for intergovernmental review to June 14, 2021.

FOR FURTHER INFORMATION CONTACT: Bonnie Carter, U.S. Department of Education, 400 Maryland Avenue SW, Room 3E308, Washington, DC 20202. Telephone: (202) 401–3576. Email: *Bonnie.Carter@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service, toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 15, 2021, we published the NIA for the FY 2021 AAE competition. Following publication of the NIA, the new Administration came into office. Upon review of the NIA, we decided to eliminate Competitive Preference Priority 1—Applications from New Potential Grantees.

Accordingly, we are amending the NIA to notify prospective applicants that we are no longer using Competitive Preference Priority 1—Applications from New Potential Grantees, and are making related conforming changes. In addition, we are extending the deadline for transmittal of applications in order to allow applicants more time to prepare and submit their applications, and are also extending the deadline for intergovernmental review. The application package will be adjusted to reflect the changes.

Applicants that have already submitted applications under the FY 2021 AAE competition may resubmit applications but are not required to do so. If a new application is not submitted, the Department will use the application that was submitted by the original deadline, without regard to any response to the competitive preference priority that we are removing. If a new application is submitted, the Department will consider the application that is most recently submitted before the deadline of April 15, 2021.

All other requirements and conditions stated in the NIA remain the same.

Program Authority: 20 U.S.C. 7292.

Corrections

In the **Federal Register** of January 15, 2021, in FR Doc. No. 2021–00705, we make the following corrections:

1. On page 4012, in the second column, correct the following in the **DATES** caption:

(1) Following the heading ''Deadline for Transmittal of Applications,'' remove ''March 16, 2021'' and add, in its place, ''April 15, 2021.''

(2) Following the heading ''Deadline for Intergovernmental Review,'' remove ''May 17, 2021'' and add, in its place, ''June 14, 2021.''

2. On page 4013, in the middle of the first column, replace the text of the first paragraph after the heading ''Priorities:'' with the following:

This notice contains one competitive preference priority and one invitational priority. The competitive preference priority is from section 4642 of the ESEA (20 U.S.C. 7292).

3. On page 4013, in the middle of the first column, replace the heading ''Competitive Preference Priorities:'' with the heading ''Competitive Preference Priority:'' and replace the text of the paragraphs under the heading ''Competitive Preference Priority'' with the following:

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 the competitive preference priority.

This priority is:

Applicants That Are National Nonprofit Organizations. (0 or 5 points)

Under this priority, the Secretary gives priority to eligible entities that are eligible national nonprofit organizations. The term ''eligible

national nonprofit organization'' means an organization of national scope that—

(a) Is supported by staff, which may include volunteers, or affiliates at the State and local levels; and

(b) Demonstrates effectiveness or high-quality plans for addressing arts education activities for disadvantaged students or students who are children with disabilities.

4. On page 4014, in the middle of the second column, in the paragraph following the heading ''Applicable Regulations,'' remove ''(e) Administrative Priorities.''

Mark Washington,

Deputy Assistant Secretary, Office of Elementary and Secondary Education.

[FR Doc. 2021–04494 Filed 3–3–21; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Reopening; Application Period for Certain Applicants Under the Fiscal Year (FY) 2021 Talent Search Program Competition

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) reopens the competition for FY 2021, for certain eligible applicants described elsewhere in this notice, under the Talent Search program, Assistance Listing Number 84.044A. The Department takes this action to allow more time for the preparation and submission of applications by eligible applicants affected by the severe winter weather in Louisiana, Oklahoma, and Texas, where the President has issued a disaster declaration. The reopening of the application deadline date for this competition is intended to help affected eligible applicants compete fairly with other eligible applicants under this competition.

DATES:

Deadline for Transmittal of Applications for Applicants Meeting the Eligibility Criteria in this Notice: March 12, 2021.

Deadline for Intergovernmental Review: May 11, 2021.

FOR FURTHER INFORMATION CONTACT: Antoinette Edwards, U.S Department of Education, 400 Maryland Avenue SW, Room 2C223, Washington, DC 20202–4260. Telephone: (202) 453–7121. Email: *Antoinette.Edwards@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: On December 28, 2020, we published the notice inviting applications (NIA) for new awards for the FY 2021 Talent Search competition in the **Federal Register** (85 FR 84324). Under the NIA, applications were due on February 26, 2021.

We are reopening this competition for applicants from affected areas in Louisiana, Oklahoma, and Texas, for which the President has issued a disaster declaration, to allow those applicants more time to prepare and submit applications. For applicants that meet the eligibility criteria in this notice, we are reopening the competition until March 12, 2021. We are also extending the intergovernmental review deadline until May 11, 2021.

Eligibility: The reopening of the competition in this notice applies to eligible applicants under Talent Search, Assistance Listing Number 84.044A, that are located in an area for which the President has issued an emergency declaration (see *www.fema.gov/disasters/*), in Louisiana (FEMA Disaster designation 3556), Oklahoma (FEMA Disaster designation 3555), and Texas (FEMA Disaster designation 3554).

In accordance with the NIA, eligible applicants for this competition are institutions of higher education, public and private agencies or organizations, including community-based organizations with experience in serving disadvantaged youth, secondary schools, and combinations of such institutions, agencies, and organizations, for planning, developing, or carrying out one or more of the services identified under this program.

Note: All information in the NIA for this competition remains the same, except for, with respect to eligible applicants, the deadline for the transmittal of applications and the deadline for intergovernmental review.

Program Authority: 20 U.S.C. 1070a–11 and 1070a–12.

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.

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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.

Tiwanda Burse,

Deputy Assistant Secretary for Management & Planning, Office of Postsecondary Education, Delegated authority to perform functions and duties of the Assistant Secretary for the Office of Postsecondary Education.

[FR Doc. 2021–04486 Filed 3–3–21; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–504–000]

Northern Natural Gas Company; Notice of Availability of the Environmental Assessment for the Proposed Lake City 1st Branch Line Abandonment and Capacity Replacement Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the Lake City 1st Branch Line Abandonment and Capacity Replacement Project proposed by Northern Natural Gas Company (Northern) in the above-referenced docket. Northern requests authorization to abandon, construct, modify, and operate natural gas pipeline facilities in Webster and Calhoun Counties, Iowa.

The EA assesses the potential environmental effects of the construction and operation of the Lake City 1st Branch Line Abandonment and Capacity Replacement 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 proposed Lake City 1st Branch Line Abandonment and Capacity Replacement Project includes the following facilities/activities:

- Abandon in-place 34.2 miles of the Lake City 1st branch line (4-inch-diameter pipeline) from milepost (MP) 0.00 to MP 34.15;
- disconnect the abandoned segment of the Lake City 1st branch line pipeline from Northern's existing pipelines at five locations;
- uprate the maximum allowable operating pressure (MAOP) of 25.3 miles of the Lake City 2nd branch line (6-inch-diameter pipeline) and install a new take-off regulator setting to the Harcourt branch line pipeline;
- uprate the MAOP of the Callender branch line (2-inch-diameter pipeline);
- uprate the MAOP of the Manson 2nd branch line (4-inch-diameter pipeline) and install a new take-off regulator setting from the Manson 2nd branch line pipeline to the Manson 1st branch line pipeline and Rockwell City branch line pipeline; and
- construct 9.2 miles of new 6-inch-diameter pipeline extension of the Lake City 2nd branch line, relocate a receiver to the Lake City Town Border Station (TBS), and install a new take-off valve setting for the Lohrville TBS.

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 other interested individuals and groups; and newspapers and libraries in the project area. The EA is only available in electronic format. It may be viewed and downloaded from the FERC's website (*www.ferc.gov*), on the natural gas environmental documents page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). In addition, the EA may be accessed by using the eLibrary link on the FERC's website. Click on the eLibrary link (*https://elibrary.ferc.gov/eLibrary/search*), select ''General Search'' and enter the docket number in the ''Docket Number'' field (*i.e.* CP20–504). 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 pm Eastern Time on March 29, 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 to *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 (CP20–504–000) 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, 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: February 26, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–04464 Filed 3–3–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 5698–022]

Triton Power Company; Notice of Intent To File License Application, Filing of Pre-Application Document, Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 5698–022.

c. *Date Filed:* December 31, 2020.

d. *Submitted By:* Triton Power Company (Triton Power).

e. *Name of Project:* Chateaugay High Falls Hydroelectric Project.

f. *Location:* On the Chateaugay River in the Town of Chateaugay, Franklin County, New York. The project does not occupy any federal land.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant Contact:* Mr. Tim Carlsen, Chief Executive Officer,

Hydroland, Inc., 403 Madison Ave. N #240, Bainbridge Island, WA 98110; (844) 493–7612; email—*tim@hydrolandcorp.com.*

i. *FERC Contact:* Jeremy Feinberg at (202) 502–6893; or email at *jeremy.feinberg@ferc.gov.*

j. Triton Power filed its request to use the Traditional Licensing Process on December 31, 2020. Triton Power provided public notice of its request on December 29, 2020. In a letter dated February 26, 2021, the Director of the Division of Hydropower Licensing approved Triton Power's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, part 402; and NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920. We are also initiating consultation with the New York State Historic Preservation Officer, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Triton Power as the Commission's non-federal representative for carrying out informal consultation pursuant to section 7 of the Endangered Species Act and consultation pursuant to section 106 of the National Historic Preservation Act.

m. Triton Power filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD may be viewed and/or printed on the Commission's website (*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,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY).

o. The licensee states its unequivocal intent to submit an application for a new license for Project No. 5698. Pursuant to 18 CFR 16.8, 16.9, and 16.10 each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 2023.

p. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: February 26, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–04467 Filed 3–3–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. AD21–6–000; AD20–6–000]

RTO/ISO Credit Principles and Practices; Credit Reforms in Organized Wholesale Electric Markets; Supplemental Notice of Technical Conference

Correction

In notice document 2021–04261, appearing on page 12187 in the issue of Tuesday, March 2, 2021, make the following correction:

On page 12187, in the first column, on the twenty-seventh line from the bottom of the page, the docket number is corrected to read as set forth above.

[FR Doc. C1–2021–04261 Filed 3–3–21; 8:45 am]

BILLING CODE 1301–00–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 539–015]

Lock 7 Hydro Partners, LLC; Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 539–015.

c. *Date filed:* April 30, 2020.

d. *Applicant:* Lock 7 Hydro Partners, LLC (Lock 7 Partners).

e. *Name of Project:* Mother Ann Lee Hydroelectric Station Water Power Project (Mother Ann Lee Project).

f. *Location:* The project is located on the Kentucky River in Mercer, Jessamine, and Garrard Counties, Kentucky. The project does not occupy federal land.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* David Brown Kinloch, Lock 7 Hydro Partners, 414 S Wenzel St., Louisville, Kentucky 40204; (502) 589–0975, or *kyhydropower@gmail.com.*

i. *FERC Contact:* Joshua Dub at (202) 502–8138, or *joshua.dub@ferc.gov.*

j. Deadline for filing comments, recommendations, terms and conditions, and prescriptions: 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file comments, recommendations, terms and conditions, and prescriptions using the Commission's eFiling system at *https://ferconline.ferc.gov/FERCOnline.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 at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY).

k. This application has been accepted and is now ready for environmental analysis.

The Council on Environmental Quality (CEQ) issued a final rule on July 15, 2020, revising the regulations under 40 CFR parts 1500–1518 that federal agencies use to implement NEPA (see Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, 85 FR 43,304). The Final Rule became effective on and applies to any NEPA process begun after September 14, 2020. An agency may also apply the regulations to ongoing activities and environmental documents begun before September 14, 2020, which includes the proposed Mother Ann Lee Project. Commission staff intends to conduct its NEPA review in accordance with CEQ's new regulations.

l. The Mother Ann Lee Project consists of the following existing facilities: (1) A reservoir with a surface area of 777 acres and a storage capacity of 5,828 acre-feet at elevation 513.12 feet National Geodetic Vertical Datum of 1929; (2) a 250-foot-long, 15.3-foot-high,

timber crib dam with a concrete cap and an abandoned 62-foot-long lock structure on the east side; (3) a 120-foot-long, 100-foot-wide forebay; (4) a 24-foot-tall, 84-foot-wide trashrack; (5) a 93-foot-long, 25-foot-wide, 16-foot-high powerhouse integral with the dam containing three turbine-generating units with a total installed capacity of 2,210 kilowatts; (6) a 30-foot-long, 15.3-foot-high concrete spillway section that extends from the powerhouse to the west shore; (7) an 85-foot-long substation; and (8) a 34.5 kilovolt, 4,540-foot-long transmission line. The project is estimated to generate an average of 9,200 megawatt-hours annually.

Lock 7 Partners proposes to continue operating the project in a run-of-river mode. In addition, the applicant proposes to construct, operate, and maintain a canoe portage, fishing access, and parking area at the Mother Ann Lee Project.

m. A copy of the application can be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support.

All filings must (1) bear in all capital letters the title ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (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 submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *Procedural schedule:* The application will be processed according to the following schedule. Revisions to the schedule will be made as appropriate.

Milestone	Target date
Deadline for Filing Comments, Recommendations, and Agency Terms and Conditions/Prescriptions.	April 2021.
Deadline for Filing Reply Comments.	June 2021.

Dated: February 26, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–04466 Filed 3–3–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 4026–054]

Androscoggin Reservoir Company; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Non-Capacity Amendment of License.

b. *Project No.:* 4026–054.

c. *Date Filed:* December 31, 2020, and supplemented on February 11, 2021.

d. *Applicant:* Androscoggin Reservoir Company.

e. *Name of Project:* Aziscohos Hydroelectric Project.

f. *Location:* The project is located on the Magalloway River in Oxford County, Maine.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Randall Dorman, Licensing Manager, Brookfield Renewable, 150 Main Street, Lewiston, ME 04240; telephone (207) 755–5605 and email *randy.dorman@brookfieldrenewable.com.*

i. *FERC Contact:* Linda Stewart, (202) 502–8184, *linda.stewart@ferc.gov.*

j. Deadline for filing comments, motions to intervene, and protests is 30 days from the issuance date of this notice by the Commission.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, 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–4026–054. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, it must also serve a copy of the document on that resource agency.

k. *Description of Request:* The Androscoggin Reservoir Company (licensee) proposes to administratively remove from the project license the existing 23.5-mile-long, 34.5-kilovolt transmission line. The licensee specifies that the transmission line, which is owned by Central Maine Power Company, should no longer be included in the license as a primary line because the line does not solely transmit power from the project to the interconnected grid, but also transmits power from the grid to the customers of the utility. Further, the licensee states that the point of interconnection of project power with the transmission grid occurs at the existing substation located adjacent to the powerhouse.

l. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended

access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified deadline date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting, or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: February 26, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–04465 Filed 3–3–21; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10020–31–ORD]

Ambient Air Monitoring Reference and Equivalent Methods; Designation of One New Reference Method and One New Equivalent Method

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of the designation of one new reference method and one new equivalent method for monitoring ambient air quality.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) has designated one new reference method for measuring concentrations of sulfur dioxide (SO_2), and one new equivalent method for measuring concentrations of particulate matter (PM_{10}) in ambient air.

FOR FURTHER INFORMATION CONTACT: Robert Vanderpool, Air Methods and Characterization Division (MD–D205–03), Center for Environmental Measurements and Modeling, U.S. EPA, Research Triangle Park, North Carolina 27711. Phone: 919–541–7877. Email: *Vanderpool.Robert@epa.gov.*

SUPPLEMENTARY INFORMATION: In accordance with regulations at 40 CFR part 53, the EPA evaluates various methods for monitoring the concentrations of those ambient air pollutants for which EPA has established National Ambient Air Quality Standards (NAAQS) as set forth in 40 CFR part 50. Monitoring methods that are determined to meet specific requirements for adequacy are designated by the EPA as either reference or equivalent methods (as applicable), thereby permitting their use under 40 CFR part 58 by States and other agencies for determining compliance with the NAAQS. A list of all reference or equivalent methods that have been previously designated by EPA may be found at *http://www.epa.gov/ttn/amtic/criteria.html.*

The EPA hereby announces the designation of one new reference method for measuring concentrations of SO_2 in ambient air and one new equivalent method for measuring concentrations of PM_{10} in ambient air. These designations are made under the provisions of 40 CFR part 53, as amended on October 26, 2015 (80 FR 65291–65468).

The new reference method for SO_2 is an automated method (analyzer) utilizing the measurement principle based on UV fluorescence. This newly designated reference method is identified as follows:

RFSA–1120–257, ''KENTEK Inc. Model MEZUS 110 SO_2 Analyzer,'' UV fluorescence analyzer operated in a range of 0–0.5 ppm, with 0.5 μm, 47 mm diameter Teflon® filter installed, operated at temperatures between 20° C and 30° C, at a nominal sampling flow rate of 800 cc/min, using a 5 minute averaging time, with either 105VAC–125VAC or 200VAC–240VAC input power options installed, 280-watt power consumption, equipped with 7 inch LCD touch screen display, and operated according to the KENTEK Inc. Model Mezus 110 Sulfur Dioxide Analyzer User's Instruction Manual.

This application for a reference method determination for this SO_2 method was received by the Office of Research and Development on July 21, 2020. This analyzer is commercially available from the applicant, KENTEK Inc., Hanshin S. Meca Room #526, 65 Techno 3-ro, Yuseong-gu, Daejeon, Republic of Korea, 34016.

The new equivalent method for PM_{10} is an automated method (monitor) utilizing the measurement principle based on Beta Attenuation or β-ray monitoring. This newly designated equivalent method is identified as follows:

EQPM–0121–258, ''Focused Photonics Inc. BPM–200 PM_{10} Monitor,'' β-ray monitor operated in the following concentration ranges: 0–1 mg/m^3, 0–2 mg/m^3, 0–5 mg/m^3, or 0–10 mg/m^3, analyzing ambient conditions temperatures between −30° C to 50° C, while the monitor can operate in a conditioned space between 0° C to 50° C. The unit is operated for 24-hour average measurements, with the FPI P/N 6150138000X EPA PM_{10} inlet, glass fiber filter tape with axial inner diameter of 40mm (GCY00003900), the 220VAC 50Hz power supply, the FPI P/N 6150139000X Atmospheric Temperature Unit, the 6100050000X Air heating unit for maintaining moisture at about 35% and no ΔT control, the FPI P/N GCX00013700 filter, the FPI P/N 6102182000X internal calibration device, 290508D00A Main Board, and 2910510B00X Interface board display. Instrument must be operated in accordance with the appropriate instrument manual and with software (firmware) version AQMSPlus.P005.V01A.US001.

This application for an equivalent method determination for this PM_{10} method was received by the Office of Research and Development on October 13, 2020. This monitor is commercially available from the applicant, Focused Photonics Inc. (FPI), 760 Bin'an Road, Binjiang District, Hangzhou, Zhejiang, China.

Representative test analyzers have been tested in accordance with the applicable test procedures specified in 40 CFR part 53, as amended on October 26, 2015. After reviewing the results of those tests and other information submitted by the applicants, EPA has determined, in accordance with 40 CFR part 53, that these methods should be designated as a reference or equivalent method.

As a designated reference or equivalent method, these methods are acceptable for use by states and other air monitoring agencies under the requirements of 40 CFR part 58, Ambient Air Quality Surveillance. For such purposes, each method must be used in strict accordance with the operation or instruction manual associated with the method and subject to any specifications and limitations (*e.g.,* configuration or operational settings) specified in the designated method description (see the identification of the method above).

Use of the method also should be in general accordance with the guidance and recommendations of applicable sections of the ''Quality Assurance Handbook for Air Pollution Measurement Systems, Volume I,'' EPA/600/R–94/038a and ''Quality Assurance Handbook for Air Pollution Measurement Systems, Volume II, Ambient Air Quality Monitoring Program,'' EPA–454/B–13–003, (both available at *http://www.epa.gov/ttn/amtic/qalist.html*). Provisions concerning modification of such methods by users are specified under Section 2.8 (Modifications of Methods by Users) of Appendix C to 40 CFR part 58.

Consistent or repeated noncompliance with any of these conditions should be reported to: Director, Air Methods and Characterization Division (MD–D205–03), Center for Environmental Measurements and Modeling, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of these reference and equivalent methods is intended to assist the States in establishing and operating their air quality surveillance systems under 40 CFR part 58. Questions concerning the commercial availability or technical aspects of the methods should be directed to the applicants.

Timothy Watkins,

Director, Center for Environmental Measurements and Modeling.

[FR Doc. 2021–04497 Filed 3–3–21; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2021–0178; FRL–10021–15–OAR]

Clean Air Act Advisory Committee (CAAAC): Request for Nominations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Request for Nominations to the Clean Air Act Advisory Committee (CAAAC).

SUMMARY: The U.S. Environmental Protection Agency (EPA) invites nominations from a diverse range of qualified candidates to be considered for appointment to its Clean Air Act Advisory Committee (CAAAC). Vacancies are anticipated to be filled by August 2021 and applications are due by April 30, 2021. Sources in addition to this **Federal Register** Notice may also be utilized in the solicitation of nominees.

DATES: Applications are due by April 30, 2021.

ADDRESSES: Submit nominations in writing to: Shanika Whitehurst, Designated Federal Officer, Office of Air and Radiation, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.

For further information or to email nominations, include in the subject line CAAAC Membership 2021 and send to *caaac@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Shanika Whitehurst, Designated Federal Officer, Office of Air and Radiation, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, 202–564–8235, *whitehurst.shanika@epa.gov.*

SUPPLEMENTARY INFORMATION:

Background: Clean Air Act Advisory Committee provides advice, information and recommendations on policy and technical issues associated with implementation of the Clean Air Act (CAA) as requested by EPA. These issues include the development, implementation, and enforcement of programs required by the Act. The CAAAC will provide advice and recommendations on approaches for new and expanded programs including those using innovative technologies and policy mechanisms to achieve environmental improvements; the potential health, environmental and economic effects of CAA programs on the public, the regulated community, State and local governments, and other Federal agencies; the policy and technical contents of proposed major EPA rulemaking and guidance required by the Act in order to help effectively incorporate appropriate outside advice and information; and the integration of existing policies, regulations, standards, guidelines, and procedures into programs for implementing requirements of the Act.

The programs falling under the purview of the committee include, but are not limited to, those for meeting National Ambient Air Quality Standards, reducing emissions from vehicles and vehicle fuels, reducing air toxic emissions, permitting, carrying out compliance authorities, and CAA-related voluntary activities. Members are appointed by the EPA Administrator for two-year terms with the possibility of reappointment to additional term(s). The CAAAC usually meets approximately 2 times annually and the average workload for the members is approximately 5 to 10 hours per month.

Although EPA is unable to offer compensation or an honorarium for CAAAC members, they may receive travel and per diem allowances, according to applicable federal travel regulations. EPA is seeking nominations from academia, industry, non-governmental/environmental organizations, community organizations, state and local government agencies, tribal governments, unions, trade associations, utilities, and lawyers/consultants. EPA values and welcomes diversity. In an effort to obtain nominations of diverse candidates, EPA encourages nominations of women and men of all racial and ethnic groups.

Evaluation Criteria

The following criteria will be used to evaluate nominees:

- The background and experiences that would help members contribute to the diversity of perspectives on the committee (*e.g.,* geographic, economic, social, cultural, educational, and other considerations)
- Experience serving as an elected official;
- Experience serving as an appointed official for a state, county, city or tribe;
- Experience working on national level or on local government issues;
- Demonstrated experience with air quality policy issues;
- Executive management level experience with membership in broad-based networks;
- Excellent interpersonal, oral and written communication, and consensus-building skills.
- Ability to volunteer time to attend meetings 2–3 times a year, participate in teleconference meetings, attend listening sessions with the

Administrator or other senior-level officials;

- Ability to work with others with varying perspectives to develop policy recommendations to the Administrator, and prepare reports and advice letters.

Nominations must include a resume and a short biography describing the professional and educational qualifications of the nominee, as well as the nominee's current business/home address, email address, and daytime telephone number. Interested candidates may self-nominate. All application items are due by April 30, 2021. Please note that EPA's policy is that, unless otherwise prescribed by statute, members generally are appointed to two-year terms. To help the Agency in evaluating the effectiveness of our outreach efforts, please also tell us how you learned of this opportunity.

Dated: February 26, 2021.

Shanika T. Whitehurst,

Designated Federal Officer, Clean Air Act Advisory Committee, Office of Air and Radiation.

[FR Doc. 2021–04462 Filed 3–3–21; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

[Notice 2021–04]

Filing Dates for the Texas Special Election in the 6th Congressional District Special Election

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special election.

SUMMARY: Texas has scheduled a Special General Election on May 1, 2021, to fill its U.S. House of Representatives seat in the 6th Congressional District of the late Representative Ron Wright. There are two possible elections, but only one may be necessary. Under Texas law, all qualified candidates, regardless of party affiliation, will appear on the ballot. The majority winner of the special election is declared elected. Should no candidate achieve a majority vote, the Governor will then set the date for a Special Runoff Election that will include only the top two vote-getters. Committees participating in the Texas special election are required to file pre- and post-election reports.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth S. Kurland, Information Division, 1050 First Street NE, Washington, DC 20463; Telephone: (202) 694–1100; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION:

Principal Campaign Committees

All principal campaign committees of candidates who participate in the Texas Special General Election shall file a 12-day Pre-General Report on April 19, 2021. If there is a majority winner, committees must also file a Post-General Report on May 31, 2021. (See charts below for the closing date for each report.)

Note that these reports are in addition to the campaign committee's regular quarterly filings. (See charts below for the closing date for each report).

Unauthorized Committees (PACs and Party Committees)

Political committees not filing monthly in 2021 are subject to special election reporting if they make previously undisclosed contributions or expenditures in connection with the Texas Special General by the close of books for the applicable report(s). (See charts below for the closing date for each report.)

Committees filing monthly that make contributions or expenditures in connection with the Texas Special General will continue to file according to the monthly reporting schedule.

Additional disclosure information for the Texas special elections may be found on the FEC website at *https://www.fec.gov/help-candidates-and-committees/dates-and-deadlines/.*

Possible Special Runoff Election

In the event that no candidate receives a majority of the votes in the Special General Election, a Special Runoff Election will be held. The Commission will publish a future notice giving the filing dates for that election if it becomes necessary.

Disclosure of Lobbyist Bundling Activity

Principal campaign committees, party committees and leadership PACs that are otherwise required to file reports in connection with the special election must simultaneously file FEC Form 3L if they receive two or more bundled contributions from lobbyists/registrants or lobbyist/registrant PACs that aggregate in excess of $19,300 during the special election reporting period. (See charts below for closing date of each period.) 11 CFR 104.22(a)(5)(v), (b), 110.17(e)(2), (f).

CALENDAR OF REPORTING DATES FOR TEXAS SPECIAL ELECTION

Report	Close of books [1]	Reg./cert. & overnight mailing deadline	Filing deadline
IF ONLY THE SPECIAL GENERAL IS HELD (05/01/2021), CAMPAIGN COMMITTEES INVOLVED MUST FILE			
April Quarterly	—WAIVED—		
Pre-General	04/11/2021	04/16/2021	04/19/2021
Post-General	05/21/2021	05/31/2021	[2] 05/31/2021
July Quarterly	06/30/2021	07/15/2021	07/15/2021
IF ONLY THE SPECIAL GENERAL (05/01/2021) IS HELD, PACs AND PARTY COMMITTEES NOT FILING MONTHLY INVOLVED MUST FILE			
Pre-General	04/11/2021	04/16/2021	04/19/2021
Post-General	05/21/2021	05/31/2021	[2] 05/31/2021
Mid-Year	06/30/2021	07/31/2021	[2] 07/31/2021
IF TWO ELECTIONS ARE HELD, CAMPAIGN COMMITTEES INVOLVED *ONLY* IN THE SPECIAL GENERAL (05/01/2021) MUST FILE			
April Quarterly	—WAIVED—		
Pre-General	04/11/2021	04/16/2021	04/19/2021

CALENDAR OF REPORTING DATES FOR TEXAS SPECIAL ELECTION—Continued

Report	Close of books [1]	Reg./cert. & overnight mailing deadline	Filing deadline
July Quarterly	06/30/2021	07/15/2021	07/15/2021
IF TWO ELECTIONS ARE HELD, PACS AND PARTY COMMITTEES NOT FILING MONTHLY INVOLVED IN *ONLY* THE SPECIAL GENERAL (05/01/2021) MUST FILE			
Pre-General	04/11/2021	04/16/2021	04/19/2021
Mid-Year	06/30/2021	07/31/2021	[2] 07/31/2021

[1] The reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered as a political committee up through the close of books for the first report due.

[2] Notice that this filing deadline falls on a weekend or federal holiday. Filing deadlines are not extended when they fall on nonworking days. Accordingly, reports filed by methods other than registered, certified or overnight mail must be received by close of business on the last business day before the deadline.

Dated: February 26, 2021.

On behalf of the Commission,

Shana M. Broussard,

Chair, Federal Election Commission.

[FR Doc. 2021–04445 Filed 3–3–21; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

TIME AND DATE: Tuesday, March 9, 2021 at 10:00 a.m. and its continuation at the conclusion of the open meeting on March 11, 2021.

PLACE: 1050 First Street NE, Washington, DC. (This meeting will be a virtual meeting.)

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Compliance matters pursuant to 52 U.S.C. 30109.

Information the premature disclosure of which would be likely to have a considerable adverse effect on the implementation of the proposed Commission action.

Matters concerning participation in civil actions or proceedings or arbitration.

* * * * *

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Laura E. Sinram,

Acting Secretary and Clerk of the Commission.

[FR Doc. 2021–04672 Filed 3–2–21; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than March 19, 2021.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *The Dreiseszun Grandchildren Trust, the Helene Kramer Trust, the Chad M. Feingold Grantor Trust, the Chad M. Feingold Irrevocable Insurance Trust, the Erika R. Feingold Irrevocable Insurance Trust, the Erika R. Feingold Grantor Trust, the Jeremy Morgan Family Irrevocable Trust, the Marilyn J. Feingold Trust #2, the Mark A. Morgan Family Irrevocable Trust, the Mark A. Morgan Trust #2, the Michael B. Morgan Trust #2, the Thomas S. Morgan Family Irrevocable Trust, the Thomas S. Morgan Trust #2, the Timothy Morgan Irrevocable Trust, the Todd D. Morgan Trust #2, the Avi Velasquez Irrevocable Trust, the Marley Blake Velasquez Irrevocable Trust, and the Mia M. Velasquez Irrevocable Trust, Gregory Sherman, as trustee or co-trustee, all of Overland Park, Kansas;* to become members of the Sherman Control Group, a group acting in concert, to retain voting shares of Valley View Bancshares, Inc., Overland Park, Kansas, and thereby indirectly retain voting shares of Security Bank of Kansas City, Kansas City, Kansas.

Board of Governors of the Federal Reserve System, March 1, 2021.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2021–04488 Filed 3–3–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Requirement for Airlines To Collect Designated Information for Passengers Destined for the United States Who Are Departing From, or Were Otherwise Present in the Democratic Republic of the Congo or the Republic of Guinea

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), a

component of the Department of Health and Human Services (HHS), announces the issuance of an Order requiring airlines and aircraft operators to collect designated information for passengers who are departing from, or were otherwise present in, the Democratic Republic of the Congo (DRC) or the Republic of Guinea (Guinea) within 21 days prior to their entry or attempted entry into the United States. This Order is based on the CDC Director's determination that such passengers are at risk of exposure to Ebola virus and that their accurate and complete contact information is needed to protect the health of fellow travelers and United States communities.

DATES: This Order takes effect beginning 11:59 p.m. Eastern Standard Time on March 4, 2021.

FOR FURTHER INFORMATION CONTACT: Jennifer Buigut, Division of Global Migration and Quarantine, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H16–4, Atlanta, GA 30329. Email: *dgmqpolicyoffice@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Background: There are currently outbreaks of Ebola Virus Disease (EVD) in DRC and Guinea. As of February 23, 2021, there were 8 cases of EVD in DRC and 9 in Guinea. Currently, a daily average of 27 travelers arrive in the United States each day from DRC and 33 from Guinea. A very small number (an average of between two and six) are neither United States citizens nor lawful permanent residents of the United States. Over 96% of travelers arriving from these countries enter the United States at one of six U.S. airports: Washington-Dulles International Airport (IAD), Virginia; John F. Kennedy International Airport (JFK), New York; Newark Liberty International Airport (EWR), New Jersey; Chicago O'Hare International Airport (ORD), Illinois; Atlanta Hartsfield-Jackson Atlanta International Airport (ATL), Georgia; and Los Angeles International Airport (LAX), California. Experience with previous EVD outbreaks (including the 2014–2016 EVD outbreak in West Africa) shows that EVD can spread quickly between close contacts and within healthcare settings, often with high case-fatality rates, and with substantial disruption and strain on healthcare services and broader socioeconomic impacts. While information continues to be gathered regarding these most recent EVD cases, there is potential for spread within the affected countries and to surrounding countries in both West Africa and Central/East Africa.

Because air travel has the potential to transport people, some of whom may have been exposed to a communicable disease, anywhere across the globe in less than 24 hours, CDC considers it essential that U.S. public health authorities have access to information necessary to follow up with travelers arriving from countries with EVD outbreaks, as needed, including for health education, risk assessment, and symptom monitoring. U.S. state, local, and territorial health departments have the authority to implement and manage public health follow-up, including monitoring, conducted within their jurisdictions. Health departments may elect to assume direct responsibility for monitoring or accept monitoring by a sponsoring organization (*e.g.,* if the individual was deployed overseas by a private company).[1]

Timely public health follow-up requires health officials to have immediate access to accurate and complete contact information for passengers as they arrive in the United States. Inaccurate or incomplete contact information hampers the ability of public health authorities to protect the health of passengers and the public. The best way to ensure airline passengers' contact information is available in real time is to collect the information before they board a flight. CDC has identified the minimum amount of information needed to locate passengers reliably after they arrive in the United States: Full name, address while in the United States, primary contact phone number, secondary or emergency contact phone number, and email address.

A copy of the Order is provided below and a copy of the signed Order can be found at *https://www.cdc.gov/quarantine/order-passengers-departing-congo.html.*

Order of the Centers for Disease Control and Prevention, Department of Health and Human Services, Requirement for Airlines to Collect Designated Information for Passengers Destined for the United States who Are Departing From, or Were Otherwise Present in, the Democratic Republic of the Congo or the Republic of Guinea

Under 42 CFR 71.4, 71.20, 71.31, and 71.32 as Authorized by 42 U.S.C. 264 and 268

Attention:

- All airlines and aircraft operators conducting any passenger-carrying operation destined for the United States transporting passengers who are departing from or were otherwise present in the Democratic Republic of the Congo (DRC) or the Republic of Guinea (Guinea) within 21 days of the date of the person's entry or attempted entry into the United States; and
- All air passengers destined for the United States who are departing from or were otherwise present in the DRC or Guinea within the previous 21 days of the date of the person's entry or attempted entry into the United States.

The Director of the Centers for Disease Control and Prevention (CDC) (Director) has issued an order (Order) under 42 CFR 71.4, 71.20, 71.31 and 71.32. This Order, as detailed below, requires all passengers destined for the United States who are departing from, or were otherwise present in, DRC or Guinea within the previous 21 days to provide designated contact information, as further described herein, to the airline or aircraft operator, so this information can be provided by the airline or aircraft operator, as required by this Order, to the United States Government. The collection of this information will begin for flights departing after 11:59 p.m. Eastern Standard Time on March 4, 2021.

In taking this action, the CDC Director has requested the assistance of U.S. Customs and Border Protection (CBP) in the Department of Homeland Security (DHS), which aids in the enforcement of quarantine rules and regulations pursuant to 42 U.S.C. 268 by collecting, storing, managing, and processing designated contact information and making it available to CDC when the Director has determined that travelers may have been exposed to Ebola Virus Disease (EVD). Additionally, CBP has issued an Order, in accordance with CBP statutory authority, to direct all operators of aircraft to ensure that all flights carrying persons who have recently traveled from, or were otherwise present within, the DRC or the Republic of Guinea only arrive at one of the following airports: John F. Kennedy International Airport (JFK), New York; Chicago O'Hare International Airport (ORD), Illinois; Hartsfield-Jackson Atlanta International Airport (ATL), Georgia; Washington-Dulles International Airport (IAD), Virginia; Newark Liberty International Airport (EWR), New Jersey; and Los Angeles International Airport (LAX), California, where the United States government may focus public health resources to implement enhanced public health measures. In keeping with current practice, CDC will work closely with CBP to ensure that the information collection by the airline or aircraft operator required by this Order is not duplicated upon passengers' arrival.

[1] *https://wwwnc.cdc.gov/travel/page/recs-organizations-sending-workers-ebola*

CDC will use this information for the purposes of public health follow-up, such as health education, risk assessment, and symptom monitoring or other appropriate public health interventions, including travel restrictions when indicated.[2]

Determination:

There are currently outbreaks of EVD in DRC and Guinea. As of February 23, 2021, there were 8 cases of EVD in DRC and 9 in Guinea. Currently, according to CBP, a daily average of 27 travelers arrive in the United States each day from DRC and 33 from Guinea. A very small number (an average of between two and six per day) are neither United States citizens nor lawful permanent residents of the United States. Over 96% of travelers arriving from these countries enter the United States at one of six U.S. airports: Washington-Dulles International Airport (IAD), Virginia; John F. Kennedy International Airport (JFK), New York; Newark Liberty International Airport (EWR), New Jersey; Chicago O'Hare International Airport (ORD), Illinois; Atlanta Hartsfield-Jackson Atlanta International Airport (ATL), Georgia; and Los Angeles International Airport (LAX), California. Experience with previous EVD outbreaks (including the 2014–2016 EVD outbreak in West Africa) shows that EVD can spread quickly between close contacts and within healthcare settings, often with high case fatality rates, and with substantial disruption and strain on healthcare services and broader socioeconomic impacts. While information continues to be gathered regarding these most recent EVD cases, there is potential for spread within the affected countries and to surrounding countries in both West Africa and Central/East Africa.

Air travel has the potential to transport people, some of whom may have been exposed to a communicable disease, anywhere across the globe in less than 24 hours. CDC considers it essential that U.S. public health authorities have access to information necessary to follow up with travelers arriving from countries with EVD outbreaks, as needed, including for health education, risk assessment, and symptom monitoring. U.S. state, local, tribal, and territorial health departments have the authority to implement and manage public health follow-up, including monitoring, conducted within their jurisdictions. Health departments may elect to assume direct responsibility for monitoring or accept monitoring by a sponsoring organization (*e.g.,* if the individual was deployed overseas by a private company).[3]

Timely public health follow-up requires health officials to have immediate access to accurate and complete contact information for passengers as they arrive in the United States. Inaccurate or incomplete contact information hampers the ability of public health authorities to protect the health of passengers and the public. The best way to ensure airline passengers' contact information is available in real time is to collect the information before they board a flight. CDC has identified the minimum amount of information needed to locate passengers reliably after they arrive in the United States: Full name, address while in the United States, primary contact phone number, secondary or emergency contact phone number, and email address.

For these reasons, I hereby determine that all travelers destined for the United States who are departing from, or were otherwise present in, DRC or Guinea within 21 days prior to their entry or attempted entry into the United States are at risk of exposure to EVD and that their accurate and complete contact information is needed to protect the health of fellow travlers and U.S. communities.

Directive:

Definitions.—In this Order—

1. the term 'airline' has the same meaning as in 42 CFR 71.1(b).

2. the term 'aircraft' has the same meaning as in 42 CFR 71.1(b) and 49 U.S.C. 40102(a)(6).

3. the term 'United States' has the same meaning as in 42 CFR 71.1(b).

4. the term 'communicable disease' has the same meaning as in 42 CFR 71.1(b).

5. the term 'designated information' consists of the following five data elements, to the extent that they exist, and any additional data elements that CDC, in consultation with CBP, determines are necessary to accommodate the means of transmission chosen by the airline or aircraft operator in section 1(b) or 2(b) of this Order below as provided by the passenger:

(A) Full name (last, first, and, if available, middle or suffix (*e.g.,* Jr.));

(B) Address while in the United States (number and street, city, State or territory, and zip code). If a United States citizen or lawful permanent resident, provide address of permanent residence in the United States or territory (number and street, city, State or territory, and zip code);

(C) Primary contact phone number to include country and area code, at which the passenger can be contacted while in the United States;

(D) Secondary contact phone number to include country and area code, which may be an emergency contact number, a work number, or a home number; and

(E) Email address that the passenger will routinely check while in the United States.

6. the term 'scheduled operation' means any common carriage passenger-carrying operation for compensation or hire conducted by an airline or commercial operator for which the airline or its representative offers in advance the departure location, departure time, and arrival location. For the purposes of this Order, this includes any passenger carrying operation under 14 CFR part 380.

In accordance with 42 CFR 71.4, 71.20, 71.31, and 71.32, as authorized by 42 U.S.C. 264 and 268, it is hereby *ordered*:

1. This section applies to all scheduled operations conducted under 14 CFR part 121, part 129, or part 380, or public charter operations conducted under part 135 using aircraft with ten or more seats, regardless of the number of passengers on the flight. Beginning 11:59 p.m. Eastern Standard Time on March 4, 2021, for each passenger flight transporting passengers destined for the United States from international last points of departure who are departing from, or were otherwise present in, DRC or Guinea within 21 days prior to their entry or attempted entry into the United States, all airlines or aircraft operators shall—

(a) Collect, before boarding, the designated information for all passengers who are departing from, or were otherwise present in, DRC or Guinea within 21 days prior to their entry or attempted entry into the United States. When collecting the designated information, airlines or aircraft operators shall notify passengers that the obligation to provide the information is a United States Government requirement.

(b) Transmit the designated passenger information to CBP through one of the following means:

i. Through the airline's advance passenger information transmission; or

ii. Through an industry-proposed, alternative compliance method meeting minimum standards deemed acceptable to CDC in consultation with CBP, *e.g.,* JSON messaging or PNRGOV.

(c) For all crew members, upon request from the CDC Director, transmit the designated information through encrypted email or other means approved by CDC within 24 hours.

[2] Privacy Act System Notice 09–20–0171: *https://www.cdc.gov/SORNnotice/09-20-0171.htm.*

[3] *https://wwwnc.cdc.gov/travel/page/recs-organizations-sending-workers-ebola*

CDC or CBP may issue additional operational guidance to aircraft operators regarding the collection and transmission of the designated information, including for those who are unable submit data in the manner specified or to meet the deadline of technical compliance.

Any airline that fails to comply with section 1 may be subject to criminal penalties under, *inter alia,* 42 U.S.C. 271 and 42 CFR 71.2, in conjunction with 18 U.S.C. 3559 and 3571.

2. This section applies to all other aircraft operators not covered in section 1 above. Beginning 11:59 p.m. Eastern Standard Time on March 4, 2021, for each passenger flight transporting passengers destined for the United States from international last points of departure who have been in DRC or Guinea within 21 days prior to the date of entry or attempted entry into the United States, all airlines or aircraft operators shall —

(a) Collect the designated information for all passengers who are departing from, or were otherwise present in, DRC or Guinea within the 21 days prior to their entry or attempted entry into the United States. When collecting the designated information, aircraft operators shall notify passengers that the obligation to provide the information is a United States Government requirement.

(b) Transmit the designated passenger information to CBP or CDC through one of the following means:

(1) Electronic Advance Passenger Information System; [4] or

(2) Other means meeting minimum standards deemed acceptable to CDC in consultation with CBP.

(c) For all crew members, upon request from the CDC Director, transmit the designated information through encrypted email or other means approved by CDC within 24 hours.

CDC or CBP may issue additional operational guidance to aircraft operators regarding the collection and transmission of the designated information, including for those who are unable submit data in the manner specified or to meet the deadline of technical compliance.

Any entities covered under section 2 that fail to comply with section 2 may be subject to criminal penalties under, *inter alia,* 42 U.S.C. 271 and 42 CFR 71.2, in conjunction with 18 U.S.C. 3559 and 3571.

3. Requirements for Passengers:

Beginning 11:59 p.m. Eastern Standard Time on March 4, 2021, any passenger destined for the United States on a flight covered under sections 1 or 2 who is departing from, or was otherwise present in, DRC or Guinea within 21 days prior to entry, or attempted entry, into the United States shall provide the designated information, as instructed by the airline or aircraft operator, insofar as the information exists for the passenger.

Authorized representatives (for example, immediate family member, legal guardian, or travel agent) may provide the designated information on behalf of passengers, including on behalf of minors or other passengers who are unable to do so on their own behalf), but the information must be specific to the individual passenger (*e.g.*agents may not put one number for an entire group of unrelated persons).

Any passenger who fails to comply with the requirements of section 3 may be subject to criminal penalties under, *inter alia,* 42 U.S.C. 271 and 42 CFR 71.2, in conjunction with 18 U.S.C. 3559 and 3571.

CDC and CBP will maintain the designated information within their respective systems in accordance with Federal law, including the Privacy Act of 1974 (5 U.S.C. 552a). Identifiable information may be used and shared only for lawful purposes, including with authorized personnel of the United States Department of Health and Human Services; the United States Department of Homeland Security; state, local, tribal, and territorial public health departments; and other cooperating authorities, as authorized by law. CDC and CBP will retain, use, delete, or otherwise destroy the designated information in accordance with the Federal Records Act, applicable Privacy Act System of Records Notices, and other applicable law.

CDC may modify this Order by an updated publication in the **Federal Register** or by posting an advisory to follow at *www.cdc.gov.*

Authority

The CDC Director is issuing this Order pursuant to Sections 361 and 365 of the Public Health Service (PHS) Act, 42 U.S.C. 264 and 268, and implementing regulations at 42 CFR 71.4, 71.20, 71.31, and 71.32.

Dated: March 2, 2021.

Sherri Berger,

Acting Chief of Staff, Centers for Disease Control and Prevention.

[FR Doc. 2021–04625 Filed 3–2–21; 4:15 pm]

BILLING CODE 4163–18–P

[4] *https://www.cbp.gov/travel/travel-industry-personnel/apis/eapis-transmission-system*

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0438]

Agency Information Collection Activities; Proposed Collection; Comment Request; Early Food Safety Evaluation of New Non-Pesticidal Proteins Produced by New Plant Varieties Intended for Food Use

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection provisions of FDA's procedures for early food safety evaluation of new non-pesticidal proteins produced by new plant varieties intended for food use, including bioengineered food plants.

DATES: Submit either electronic or written comments on the collection of information by May 3, 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 May 3, 2021. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of May 3, 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–2012–N–0438 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Early Food Safety Evaluation of New Non-Pesticidal Proteins Produced by New Plant Varieties Intended for Food Use.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Early Food Safety Evaluation of New Non-Pesticidal Proteins Produced by New Plant Varieties Intended for Food Use

OMB Control Number 0910–0583—Extension

This information collection supports FDA regulations. Since May 29, 1992, when we issued a policy statement on foods derived from new plant varieties, including those varieties that are developed through biotechnology, we have encouraged developers of new plant varieties to consult with us early in the development process to discuss possible scientific and regulatory issues that might arise (57 FR 22984). The guidance, entitled ''Recommendations for the Early Food Safety Evaluation of New Non-Pesticidal Proteins Produced by New Plant Varieties Intended for Food Use'' (*https://www.fda.gov/regulatory-information/search-fda-guidance-documents/guidance-industry-recommendations-early-food-safety-evaluation-new-non-pesticidal-proteins-produced*), continues to foster early communication by encouraging developers to submit to us their evaluation of the food safety of their new proteins. Such communication helps to ensure that any potential food safety issues regarding a new protein in a new plant variety are resolved early in development, prior to any possible inadvertent introduction into the food supply of the new protein.

We believe that any food safety concern related to such material entering the food supply would be limited to the potential that a new protein in food from the plant variety could cause an allergic reaction in susceptible individuals or could be a toxin. The guidance describes the procedures for early food safety evaluation of new proteins produced by new plant varieties, including bioengineered food plants, and the procedures for communicating with us about the safety evaluation.

Interested persons may use Form FDA 3666 to transmit their submission to the Office of Food Additive Safety in the

Center for Food Safety and Applied Nutrition (CFSAN). Form FDA 3666 is entitled ''Early Food Safety Evaluation of a New Non-Pesticidal Protein Produced by a New Plant Variety (New Protein Consultation)'' and may be used in lieu of a cover letter for a New Protein Consultation (NPC). The form may be accessed at FDA's web page for forms (*https://www.fda.gov/about-fda/reports-manuals-forms/forms*) using the search term ''3666.'' To enable field-fillable functionality of FDA forms, they must be downloaded. Form FDA 3666 prompts a submitter to include certain elements of an NPC in a standard format and helps the respondent organize their submission to focus on the information needed for our safety review. The form, and elements prepared as attachments to the form, may be prepared using the CFSAN Online Submission Module (*https://www.fda.gov/food/registration-food-facilities-and-other-submissions/cfsan-online-submission-module-cosm*). Once the submission is prepared, it may be submitted in electronic format via the Electronic Submissions Gateway (*https://www.fda.gov/industry/electronic-submissions-gateway),* paper format, or as electronic files on physical media with paper signature page. We use this information to evaluate the food safety of a specific new protein produced by a new plant variety.

Description of Respondents: The respondents to this collection of information are developers of new plant varieties intended for food use.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

GFI section VI: Format for submission	Form FDA No.	Number of responses	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
First four data components	3666	6	1	6	4	24
Two other data components	3666	6	1	6	16	96
Total						120

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on a review of the information collection since our last request for OMB approval, we have made no adjustments to our burden estimate. The estimated number of annual responses and average burden per response are based on our experience with early food safety evaluations. Completing an early food safety evaluation for a new protein from a new plant variety is a one-time burden (one evaluation per new protein). Many developers of novel plants may choose not to submit an evaluation because the field testing of a plant containing a new protein is conducted in such a way (*e.g.,* on such a small scale, or in such isolated conditions, etc.) that cross-pollination with traditional crops or commingling of plant material is not likely to be an issue. Also, other developers may have previously communicated with us about the food safety of a new plant protein, for example, when the same protein was expressed in a different crop.

We estimate the annual number of NPCs submitted by developers will be six or fewer. The early food safety evaluation for new proteins includes six main data components. Four of these data components, having to do with the identity and source of the protein, are easily and quickly obtainable. We estimate that completing these data components will take about 4 hours per NPC.

Two data components ask for original data to be generated. One data component consists of a bioinformatics analysis that can be performed using publicly available databases. The other data component involves ''wet'' lab work to assess the new protein's stability and the resistance of the protein to enzymatic degradation using appropriate in vitro assays (protein digestibility study). The paperwork burden of these two data components consists of the time it takes the company to assemble the information on these two data components and include it in an NPC. We estimate that completing these data components will take about 16 hours per NPC.

Dated: February 26, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–04448 Filed 3–3–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0025]

Agency Information Collection Activities; Proposed Collection; Comment Request; Animal Food Labeling; Declaration of Certified and Non-Certified Color Additives

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection provisions of FDA regulations requiring the declaration of color additives on animal food labels.

DATES: Submit either electronic or written comments on the collection of information by May 3, 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 May 3, 2021. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of May 3, 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–2009–N–0025 for ''Animal Food Labeling; Declaration of Certified and Non-Certified Color Additives.'' 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.

Animal Food Labeling; Declaration of Certified and Non-Certified Color Additives—21 CFR 501.22(k)

OMB Control Number 0910–0721—Extension

FDA has the authority under the Federal Food, Drug, and Cosmetic Act (FD&C Act) to issue regulations concerning animal food. Specifically, section 403(i) of the FD&C Act (21 U.S.C. 343(i)) requires that certified color additives used in or on a food must be declared by their common or usual names and not be designated by the collective term ''colorings.'' Our regulations in part 501 (21 CFR part 501) set forth the requirements for animal food labeling. Under § 501.22(k) (21 CFR 501.22(k)), animal food manufacturers must declare on the animal food label the presence of certified and noncertified color additives in their animal food products. Our animal food labeling regulation at § 501.22(k) is consistent with the regulations requiring the declaration of color additives on human food labels. The purpose of the labeling is to provide animal owners with information on the color additives used in animal food. Animal owners use the information to become knowledgeable about the foods they purchase for their animals. Color additive information enables a consumer to comparison shop and to avoid substances to which their animals may be sensitive.

Description of Respondents: Respondents to this collection of information are manufacturers of pet food products that contain color additives.

FDA estimates the burden of this collection of information as follows:

TABLE 1—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
501.22(k); labeling of color additive or lake of color additive; labeling of color additives not subject to certification.	3,120	0.8292	2,587	0.25 ..... (15 minutes).	647

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on a review of the information collection since our last request for OMB approval, we have made no adjustments to our burden estimate.

Dated: February 26, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–04461 Filed 3–3–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–3077]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Obtaining Information To Understand and Challenges and Opportunities Encountered by Compounding Outsourcing Facilities

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing that a collection of information entitled ''Obtaining Information to Understand and Challenges and Opportunities Encountered by Compounding Outsourcing Facilities'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrachi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–7726, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: On December 18, 2020, the Agency submitted a proposed collection of information entitled ''Obtaining Information to Understand and Challenges and Opportunities Encountered by Compounding Outsourcing Facilities'' to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0883. The approval expires on January 31, 2022. A copy of the supporting statement for this information collection is available on the internet at *https://www.reginfo.gov/public/do/PRAMain.*

Dated: February 26, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–04470 Filed 3–3–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–1228]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Study of Multiple Indications in Direct-to-Consumer Television Advertisements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by April 5, 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 title of this information collection is ''Study of Multiple Indications in Direct-to-Consumer Television Advertisements.'' Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrachi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–7726, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Study of Multiple Indications in Direct-to-Consumer Television Advertisements

OMB Control Number 0910–NEW

Section 1701(a)(4) of the Public Health Service Act (42 U.S.C. 300u(a)(4)) authorizes the FDA to conduct research relating to health information. Section 1003(d)(2)(C) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 393(d)(2)(C)) authorizes FDA to conduct research relating to drugs and other FDA regulated products in carrying out the provisions of the FD&C Act.

The Office of Prescription Drug Promotion's (OPDP) mission is to protect the public health by helping to ensure that prescription drug promotion is truthful, balanced, and accurately communicated. OPDP's research program provides scientific evidence to help ensure that our policies related to prescription drug promotion will have the greatest benefit to public health.

Toward that end, we have consistently conducted research to evaluate the aspects of prescription drug promotion that are most central to our mission, focusing in particular on three main topic areas: (1) Advertising features, including content and format; (2) target populations; and (3) research quality. Through the evaluation of advertising features, we assess how elements such as graphics, format, and disease and product characteristics impact the communication and

understanding of prescription drug risks and benefits. Focusing on target populations allows us to evaluate how understanding of prescription drug risks and benefits may vary as a function of audience, and our focus on research quality aims at maximizing the quality of research data through analytical methodology development and investigation of sampling and response issues. This study will inform the first topic area, advertising features, including content and format.

Because we recognize the strength of data and the confidence in the robust nature of the findings is improved through the results of multiple converging studies, we continue to develop evidence to inform our thinking. We evaluate the results from our studies within the broader context of research and findings from other sources, and this larger body of knowledge collectively informs our policies as well as our research program. Our research is documented on our homepage, which can be found at: *https://www.fda.gov/about-fda/center-drug-evaluation-and-research-cder/office-prescription-drug-promotion-opdp-research.* The website includes links to the latest **Federal Register** notices and peer-reviewed publications produced by our office. The website maintains information on studies we have conducted, dating back to a direct-to-consumer (DTC) survey conducted in 1999.

A number of prescription drugs are approved for multiple indications. These indications can be similar in certain respects (*e.g.,* diabetic peripheral neuropathy and fibromyalgia, which are both conditions that manifest in pain) or very different from one another (*e.g.,* diabetic peripheral neuropathy and generalized anxiety disorder). If a drug is approved for multiple indications, sponsors choose whether to promote only one of those indications in DTC television advertising, or multiple indications in the same television advertisement. We are unaware of any quantitative research that addresses how presenting multiple indications in one advertisement affects consumers' processing of drug information. Some research suggests that presenting more than one indication in a television advertisement, regardless of the similarity of the indications, may increase the cognitive load on consumers, thus decreasing their understanding of the drug's indications (Refs. 1–3).

When more than one indication is presented, the similarity or dissimilarity of the indications may affect participants' ability to remember and understand the indications. If this is the case, it is not clear whether similarity would have a positive or negative effect in the multimodal context of a television advertisement (*e.g.,* Refs. 4 and 5).

This study will provide preliminary information on whether consumers face challenges when multiple indications are promoted in a single television advertisement. The study also will explore whether similarity of the indications affects participants' likelihood to recall and understand the indications, and whether its effect would be positive or negative.

We propose to test three types of fictional DTC television advertisements—one that promotes a single indication, one that promotes an indication plus a similar indication, and one that promotes an indication plus a dissimilar indication—in two different medical conditions (table 1).

TABLE 1—STUDY DESIGN: 1 × 3 FACTORIAL EXPERIMENT REPEATED IN TWO MEDICAL CONDITIONS

	Indication 1	Indication 1 plus a similar indication	Indication 1 plus a dissimilar indication
Study 1: Diabetic peripheral neuropathy (DPN)	DPN	DPN + fibromyalgia	DPN + generalized anxiety disorder.
Study 2: Rheumatoid arthritis (RA)	RA	RA + psoriatic arthritis	RA + ulcerative colitis.

We plan to conduct two pretests (one for each main study) and two main studies not longer than 20 minutes, administered via internet panel, to test the experimental manipulations and pilot the main study procedures. Participants will be randomly assigned to view one study advertisement and then complete a questionnaire that assesses recall and comprehension of the drug's benefits and risks, benefit and risk perceptions, attitudes, and behavioral intentions. We will also measure covariates such as demographics and health literacy. Taking into account prior research, it is our hypothesis that participants will be more likely to correctly recall and understand the first indication when it is presented alone, compared with when it is presented with a second (similar or dissimilar) indication. We will explore whether similarity of the indications affects participants' likelihood to recall and understand the indications. We will also explore the effects of the indication presentation on benefit and risk perceptions, attitudes toward the drug and the indication information, and intentions to look for more information and ask a doctor about the drug.

For all phases of this research, we will recruit adult volunteers 18 years of age or older. For Pretest 1 and Study 1, we will recruit participants who self-report being diagnosed with diabetes (N = 60 in Pretest 1 and N = 402 in Study 1). For Pretest 2 and Study 2, we will recruit participants who self-report being diagnosed with rheumatoid arthritis (N = 60 in Pretest 2 and N = 402 in Study 2). We will exclude individuals who work for the Department of Health and Human Services or work in the healthcare, marketing, or pharmaceutical industries. We will also exclude pretest participants from the main studies, and participants will not be able to participate in both Studies 1 and 2. With these sample sizes, we will have sufficient power to detect small-sized effects in Studies 1 and 2. For the burden estimate, we include an additional 10% over our target number of valid completes to account for some overage.

In the **Federal Register** of July 6, 2020 (85 FR 40296), FDA published a 60-day notice requesting public comment on the proposed collection of information. FDA received four comments that were PRA-related.

Within the four submissions, FDA received multiple comments that the Agency has addressed below. For brevity, some public comments are paraphrased and therefore may not reflect the exact language used by the commenter. We assure commenters that the entirety of their comments was considered even if not fully captured by our paraphrasing in this document.

(Comment) One comment suggested several ideas for other study designs, including: (1) Studying consumer reactions to actual advertisement campaigns; (2) studying consumer reactions to watching a DTC television advertisement and then viewing a related website; and (3) studying advertisements for multiple indications with different risk profiles. Another comment suggested another study idea:

Studying a drug with multiple indications for the same disease.

(Response) We appreciate these alternate study ideas. As this is the first study on this topic, we acknowledge our study cannot answer every research question. We believe these alternate study ideas could be candidates for future research, and we encourage stakeholders to conduct research in this area.

(Comment) One comment recommended using Crohn's or ulcerative colitis rather than leukemia as the dissimilar indication in Study 2 to avoid confusion with adverse effects of common RA medications.

(Response) Based on this comment, we plan to use ulcerative colitis rather than leukemia as the dissimilar indication in Study 2.

(Comment) Three comments noted that care should be taken to reduce confounding variables in the study stimuli in terms of length, order and presentation of indications, background and actor profiles, advertisement quality, and audio and visual effects.

(Response) We can confirm that care has been taken to ensure that we do not have any unintentional confounds across the study conditions. The advertisements use the same actors, scenes, audio and visual effects and all other design and content features to ensure that all elements are consistent across experimental conditions. We also used the same setting, actors, and advertisement concept across Study 1 and Study 2 to minimize differences across the two studies. The only aspect that will change is the manipulated content (*i.e.,* script and superimposed text relaying the indications).

(Comment) One comment requested that we clarify how we are defining similar versus dissimilar indications.

(Response) The similar indications have similar clinical manifestations: In Study 1, nerve-related pain for diabetic peripheral neuropathy and fibromyalgia, and in Study 2, joint pain for rheumatoid arthritis and psoriatic arthritis. The dissimilar indications have dissimilar clinical manifestations: In Study 1, nerve-related pain for diabetic peripheral neuropathy and anxiety for generalized anxiety disorder, and in Study 2, joint pain for rheumatoid arthritis and abdominal pain and diarrhea for ulcerative colitis.

(Comment) One comment recommended stratification across conditions for demographics and several health characteristics.

(Response) Typically, stratified randomization is used if there are prognostic variables that correlate with outcome measures and researchers are concerned about such factors not being evenly distributed across groups (Ref. 6). We have no reason to expect that the aforementioned factors would have a strong association with the outcome measures, nor do we have reason to believe that we will not achieve adequate balance of prognostic variables given the large sample size proposed for this study (Ref. 6). Random assignment will help to produce groups which are, on average, probabilistically similar to each other. Because randomization eliminates most other sources of systematic variation, we can be reasonably confident that any effect that is found is the result of the intervention and not some preexisting differences between the groups (Ref. 7). However, we have included questions about demographics and health characteristics, which will enable us to assess their association with our outcomes and statistically control for them if necessary.

(Comment) One comment noted that the sample size per cell should be at least 75 participants.

(Response) We conducted power analyses to determine sample size. We plan to have 134 participants per cell in each study, for a total of 402 participants per study.

(Comment) One comment noted that recruiting participants with only the primary indication could bias results because participants will be more familiar with their own medical condition. Instead, it suggested that for each study condition we recruit a sample that matches that study condition (*e.g.,* recruiting participants with diabetic peripheral neuropathy or fibromyalgia for the second study condition in Study 1).

(Response) We agree that participants may know more about their own medical condition than the other medical conditions advertised. However, we believe the alternate design offered in the comment would make results difficult to interpret as it would be unclear whether differences were due to the advertisement manipulations or to the different samples. Instead, we plan to keep the original design. We do not plan to compare participants' recall, recognition, or comprehension of the primary indication to the second indication (which may lead to the bias noted in the comment). Rather, we plan to compare understanding across the experimental conditions. For instance, we are testing the hypothesis that participants (with diabetes in Study 1 and rheumatoid arthritis in Study 2) who see the first indication alone will be more likely to recall, recognize, and comprehend the first indication compared with participants (with diabetes in Study 1 and rheumatoid arthritis in Study 2) who see the first indication and a second (similar or dissimilar) indication. As another example, we would expect that recall, recognition, and comprehension of the second indication would be higher when the second indication is mentioned in the advertisement compared with when it is not (*e.g.,* participants are more likely to know the drug is also indicated for fibromyalgia when the advertisement mentions the fibromyalgia indication). We will measure participants' familiarity with treatments for each medical condition and assess whether they have been diagnosed with each medical condition. We can use these variables to explore differences among participants. A future study could examine how individuals suffering from fibromyalgia or generalized anxiety, or from psoriatic arthritis or ulcerative colitis (which are secondary indications in the current study) may interpret these advertisements.

(Comment) One comment suggested recruiting participants with diabetic peripheral neuropathy specifically rather than diabetes in Study 1, while another comment noted that diabetic peripheral neuropathy is underdiagnosed and therefore may present recruitment challenges.

(Response) We plan to retain the diabetes sample for Study 1 to aid recruitment. We will ask participants if they experience diabetes-related pain and whether they have been diagnosed with diabetic peripheral neuropathy.

(Comment) One comment noted concern about the chosen indications because medical conditions can differ from one another in several ways (*e.g.,* prevalence, treatment options) and suggested considering public awareness of the medical conditions.

(Response) We agree that medical conditions vary; this is unavoidable in a study of this kind. To account for this, we plan to conduct two studies using different medical conditions to determine whether the effects replicate across studies. We will measure participants' familiarity with treatments for the medical conditions in each study.

(Comment) One comment suggested asking participants if they were familiar with the fictitious drug and terminating participants who say yes.

(Response) It is unlikely that many participants will claim to be familiar with the fictional brand name. However, past research has noted the human tendency to falsely recognize content

(Ref. 8). While theoretically interesting, the fact that people may falsely recognize our brand should not threaten the internal validity of the current study. Random assignment should guard against systematic differences among groups in terms of false recognition tendency. Nonetheless, we appreciate this concern and in response, we have added a question to the survey to measure familiarity with the brand, which we can then explore in auxiliary analyses, but we do not think participants with false brand familiarity should be removed from the study. Our study sample includes those with rheumatoid arthritis for one of the studies (a condition with lower prevalence in the United States, about 0.6 percent of the population). Excluding those with false recognition would impose additional burden on recruitment.

(Comment) One comment suggested that the questionnaire should include the statement ''Based on the ad you just saw . . .'' before each question.

(Response) We include this statement and similar language throughout the questionnaire.

(Comment) One comment suggested we measure unaided awareness of the indications, aided awareness of the indications, likelihood to go to the branded drug website to learn more about the drug, and likelihood to ask their doctor about the drug.

(Response) We measure unaided awareness of the indications (benefit recall) in Question 2, aided awareness of the indications (benefit recognition) in Question 3, and likelihood to look for more information about the drug and ask their doctor about the drug in Questions 16 and 17.

(Comment) One comment suggested deleting Questions 2 and 13 in favor of Questions 3 and 14 because these open-ended questions may be difficult for respondents to answer.

(Response) Questions 2 and 13 measure unaided recall of drug benefits and risks whereas Questions 3 and 14 measure recognition of drug benefits and risks. We agree that recall is more difficult than recognition. We plan to retain Questions 2 and 13 but will assess their utility in cognitive interviews and pretesting.

(Comment) One comment suggested using consistent scales on the questionnaire.

(Response) Most questionnaire items have true/false/don't know or yes/no/don't know response options. Some items are validated measures with Likert-type scales; for these, we have used the response options from the validated measures.

(Comment) Two comments suggested removing or revising questions 7–10 because participants do not have the medical expertise to say whether someone is a good candidate for a drug. Instead, the comments suggested asking whether the drug is appropriate for them.

(Response) These questions are intended to measure participants' comprehension of the indications as communicated in the advertisements. DTC advertisements can drive consumers to ask their doctors about a drug, so it is important to know whether the drug indication is accurately communicated to consumers. We used similar questions about being a ''good candidate'' in another study (OMB control number 0910–0885). In cognitive interviews, participants were able to answer the questions and they understood that the questions were asking about the drug information in the advertisement. We also tested language, such as whether it would be appropriate for the person to ask their doctor about the drug, but participants found this language to be wordy and unnecessary. We do not plan to change these questions at this time, but we will assess participants' ability to answer these questions in cognitive interviews and pretesting.

(Comment) Two comments suggested deleting or revising several items (Questions 16, 17, 21–24, 26, 27 in one comment, Questions 18–27 in the other) because responses to these items may be influenced by the particular stimuli used and by factors other than those being studied.

(Response) These items measure intentions, attitudes, and perceptions. We agree that several factors can influence these outcomes. However, random assignment to conditions allows us to determine whether the experimental manipulation is responsible for differences in these outcomes across conditions. We will retain these items and assess their utility in cognitive interviews and pretesting.

(Comment) One comment suggested combining Questions 30 through 33 into one item and asking it at the beginning of the questionnaire.

(Response) We combined questions Q31 and Q32 into one item and moved the item to the screener.

(Comment) One comment suggested we ask participants if they have been diagnosed with the indicated medical conditions (diabetic neuropathy, fibromyalgia, etc.).

(Response) These questions are included on the questionnaire.

FDA estimates the burden of this collection of information as follows:

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual respondents	Average burden per response	Total hours
Pretest 1 and 2 screener	264	1	264	0.083 (5 minutes)	22
Pretest 1 and 2	132	1	132	0.333 (20 minutes)	44
Main Study 1 and 2 screener	1,770	1	1,770	0.083 (5 minutes)	147
Main Study 1 and 2	885	1	885	0.333 (20 minutes)	295
Total					508

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

References

The following references are on display at the Dockets Management Staff (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; these are not available electronically at *https://www.regulations.gov* as these references are copyright protected. Some may be available at the website address, if listed. FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

1. Mayer, R.E. and R. Moreno (2003), ''Nine Ways to Reduce Cognitive Load in Multimedia Learning.'' *Educational Psychologist,* 38(1), 43–52.
2. Mutlu-Bayraktar, D., V. Cosgun, and T.

Altan (2019), ''Cognitive Load in Multimedia Learning Environments: A Systematic Review.'' *Computers & Education,* 141, 103618.
3. Betts, K.R., V. Boudewyns, K.J. Aikin, C. Squire, et al. (2018), ''Serious and Actionable Risks, Plus Disclosure: Investigating an Alternative Approach for Presenting Risk Information in Prescription Drug Television Advertisements.'' *Research in Social and Administrative Pharmacy,* 14(10), 951–963.
4. Jiang, Y.V., H.J. Lee, A. Asaad, and R. Remington (2016), ''Similarity Effects in Visual Working Memory.'' *Psychonomic Bulletin & Review,* 23(2), 476–482.
5. Oberauer, K. and E.B. Lange (2008), ''Interference in Verbal Working Memory: Distinguishing Similarity-Based Confusion, Feature Overwriting, and Feature Migration.'' *Journal of Memory and Language,* 58(3), 730–745.
6. Friedman, L.M., C.D. Furberg, and D.L. DeMets (1998), *Fundamentals of Clinical Trials.* New York, NY: Spring Science-Business Media, LLC.
7. Fisher, R.A. (1937), *The Design of Experiments.* Edinburgh, United Kingdom: Oliver and Boyd.
8. Southwell, B.G. and R. Langteau (2008), ''Age, Memory Changes, and the Varying Utility of Recognition as a Media Effects Pathway''. *Communication Methods and Measures,* 2, 100–114.

Dated: February 26, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–04472 Filed 3–3–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–2430]

Request for Nominations on Device Good Manufacturing Practice Advisory Committee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is requesting that any industry organization interested in participating in the selection of a nonvoting industry representative to serve on the Device Good Manufacturing Practice Advisory Committee (DGMPAC) in the Center for Devices and Radiological Health notify FDA in writing. FDA is also requesting nominations for a nonvoting industry representative to fill an upcoming vacancy on DGMPAC. A nominee may either be self-nominated or nominated by an organization to serve as a nonvoting industry representative. Nominations will be accepted for an upcoming vacancy effective with this notice.

DATES: Any industry organizations interested in participating in the selection of an appropriate nonvoting member to represent industry interests must send a letter stating that interest to FDA by *April 5, 2021* (see sections I and III of this document for further details). Concurrently, nomination materials for prospective candidates should be sent to FDA by April 5, 2021.

ADDRESSES: All statements of interest from industry organizations interested in participating in the selection process of nonvoting industry representative nominations should be sent to Margaret Ames (see **FOR FURTHER INFORMATION CONTACT**). All nominations for nonvoting industry representatives should be submitted electronically by accessing FDA's Advisory Committee Membership Nomination Portal at *https://www.accessdata.fda.gov/scripts/FACTRSPortal/FACTRS/index.cfm* or by mail to Advisory Committee Oversight and Management Staff, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5103, Silver Spring, MD 20993–0002. Information about becoming a member of an FDA advisory committee can also be obtained by visiting FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm.*

FOR FURTHER INFORMATION CONTACT: Margaret Ames, Office of Management, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5213, Silver Spring, MD 20993–0002, 301–796–5960, *margaret.ames@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Section 520 of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 360j), as amended, provides that DGMPAC shall be composed of two representatives of interests of the device manufacturing industry. The Agency is requesting nominations for a nonvoting industry representative to fill an upcoming vacancy on DGMPAC. FDA is publishing a separate document announcing the request for notification for voting members on DGMPAC.

I. Function of DGMPAC

DGMPAC reviews proposed regulations issuance regarding good manufacturing practices governing the methods used in, and the facilities and controls used for, the manufacture, packaging, storage, installation, and servicing of devices, and makes recommendations regarding the feasibility and reasonableness of those proposed regulations. The committee also reviews and makes recommendations on proposed guidelines developed to assist the medical device industry in meeting the good manufacturing practice requirements and provides advice with regard to any petition submitted by a manufacturer for an exemption or variance from good manufacturing practice regulations.

II. Qualifications

Persons nominated for DGMPAC should possess appropriate qualifications to understand and contribute to the committee's work as described in the committee's function.

III. Selection Procedure

Any industry organization interested in participating in the selection of an appropriate nonvoting member to represent industry interests should send a letter stating that interest to the FDA contact (see **FOR FURTHER INFORMATION CONTACT**) within 30 days of publication of this document (see DATES). Within the subsequent 30 days, FDA will send a letter to each organization that has expressed an interest, attaching a complete list of all such organizations, and a list of all nominees along with their current resumes. The letter will also state that it is the responsibility of the interested organizations to confer with one another and to select a candidate, within 60 days after the receipt of the FDA letter, to serve as the nonvoting member to represent industry interests for the committee. The interested organizations are not bound by the list of nominees in selecting a candidate. However, if no individual is selected within the 60 days, the Commissioner will select the nonvoting member to represent industry interests.

IV. Application Procedure

Individuals may self-nominate and/or an organization may nominate one or more individuals to serve as a nonvoting industry representative. Nominations must include a current, complete résumé or curriculum vitae for each nominee, including current business address, telephone number, email address if available, and a signed copy of the Acknowledgement and Consent form available at the FDA Advisory Committee Membership Nomination Portal (see **ADDRESSES**) within 30 days of publication of this document (see **DATES**). Nominations must also specify the advisory committee for which the nominee is recommended. Nominations must also acknowledge that the

nominee is aware of the nomination unless self-nominated. FDA will forward all nominations to the organizations expressing interest in participating in the selection process for the committee. (Persons who nominate themselves as nonvoting industry representatives will not participate in the selection process.)

FDA seeks to include the views of women and men, members of all racial and ethnic groups, and individuals with and without disabilities on its advisory committees and, therefore, encourages nominations of appropriately qualified candidates from these groups. Specifically, nominations for nonvoting representatives of industry interests are encouraged from the device manufacturing industry.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: February 26, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–04450 Filed 3–3–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–N–0030]

Determination That BELVIQ (Lorcaserin Hydrochloride) Tablets, 10 Milligrams, and BELVIQ XR (Lorcaserin Hydrochloride) Extended-Release Tablets, 20 Milligrams, Were Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) has determined that BELVIQ (lorcaserin hydrochloride) tablets, 10 milligrams (mg), and BELVIQ XR (lorcaserin hydrochloride) extended-release tablets, 20 mg, were withdrawn from sale for reasons of safety or effectiveness. The Agency will not accept or approve abbreviated new drug applications (ANDAs) for lorcaserin hydrochloride tablets, 10 mg and 20 mg.

FOR FURTHER INFORMATION CONTACT: Sungjoon Chi, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6216, Silver Spring, MD 20993–0002, 240–402–9674, *Sungjoon.Chi@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Section 505(j) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(j)) allows the submission of an ANDA to seek approval to market a generic version of a previously approved drug product. In general, to obtain approval, the ANDA applicant must show, among other things, that the generic drug product has the same active ingredient(s); dosage form; route of administration; strength; conditions of use; and, with certain exceptions, labeling as the listed drug. In addition, the ANDA applicant must show that the generic drug product is bioequivalent to the listed drug.

Section 505(j)(7) of the FD&C Act requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is known generally as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's new drug application (NDA) or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale, but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

BELVIQ (lorcaserin hydrochloride) tablets, 10 mg, is the subject of NDA 022529, and BELVIQ XR (lorcaserin hydrochloride) extended-release tablets, 20 mg, is the subject of NDA 208524, both held by Eisai Inc. (Eisai), and initially approved on June 27, 2012, and July 15, 2016, respectively. BELVIQ and BELVIQ XR are indicated as an adjunct to a reduced-calorie diet and increased physical activity for chronic weight management in adults with an initial body mass index of:

- 30 kilograms per square meter (kg/m^2) or greater (obese); or
- 27 kg/m^2 or greater (overweight) in the presence of at least one weight-related comorbid condition (*e.g.,* hypertension, dyslipidemia, type 2 diabetes).

After reviewing Agency records and based on the information we have at this time, FDA has determined under § 314.161 that BELVIQ (lorcaserin hydrochloride) tablets, 10 mg, and BELVIQ XR (lorcaserin hydrochloride) extended-release tablets, 20 mg, were withdrawn for reasons of safety or effectiveness.

In 2012, the Agency required the drug manufacturer to conduct a randomized, double-blind, placebo-controlled clinical trial to evaluate the risk of cardiovascular problems. The Cardiovascular and Metabolic Effects of Lorcaserin in Overweight and Obese Patients—Thrombolysis in Myocardial Infarction 61 (CAMELLIA–TIMI 61) clinical trial was conducted to fulfill this requirement. An analysis of the CAMELLIA–TIMI 61 trial results suggests an imbalance in cancer in humans. Although chance effect cannot be ruled out, the imbalance persisted throughout multiple analysis approaches. The clinical findings corroborated by the evidence from the animal models informed the Agency's assessment that the risk outweighs any potential benefits for the current indications. These findings were considered clinically meaningful and could not be adequately addressed through labeling. Additional evidence would be necessary to investigate this signal; however, the Agency has determined that it is unlikely that the necessary safety endpoints (*i.e.,* cancer and reproductive safety) can be readily or ethically investigated in a clinical trial. Because preclinical or clinical studies would first need to be conducted to address these concerns, the Agency has determined that this drug product would not be considered safe and effective if it were reintroduced to the market.

FDA issued a Drug Safety Communication on January 14, 2020, alerting the public that results from a clinical trial assessing the risk of heart-related problems show a possible increased risk of cancer with BELVIQ and BELVIQ XR (see *https://www.fda.gov/drugs/drug-safety-and-availability/safety-clinical-trial-shows-possible-increased-risk-cancer-weight-loss-medicine-belviq-belviq-xr*). On February 13, 2020, FDA announced it had asked Eisai to voluntarily withdraw BELVIQ and BELVIQ XR from the U.S. market (see *https://www.fda.gov/drugs/drug-safety-and-availability/fda-requests-withdrawal-weight-loss-drug-belviq-belviq-xr-lorcaserin-market*). On February 13, 2020, Eisai submitted a request to FDA to withdraw approval of NDA 022529 for BELVIQ and NDA 208524 for BELVIQ XR under 21 CFR 314.150(d) and waived its opportunity for a hearing. As requested by Eisai, the Agency issued a **Federal Register** notice on September 17, 2020 (85 FR 58063), withdrawing approval of the

applications for BELVIQ (lorcaserin hydrochloride) tablets, 10 mg, and BELVIQ XR (lorcaserin hydrochloride) extended-release tablets, 20 mg, effective September 17, 2020.

Accordingly, the Agency will remove BELVIQ (lorcaserin hydrochloride) tablets, 10 mg, and BELVIQ XR (lorcaserin hydrochloride) extended-release tablets, 20 mg, from the list of drug products published in the Orange Book. FDA will not accept or approve ANDAs that refer to this drug product.

Dated: February 26, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–04449 Filed 3–3–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

"Low Income Levels" Used for Various Health Professions and Nursing Programs Authorized in Titles III, VII, and VIII of the Public Health Service Act

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HRSA is updating income levels used to identify a ''low income family'' for the purpose of determining eligibility for programs that provide health professions and nursing training to individuals from disadvantaged backgrounds. These various programs are authorized in Titles III, VII, and VIII of the Public Health Service Act.

SUPPLEMENTARY INFORMATION: HHS periodically publishes in the **Federal Register** low-income levels to be used by institutions receiving grants and cooperative agreements to determine eligibility for programs providing training for (1) disadvantaged individuals, (2) individuals from disadvantaged backgrounds, or (3) individuals from low-income families.

Many health professions and nursing grant and cooperative agreement awardees use the low-income levels to determine whether potential program participants are from an economically disadvantaged background and would be eligible to participate in the program, as well as to determine the amount of funding the individual receives. Awards are generally made to accredited schools of medicine, osteopathic medicine, public health, dentistry, veterinary medicine, optometry, pharmacy, allied health, podiatric medicine, nursing, and chiropractic; public or private nonprofit schools which offer graduate programs in behavioral health and mental health practice; and other public or private nonprofit health or educational entities to assist individuals from disadvantaged backgrounds to enter and graduate from health professions and nursing schools. Some programs provide for the repayment of health professions or nursing education loans for students from disadvantaged backgrounds.

A ''low-income family/household'' for programs included in Titles III, VII, and VIII of the Public Health Service Act is defined as having an annual income that does not exceed 200 percent of the Department's poverty guidelines. A family is a group of two or more individuals related by birth, marriage, or adoption who live together.

Most HRSA programs use the income of a student's parent(s) to compute low income status. However, a ''household'' may potentially be only one person. Other HRSA programs, depending upon the legislative intent of the program, the programmatic purpose related to income level, as well as the age and circumstances of the participant, will apply these low income standards to the individual student to determine eligibility, as long as he or she is not listed as a dependent on the tax form of his or her parent(s). Each program announces the rationale and choice of methodology for determining low income levels in program funding opportunities or applications.

Low-income levels are adjusted annually based on HHS's poverty guidelines. HHS's poverty guidelines are based on poverty thresholds published by the U.S. Census Bureau, adjusted annually for changes in the Consumer Price Index. The income figures below have been updated to reflect the Department's 2021 poverty guidelines as published in 86 FR 19 (February 1, 2021).

LOW INCOME LEVELS BASED ON THE 2021 POVERTY GUIDELINES FOR THE 48 CONTIGUOUS STATES AND THE DISTRICT OF COLUMBIA

Persons in family/household *	Income level **
1	$25,760
2	34,840
3	43,920
4	53,000
5	62,080
6	71,160
7	80,240
8	89,320

For families with more than 8 persons, add $9,080 for each additional person.

* Includes only dependents listed on federal income tax forms.

** Adjusted gross income for calendar year 2020.

LOW INCOME LEVELS BASED ON THE 2021 POVERTY GUIDELINES FOR ALASKA

Persons in family/household *	Income level **
1	$32,180
2	43,540
3	54,900
4	66,260
5	77,620
6	88,980
7	100,340
8	111,700

For families with more than 8 persons, add $11,360 for each additional person.

* Includes only dependents listed on federal income tax forms.

** Adjusted gross income for calendar year 2020.

LOW INCOME LEVELS BASED ON THE 2021 POVERTY GUIDELINES FOR HAWAII

Persons in family/household *	Income level **
1	$29,640
2	40,080
3	50,520
4	60,960
5	71,400
6	81,840
7	92,280
8	102,720

For families with more than 8 persons, add $10,440 for each additional person.

* Includes only dependents listed on federal income tax forms.

** Adjusted gross income for calendar year 2020.

Separate poverty guidelines figures for Alaska and Hawaii reflect Office of Economic Opportunity administrative practice beginning in the 1966–1970 period since the U.S. Census Bureau poverty thresholds do not have separate figures for Alaska and Hawaii. The poverty guidelines are not defined for Puerto Rico or other outlying jurisdictions. Puerto Rico and other outlying jurisdictions shall use income

guidelines for the 48 Contiguous States and the District of Columbia.

Diana Espinosa,

Acting Administrator.

[FR Doc. 2021–04446 Filed 3–3–21; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Privacy Act of 1974; System of Records

AGENCY: Department of Health and Human Services.

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Department of Health and Human Services (HHS) is modifying a department-wide system of records titled HHS Correspondence, Customer Service, and Contact List Records, system no. 09–90–1901, to make certain updates and to more clearly include records about individuals who provide comments and supporting documents to HHS in response to HHS rulemakings and other docketed proceedings. The modifications include changing the name of the system of records to HHS Correspondence, Comment, Customer Service, and Contact List Records.

DATES: In accordance with 5 U.S.C. 552a(e)(4) and (11), this notice is applicable March 4, 2021, subject to a 30-day period in which to comment on the new and revised routine uses, described below. Please submit any comments by April 5, 2021.

ADDRESSES: The public should submit written comments on this notice, by mail or email, to Beth Kramer, HHS Privacy Act Officer, 200 Independence Ave. SW, Suite 729H, Washington, DC 20201, or *beth.kramer@hhs.gov.* Comments will be available for public viewing at the same location. To review comments in person, please contact Beth Kramer at *beth.kramer@hhs.gov* or 202–690–6941.

FOR FURTHER INFORMATION CONTACT: General questions may be submitted to Beth Kramer, HHS Privacy Act Officer, at 200 Independence Ave. SW, Suite 729H, Washington, DC 20201, or *beth.kramer@hhs.gov,* or 202–690–6941.

SUPPLEMENTARY INFORMATION:

I. Background on System of Records Notice (SORN) 09–90–1901

This department-wide system of records covers records about individuals within or outside HHS which are used in managing HHS correspondence, public comments in docketed proceedings, and customer service functions, including help desk and call center activities, dissemination of publications, studies, opinions, unrestricted datasets, and other information, and mailing and contact lists. SORN 09–90–1901 applies to such records if they are retrieved by personal identifier and are not covered by a more specific SORN.

Examples of the records covered in SORN 09–90–1901 include:

- Telephone and email directories containing office contact records about HHS employees, contractor personnel, and other personnel working at HHS, which are retrieved by the individuals' names and used to locate them, route mail to them, and communicate with them regarding work matters.
- Official correspondence records about individuals who contact, or are contacted by, the Secretary or Deputy Secretary of HHS or another HHS official, or are the subject of the correspondence, which are retrieved by the correspondent's or subject's name and used to control, track, and ensure timely and appropriate attention to and documentation of the correspondence. Particular subsets of these records include, for example:
  - Records about individuals who submit comments and supporting documents in response to HHS rulemakings and other docketed proceedings and public notices, which are retrieved by commenter name;
  - Correspondence notifying members of Congress of grants and other contracts that HHS has awarded to individual recipients in their districts, which are retrieved by awardee name; and
  - Records of requests about individual constituents received from members of Congress, which are retrieved by constituent name and used to track and respond to the requests.
- Mailing and contact list records used to track and respond to requests from, or otherwise interact with, individual members of the public, when the records are retrieved by personal identifier. Examples include:
  - Email lists and other contact lists about individuals who ask to receive health information from HHS in print form, or to be notified of new and upcoming publications or web postings, or to subscribe to an online newsletter issued by HHS.
  - Customer engagement workflow platform records containing account records (*i.e.,* contact information) and case records (*e.g.,* request processing records) about frequent customers of particular HHS offices, such as sole proprietor members of the media who are frequent customers of HHS public affairs offices.
- Contact records about individuals who volunteer to serve as resource persons to provide *pro bono* technical assistance to community organizations and government agencies working on particular health-related matters or campaigns

Examples of more specific SORNs, which will continue to apply to particular types of correspondence records, contact list records, and customer service records, include:

- Debt collection correspondence: SORN 09–40–0012, Debt Management and Collection System.
- Correspondence about complaints filed with the HHS Office of Civil Rights: SORN 09–90–0052, Program Information Management System (PIMS).
- Freedom of Information Act and Privacy Act Correspondence: SORN 09–90–0058, Tracking Records and Case Files for FOIA and Privacy Act Requests and Appeals.
- Medicare Customer Service records: SORN 09–70–0535, 1–800 Medicare (HELPLINE).
- List(s) of individuals ordering provider educational materials or registering for computer/Web-based training courses, satellite broadcasts and train-the-trainer sessions: SORN 09–70–0542, Medicare Learning Network (MLN).
- List of consultants available for use in evaluation of National Heart, Lung, and Blood Institute special grants and contracts: SORN 09–25–0078, Administration: Consultant File.

II. Modifications to SORN 09–90–1901

HHS is modifying the SORN to update it and to ensure that it clearly and adequately covers records about individuals who submit comments and supporting documents to HHS in response to HHS rulemakings and other docketed proceedings. HHS is also expressly including customer engagement platform records. The modifications include:

- Including the word ''Comment'' in the name of the system of records.
- Referring to ''comments'' or ''commenters'' in the Categories of Individuals, Categories of Records, Purpose(s), and Retrieval sections, and referring to ''customer engagement'' records in the System Manager(s) and Categories of Records sections.
- Including the General Services Administration (GSA) in the System Location section as the shared services provider that operates systems HHS uses to manage certain docket records.

• Indicating which System Managers apply to comment records and customer engagement records.

• Citing additional statutes (5 U.S.C. 553 and 44 U.S.C. 1505) in the Authority section which, in addition to 5 U.S.C. 301, apply to docket records.

• Revising routine use 1, which authorizes disclosures to agency contractors, to indicate that such contractors include ''another federal agency functioning as a shared service provider or other contractor to HHS.''

• Adding a new routine use, numbered as routine use 4, authorizing comment records to be made public, to the extent of information that would be required to be released to a requester under the Freedom of Information Act (FOIA), *e.g.,* that would not result in a clearly unwarranted invasion of privacy.

• Adding a new routine use, numbered as routine use 5, authorizing work contact information for HHS personnel to be made public, *e.g.,* in a public directory or on relevant HHS websites, limited to information that would be required to be released to a requester under the FOIA.

• Adding the explanatory phrase ''*e.g.,* would not result in a clearly unwarranted invasion of privacy'' to routine use 6 (formerly numbered as routine use 4), which authorizes the names of and biographical information about individuals who author, create, appear in, or are the subjects of information products HHS disseminates to be disclosed with the products and in publicizing the products to the extent that the information would be required to be released to a requester under the FOIA.

• Citing additional or different disposition schedules for certain correspondence records, comment records, and staff locator records, in the Retention section.

• Adding one security control (*i.e.,* ''reviewing security controls on a periodic basis'') to the Safeguards section.

Because some of these changes are significant, HHS provided advance notice of the modified system of records to the Office of Management and Budget (OMB) and Congress as required by 5 U.S.C. 552a(r) and OMB Circular A–108.

Brandon Gaylord,

Director, FOIA/Privacy Act Division, Office of the Assistant Secretary for Public Affairs.

SYSTEM NAME AND NUMBER:

HHS Correspondence, Comment, Customer Service, and Contact List Records, 09–90–1901.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The address of each HHS component responsible for this system of records is as shown in the System Manager(s) section below. The General Services Administration (GSA), 1800 F St. NW, Washington, DC 20006, serves as system administrator for shared services systems (the Federal Docket Management System (FDMS) and *www.regulations.gov*) which contain comment records for HHS rulemakings and certain other docketed proceedings.

SYSTEM MANAGER(S):

The System Managers are as follows:

• *Congressional correspondence:* HHS Assistant Secretary for Legislation, Congressional Liaison Office, Rm. 406G, 200 Independence Ave. SW, Washington, DC 20201, (202) 690–7627.

• *HHS Secretarial and Deputy Secretary correspondence, and docket records for the Office of the Secretary (OS):* HHS Executive Secretariat, Rm. 603H, 200 Independence Ave. SW, Washington, DC 20201, (202) 690–7000.

• *Other correspondence and docket records:*

a. Administration for Children and Families (ACF) Executive Secretariat Office, Director, 330 C St. SW, Washington, DC 20201, *linda.hitt@acf.hhs.gov.*

b. Administration for Community Living (ACL) Executive Secretariat Office, Chief of Staff/Executive Secretariat, 330 C St. SW, Rm. 1004B, Washington, DC 20201, (202) 795–7415.

c. Agency for Healthcare Research and Quality (AHRQ) Executive Secretariat Office, Director, 5600 Fishers Ln., Rm. 07N90C, Rockville, MD 20857, (301) 427–1216.

d. Centers for Disease Control and Prevention/Agency for Toxic Substances and Disease Registry (CDC/ATSDR) Executive Secretariat Office, Executive Secretariat, 1600 Clifton Rd., MS H21–10, Atlanta, GA 30329, (404) 639–7483, *RCC@cdc.gov.*

e. Centers for Medicare & Medicaid Services (CMS) Office of Strategic Operations and Regulatory Affairs, Director, 7500 Security Blvd., Baltimore, MD 21244–1850, (410) 786–3200.

f. FDA Privacy Act Coordinator, Food and Drug Administration, 5630 Fishers Ln., Rm. 1035, Rockville, MD 20857, (301) 796–3900.

g. Health Resources and Services Administration (HRSA) Executive Secretariat Office, Director, 5600 Fishers Ln., Rm. 13N82, Rockville, MD 20857 (301) 443–1785.

h. Indian Health Service (IHS), Executive Secretariat Office, Director, 5600 Fishers Ln., Rm. 08E86, Rockville, MD, (301) 443–1011.

i. National Institutes of Health (NIH), Executive Secretariat Office, Director, Shannon Bldg (Bldg. 1), Room B1–56, 1 Center Drive, Bethesda, MD 20892–0122, (301) 496–1461.

j. Substance Abuse and Mental Health Services Administration (SAMHSA) Executive Secretariat Office, Branch Chief, 5600 Fishers Ln., Rockville, MD 20857, (877) 726–4727.

• *Information product ordering and distribution records:*

a. AHRQ: Director, Office of Communications and Knowledge Transfer, Agency for Healthcare Research and Quality, 5600 Fishers Ln., 7th Floor, Rockville, MD 20857, (301) 427–1364.

b. CMS: Director, Office of Communications, Centers for Medicare & Medicaid Services, 7500 Security Blvd., Baltimore, MD 21244, (410) 786–1338.

c. FDA Privacy Act Coordinator, Food and Drug Administration, 5630 Fishers Ln., Rm. 1035, Rockville, MD 20857, (301) 796–3900.

d. SAMHSA: Director, Office of Communications, Substance Abuse and Mental Health Services Administration, 5600 Fishers Ln., Rockville, MD 20857, (240) 276–2201.

• *Call center, ombudsman, and help desk records:*

a. ONE–DHHS: FedResponse Service Director, Program Support Center, 7700 Wisconsin Ave., Bethesda, MD 20814, (877) 696–6775.

b. FDA Call Centers: FDA Privacy Act Coordinator, Food and Drug Administration, 5630 Fishers Ln., Rm. 1035, Rockville, MD 20857, (301) 796–3900.

• *Mailing list and contact list records:*

a. HHS Employee Directory: Same as ONE–DHHS contact information, under Call center, above.

b. OASH/OMH mailing and contact list records: Office of Minority Health, The Tower Building, 1101 Wootton Pkwy., Suite 600, Rockville, MD 20852, (240) 453–2882.

c. FDA mailing and contact list records: FDA Privacy Act Coordinator, Food and Drug Administration, 5630 Fishers Ln., Rm. 1035, Rockville, MD 20857, (301) 796–3900.

• *Customer engagement workflow platform records:*

a. The Office of the Chief Product Officer (OCPO), 2501 Ardennes Ave., Rockville, MD 20852, (202) 945–2152.

• *Any other records not accounted for above:* See ONE–DHHS contact information, under Call center, above.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 305, 553; 21 U.S.C. 301 *et seq.;* 31 U.S.C. 1115(b)(6); 40 U.S.C.

11313; 42 U.S.C. 201 *et seq.;* 44 U.S.C. 3101, 1505; E.O. 11583; E.O. 13571.

PURPOSE(S) OF THE SYSTEM:

The records in this system of records are used for the purpose of managing HHS correspondence, information dissemination, and customer service functions; *i.e.,* to maintain, track, control, route, and locate information and documents created, received, requested, and used in managing those functions, in order to provide timely and appropriate actions, responses, notices, services, coordination, referrals, or other follow-up, avoid duplicate entries, and ensure consistency. Correspondence, information dissemination, and customer service functions include, for example, managing comments received on rulemakings and other public notices; non-law enforcement-related help desk and call center activities; handling of consumer complaints; dissemination of publications, unrestricted datasets, and other information; and maintenance of mailing and contact lists. The records may also be used to compile aggregate statistics for the purpose of evaluating and improving these functions.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The records are about individuals within and outside HHS who contact HHS to request or offer information, information products, comments, suggestions, or services or to communicate a complaint or other information, or who receive correspondence from HHS, or who are the author or subject of such publications, communications, or correspondence by or with HHS, or who are included in mailing and contact lists maintained by HHS, when the records are used to support HHS correspondence, information dissemination, and/or customer service functions and are retrieved by the individuals' names or other personal identifiers (unless the records are covered by a more specific system of records notice (SORN)).

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records include:

• *Secretarial and other official correspondence, docket records, congressional correspondence, and other correspondence.* These records include copies of requests, comments, or other communications addressed or routed to an HHS official for response or other follow-up; copies of correspondence initialed or signed by an HHS official; tracking and control records (indicating, *e.g.,* the date and subject of the correspondence; the name of the correspondent and/or other individual record subject—for example, a constituent identified in congressional correspondence; the action required; the organization drafting the response); and associated work papers.

• *Records used in disseminating or filling orders for publications, stock photographs, audio visual productions, unrestricted datasets, and other information products.* These include indexes to repositories of informational materials, request records, and order fulfilment records. Indexes may contain names of individuals (such as authors or subjects) used to retrieve materials when needed for distribution or to fulfill a request. Request records identify the date of the request, the product requested, the requester, and the address to use for delivery. Order fulfillment records contain proof of delivery, including the delivery date and address used for delivery, which may be a mailing address or email address if delivery was through a public access web portal or link. Any associated payment records (if a fee is charged for the information product) are covered by system of records 09–90–0024 HHS Financial Management System Records.

• *Call center and help desk records.* These include contact records (containing the name of the individual who contacted the call center or help desk, his or her contact information, and location information if relevant, unless the individual wishes to be anonymous) and request records (containing the date and nature of the request, complaint, or report, the name of the call center staff member who handled the request, complaint, or report, and actions taken, such as providing an answer from a call center script, documenting the report, or assigning and routing the request to the appropriate program office to handle). Note that recordings of ONE–DHHS telephone calls are destroyed after 90 days and are not retrieved by personal identifier so are not covered by this SORN.

• *Mailing list records.* These include the lists and any records used to compile and maintain the lists (*e.g.,* existing contact lists; invitations to join and requests to be added to or removed from a list; address changes) containing an individual's contact information (*e.g.,* mailing address or email address) and indicating the particular information or notices the individual would receive or would like to receive from HHS (*e.g.,* publications on particular health topics; an electronic newsletter; notice of upcoming training courses; notice when new material is added to a website). The records may also include information that the particular program requires or requests individuals to provide about themselves (*e.g.,* characteristics such as profession, employing organization, educational level, practice setting, geographic location, age, ethnicity) to enable the agency to aggregate or organize the information or compile statistics on the types of individuals receiving the information distributed through the list.

• *Contact list records.* These include the lists and any records used to compile and maintain the lists, containing names, contact information, and any other relevant information (*e.g.,* expertise type, primary language, geographic region) for individuals who HHS regularly contacts or otherwise interacts with (such as, authors; sole proprietor media stakeholders; HHS personnel) and/or individuals who have agreed to be included on or have asked to be removed from a particular list of contacts HHS maintains and may in some cases distribute or post for HHS and/or non-HHS parties to use to obtain assistance from or share information with the individuals on the list (for example, outside medical and research experts who wish to exchange knowledge and best practices and share studies, opinions, and training materials with each other); and any written consents from subject individuals permitting HHS to disclose their contact or other information to specific types of non-HHS parties, or to the public, for specific purposes.

• *Customer engagement workflow platform records.* These include account records containing the same types of information as contact lists, described above, and case records containing request processing records, which are used to track and respond to requests from or otherwise interact with frequent customers or business partners of particular HHS offices. The case files are linked to the applicable account record and contain information describing the customer's requests or interactions and any supporting information the customer provided.

RECORD SOURCE CATEGORIES:

Most information is obtained directly from the subject individual. Information may also be obtained from a third party who contacts HHS about or on behalf of a subject individual, or from records HHS compiles or persons HHS consults in order to provide a response, provide assistance, or otherwise follow up on the request or communication.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to other disclosures authorized directly in the Privacy Act at 5 U.S.C. 552a(b)(1) and (2) and (b)(4) through (11), information about an individual may be disclosed from this system of records to parties outside HHS without the individual's prior, written consent, for these routine uses:

1. Records may be disclosed to agency contractors (including another federal agency functioning as a shared service provider or other contractor to HHS) and to student volunteers, interns, and other individuals who do not have the status of agency employees but have been engaged by HHS to assist in accomplishment of an HHS function relating to the purposes of this system of records and who need to have access to the records in order to assist HHS. Such individuals and contractors will be required to comply with the requirements of the Privacy Act.

2. Records may be disclosed to other federal agencies and HHS partner agencies and organizations for the purpose of referring a request or issue to them for handling or obtaining their assistance with a response or issue.

3. Notice of an award that HHS has made to an individual awardee in a particular congressional district may be disclosed to the member of Congress serving that district.

4. HHS makes publicly available the name(s), contact information, comments, and any supporting documents provided by individuals who comment on docketed proceedings (provided that the information would be required to be released to a requester under the Freedom of Information Act (FOIA); *e.g.,* would not result in a clearly unwarranted invasion of privacy). For rulemaking proceedings, HHS makes the information publicly available in *www.regulations.gov.* For other docketed proceedings, HHS makes the information publicly available in *www.regulations.gov* or available for public inspection at an HHS location specified in the applicable notice, by appointment or as otherwise specified in the notice.

5. HHS makes certain work contact information for HHS personnel publicly available (for example, in a searchable public directory, and on relevant HHS websites), but only to the extent that the information would be required to be released to a requester under the FOIA.

6. Names of and biographical information about the individuals who authored, created, appear in, or are the subjects of information products may be disclosed with the products or in descriptions of the products used to publicize them, but would be disclosed without consent only if and to the extent that the names and biographical information would be required to be released to a requester under the FOIA (*e.g.,* would not result in a clearly unwarranted invasion of privacy).

7. Records may be disclosed to a member of Congress or a congressional staff member in response to a written inquiry of the congressional office made at the written request of the constituent about whom the record is maintained. The congressional office does not have any greater authority to obtain records than the individual would have if requesting the records directly.

8. Records may be disclosed to representatives of the National Archives and Records Administration during records management inspections conducted pursuant to 44 U.S.C. 2904 and 2906.

9. Information may be disclosed to the Department of Justice (DOJ) or to a court or other adjudicative body in litigation or other proceedings, when:

a. HHS or any of its component thereof, or

b. any employee of HHS acting in the employee's official capacity, or

c. any employee of HHS acting in the employee's individual capacity where the DOJ or HHS has agreed to represent the employee, or

d. the United States Government, is a party to the proceeding or has an interest in such proceeding and, by careful review, HHS determines that the records are both relevant and necessary to the proceeding.

10. Where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or by regulation, rule, or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the agency concerned, whether federal, state, local, tribal, territorial, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or the rule, regulation, or order issued pursuant thereto.

11. Records may be disclosed to appropriate agencies, entities, and persons when (1) HHS suspects or has confirmed that there has been a breach of the system of records, (2) HHS has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, HHS (including its information systems, programs, and operations), the Federal Government, or national security, and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with HHS efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

12. Records may be disclosed to another federal agency or federal entity, when HHS 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.

13. Records may be disclosed to the Department of Homeland Security (DHS) if captured in an intrusion detection system used by HHS and DHS pursuant to a DHS cybersecurity program that monitors internet traffic to and from federal government computer networks to prevent a variety of types of cybersecurity incidents.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

The records are stored in hard-copy files and/or electronic systems or media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by the individual requester's, correspondent's, commenter's, author's, or other record subject's name or by another personal identifier contained in the records (such as-email address, request tracking number, user ID number). Call center records may be retrieved by the name of the individual who contacted the call center.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

I. Permanently retained official correspondence (including significant White House and congressional correspondence):

Official correspondence and tracking records are retained by HHS while needed for agency business and are then transferred to the custody of the National Archives and permanently retained. See these schedules:

A. *Office of the Secretary (OS):* DAA–0468–2011–0006–0003 (IOS); N1–468–10–0001 (DAB); DAA–0468–2012–0003 (OMHA); DAA–0468–2011–0007 (ONC); N1–514–92–1 (OASH); DAA–0468–2013–009 (other OS Staff Divisions).

B. *Other Operating Divisions:* DAA–0292–2016–0008 and DAA–0292–2016–0014–0008 (ACF); N1–439–06–001, Item 1.a; a new schedule is pending (ACL); DAA–0510–2017–0003 (AHRQ); N1–442–93–001, Item 27.A (CDC/ATSDR); DAA–0440–2015–0001, Item 1.2.2 (CMS); N1–088–06–03, Items 4.1 and 4.2 (FDA); DAA–0512–2014–004, Item 6.3 (HRSA); N1–513–92–005, Items 6–1 and 6–12 (IHS); DAA–0443–2017–0003, Item 0001 (NIH); NC1–090–76–5, Item 11 (SAMHSA).

II. Other correspondence:

A. *OS:*

a. *OASH:* N1–514–92–1, Item 9.b.2. ASH General Correspondence: Cut off annually, and destroy when 5 years old. N1–514–92–1, Item 9.b.3 Routine Correspondence: Destroy when 5 years old.

b. *ONC:* DAA–0468–2011–0007–003. Administrative correspondence files: Destroy 5 years after cutoff.

c. *OMHA:* DAA–0468–2012–0003–0003. Working correspondence files: Destroy 3 years after cutoff.

d. *All Other OS Staff Divisions:* DAA–0468–2013–0009–0002. Routine files: Cut off at the close of calendar year in which created or received, and destroy 5 years after cutoff.

B. *Other Operating Divisions:*

a. *ACF:* DAA–0292–2016–0014, Item 1, Routine Correspondence: Cut off at the end of the fiscal year, and destroy 5 years after cutoff. NC1–292–84–7, Item B.33, OCSE Public Inquiry Correspondence: Destroy after 2 years.

b. *ACL:* N1–439–06–001, Item 2; a new schedule is pending.

c. *AHRQ:* Not scheduled separately from official correspondence.

d. *CDC/ATSDR:* NC1–090–82–4, Item 1.a, Routine Administrative Files: Destroy when 5 years old. NC1–090–78–1, Item 7, Congressional Correspondence: Destroy when 10 years old. NC1–090–78–1, Item 8, General Correspondence: Destroy after 1 year.

e. *CMS:* DAA–0440–2015–0002–0002. Cut off at end of calendar year, and destroy no sooner than 3 years after cutoff; longer retention is authorized.

f. *FDA:* N1–088–06–03. Cut off at end of calendar year, and destroy 10 years after cutoff (Item 1.1.2) or 5 years after cutoff (Item 1.2.2).

g. *HRSA:* DAA–0512–2014–004, Items 6.3.1.2 and 6.3.1.3, Correspondence: Cut off at end of calendar year, and destroy 7 years after cutoff. Tracking records: Retain permanently.

h. *IHS:* N1–513–92–005, Items 6–1 b., 6–1 c., 6–12 b., and 11–12: Destroy when 6 years old if at the division level or higher; destroy when 2 years old if below the division level.

i. *NIH:* DAA–0443–2012–0007, Item 0003. Cut off annually at termination of project/program, and destroy 7 years after cutoff.

j. *SAMHSA:* NC1–90–76–5, Item 21, Controlled Correspondence Files: Cut off at the end of each calendar year, retain for 5 years, and then destroy. NC1–90–76–5, Item 47, Executive Secretariat Files: Withdraw pertinent material and destroy when 10 years old; destroy other material when 2 years old; and destroy control forms when 1 year old.

III. Comment records:

- *Individual comments on proposed and final rules:* See GRS 6.6 Item 030 and these agency-specific schedules:
  - *ACF:* DAA–0292–2016–0005, Items 0001 and 0002, Adopted Rules and Rules Not Adopted: Cut off adopted regulations at end of FY after publication of the final rule, and destroy 10 years after cutoff. Cut off regulations not adopted at end of FY after decision not to adopt proposed rule, and destroy 3 years after cutoff. NC1–292–84–7, Item B.7, OCSE Regulation Files: Review annually and destroy when no longer needed for reference.
  - *IHS:* DAA–0513–2013–0001, Items 0001 and 0002, Adopted Rules and Rules Not Adopted: Cut off adopted rules at end of FY after publication of final rule, and destroy 10 years after cutoff. Cut off rules not adopted at end of FY after decision not to adopt proposed rule, and destroy 3 years after cutoff.
  - *SAMHSA:* NC1–90–76–5, Item 27, Regulation Files: Destroy when 10 years old; destroy duplicate and reference material when no longer needed.
- *Individual comments on other* ***Federal Register*** *notices:* See GRS 6.6 Item 040 and other General Records Schedules listed therein.

IV. Call center, help desk, and similar customer service records:

- *FDA Ombudsman records:* N1–088–05–001, Item 2. Case files maintained by the Center Ombudsman Office (Item 2.3): Cut off 3 months after the end of the calendar year in which the case is closed or the appeal is completed, and destroy 3 years after cutoff. All other case files (Item 2.1) and finding aids (Item 2.2): Cut off at the end of the calendar year in which the final action is taken or the appeal is completed, and destroy 10 years after cutoff.
- *Other customer service operations records:* GRS 6.5 Item 010 and GRS 5.8 Item 010. Destroy 1 year after resolved or when no longer needed for business use, whichever is appropriate.

V. Mailing and contact list records:

- GRS 5.1 Item 010, Staff locator records: Destroy when business use ceases.
- GRS 6.5 Item 020, Customer/client records: Delete when superseded or obsolete or when the customer requests that the agency remove the records.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Safeguards conform to the HHS Information Security and Privacy Program, *https://www.hhs.gov/ocio/securityprivacy/index.html.* Information is safeguarded in accordance with applicable laws, rules and policies, including the HHS Information Technology Security Program Handbook; all pertinent National Institutes of Standards and Technology (NIST) publications, and OMB Circular A–130, Managing Information As a Strategic Resource. Records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards. These safeguards include protecting the facilities where records are stored or accessed with security guards, badges and cameras, securing hard-copy records in locked file cabinets, file rooms or offices during off-duty hours, limiting access to electronic databases to authorized users based on roles and either two-factor authentication or user ID and password (as appropriate), using a secured operating system protected by encryption, firewalls, and intrusion detection systems, requiring encryption for records stored on removable media, training personnel in Privacy Act and information security requirements, and reviewing security controls on a periodic basis. Records that are eligible for destruction are disposed of using destruction methods prescribed by NIST SP 800–88.

RECORD ACCESS PROCEDURES:

An individual seeking access to records about the individual in this system of records must submit a written request to the relevant System Manager indicated above. An access request must contain the requesting individual's name and address, email address or other identifying information, and signature. To verify the requester's identity, the signature must be notarized or the request must include the requester's written certification that the requester is the person the requester claims to be and understands that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense subject to a fine of up to $5,000. To access the records in person, the requester should request an appointment, and may be accompanied by a person of the requester's choosing if the requester provides written

authorization for agency personnel to discuss the records in that person's presensce. An individual may also request an accounting of disclosures that have been made of the records about the individual, if any.

CONTESTING RECORD PROCEDURES:

An individual seeking to amend a record about the individual in this system of records must submit a written request to the relevant System Manager indicated above. An amendment request must include verification of the requester's identity in the same manner required for an access request, and must reasonably identify the record and specify the information being contested, the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

NOTIFICATION PROCEDURES:

An individual who wishes to know if this system of records contains records about the individual must submit a written request to the relevant System Manager indicated above and verify identity in the same manner required for an access request.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

84 FR 28823 (June 20, 2019).

[FR Doc. 2021–04463 Filed 3–3–21; 8:45 am]

BILLING CODE 4150–25–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Privacy Act of 1974; System of Records

AGENCY: National Institutes of Health (NIH), Department of Health and Human Services (HHS).

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, the Department of Health and Human Services (HHS) is publishing notice of modifications to a system of records maintained by the National Institutes of Health (NIH), ''Clinical Research: Patient Medical Records, HHS/NIH/CC,'' no. 09–25–0099. The modifications affect most sections of the System of Records Notice (SORN) and are fully explained in the ''Supplementary Information'' section of this notice.

DATES: The modified system of records is April 5, 2021, subject to a 30-day period in which to comment on the routine uses, described below. Please submit any comments by April 5, 2021.

ADDRESSES: You may submit comments, identified by the Privacy Act SORN no. 09–25–0099, by any of the following methods: Email: *privacy@mail.nih.gov.* Telephone: (301) 402–6201. Fax: (301) 402–0169. Mail or hand-delivery: NIH Privacy Act Officer, Office of Management Assessment, National Institutes of Health, 6011 Executive Blvd., Ste. 601, MSC 7669, Rockville, MD 20892. Comments received will be available for public inspection at this same address from 9:00 a.m. to 3:00 p.m., Monday through Friday, except federal holidays. Please call (301) 496–4606 for an appointment.

FOR FURTHER INFORMATION CONTACT: General questions about the system of records may be submitted to Celeste Dade-Vinson, NIH Privacy Act Officer, Office of Management Assessment (OMA), Office of the Director (OD), National Institutes of Health (NIH), 6011 Executive Blvd., Ste. 601, MSC 7669, Rockville, MD 20892, or telephone (301) 402–6201.

SUPPLEMENTARY INFORMATION:

Explanation of Revisions to System No. 09–25–0099

The revised SORN published in this notice for system no. 09–25–0099 is in accordance with 5 U.S.C. 552a(e)(4) and (11), and includes the following significant changes, in addition to minor wording changes throughout:

- *Purposes section.* Three new purpose descriptions (a, c, d,) have been added, and the one existing purpose description (b, formerly 1 and 2) has been revised. The changes reflect additional purposes for which records will be used within the agency due to a system upgrade or other developments intended to serve patient needs, or provide improved descriptions of existing uses within the agency. For example:
  - The patient medical records system was upgraded to provide the basic functions of a hospital electronic health record. As a result, the system is now able to support the electronic registration of new patients, electronic authorization of patient travel for participation in research protocols conducted at the NIH Clinical Center, and the creation of reports for the patient and any physician authorized by the patient to receive a summary of the patient's care.
- *Categories of Individuals section.* This section has been updated to include only registered NIH Clinical Center patients (non-registered patients have been excluded).
- *Routine Uses section.* Certain routine uses have been deleted, revised, or added, and a note has been added to the introductory paragraph to indicate that other federal laws may place additional requirements on the use and disclosure of the information contained in this system. Specifically:
  - The routine use formerly numbered as 1, which authorized disclosures to congressional offices to assist them in responding to constituent inquiries, has been deleted as unnecessary. NIH can respond to a congressional inquiry by explaining that NIH will provide requested records directly to the named constituent or with the prior written consent of the named constituent.
  - The routine use formerly numbered as 2, which authorized disclosures by the Social Work Department to community agencies to assist patients or their families, has been deleted as unnecessary. Such disclosures are provided pursuant to written authorization by the patient.
  - Routine uses 1 through 8 are existing routine uses; routine uses 2 through 8 have been revised as follows:
    - The last sentence in routine use 2 (formerly 4), which stated that the disclosure recipients (research organizations, experts, or consultants outside HHS) are required to maintain Privacy Act safeguards with respect to the records, has been omitted because those recipients are not agency contractors, so are not required to be subject to the federal Privacy Act.
    - Routine use 3 (formerly 5) has been broadened to refer to ''authorized accrediting agencies or organizations'' ''conducting established accreditation activities,'' instead of referring to one particular accrediting agency and one activity (*e.g.,* onsite inspections).
    - Routine use 4 (formerly 6) has been revised to include ''other reportable events'' and reporting to ''local or tribal'' (not just state and federal) government authorities as disclosure recipients.
    - Routine use 5 (formerly 7) has been revised to remove unnecessary wording (*i.e.,* ''may be disclosed in identifiable form'').
    - Routine use 6 (formerly 8), which previously authorized disclosures to ''private firms'' (meaning, contractors and others functioning akin to HHS employees) for limited purposes (*i.e.,* ''transcribing updating, copying or otherwise refining records in the system''), has been revised to include more of the same type of disclosure recipient (*i.e.,* ''other federal agencies,

HHS contractors, or HHS volunteers'') and to describe broader purposes for which they might be engaged to assist HHS and require access to records in this system (*i.e.,* to assist HHS in accomplishing an HHS function relating to the purposes of the system of records).

▪ Routine use 7 (formerly 9), which authorizes disclosures for litigation purposes, has been revised to include courts and tribunals (not just the Department of Justice) as disclosure recipients; to reorganize the description of ''defendant'' into subparts a through d (instead of a through c); and to omit a condition that followed the reference to the United States (*i.e.,* that any claim against the United States must be likely to directly affect agency operations if successful).

▪ Routine use 8 (formerly 10), which authorizes disclosure of information concerning exposure to HIV, has been revised to state that such information may be disclosed ''consistent with applicable laws, policies, and procedures.''

○ Routine use 9 is new. Routine use 9 has been added to authorize disclosures to ''designated organ procurement organizations/agencies that recover organs, eyes or tissue for transplantation or donation'' in order ''to facilitate donor and recipient matching involving patients participating in clinical research.''

○ Routine uses 10 is also new; it authorizes disclosures for records management purposes.

○ Two breach response-related routine uses which were added February 14, 2018 (see 83 FR 6591) are now numbered as 11 and 12.

Dated: January 21, 2021.

Alfred C. Johnson,

Deputy Director for Management, National Institutes of Health.

SYSTEM NAME AND NUMBER:

Clinical Research: Patient Medical Records, HHS/NIH/CC, 09–25–0099.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The address of the agency component responsible for the system of records is: Health Information Management Department, Clinical Center, Bldg. 10, Rm. 1N208, 10 Center Dr., Bethesda, MD 20892–1192.

SYSTEM MANAGER(S):

Director, Health Information Management Department, Clinical Center (CC), Bldg. 10, Rm. 1N208, 10 Center Dr., Bethesda, MD 20892–1192, (301) 496–2292.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, 248, 282 and 284. Collection of SSN is impliedly authorized by 42 U.S.C. 282(b)(19) which authorizes the NIH Director to admit and treat individuals for purposes of study (this requires using an enumerator to differentiate between individuals for patient tracking and patient safety), and by E.O. 9397 (8 FR 16094, Nov. 30, 1943), as amended by E.O. 13478 (73 FR 70239, Nov. 20, 2008), which permits SSN to be used as the enumerator.

PURPOSE(S) OF THE SYSTEM:

Records are used within the agency for these purposes:

a. To facilitate clinical care, clinical research studies, discharge planning, and reporting of information (*i.e.,* medical and research findings) to patients and their treating and/or referring physicians.

b. To document clinical care and research and provide a continuous history of the medical and clinical research services afforded to registered Clinical Center patients.

c. To create reports and compile information to provide to recipients authorized by the Privacy Act and this SORN, *e.g.,* designated organ procurement organizations, consultants for expert medical opinions, and authorized outside physicians for continuing patient care.

d. To allow Institute/Center research team members to register patients.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The records pertain to registered NIH Clinical Center patients.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of medical and clinical records, containing patient name, demographics, contact information, physician name and work address, principal investigator name, names of clinicians and other health care staff involved in the care of the patient or management of research activities associated with the protocol, clinical research data and records related to screening, diagnosis, observation and/or treatment at the NIH Clinical Center, social security number (SSN), diagnosis and medication, protocol number, medical record number, lab tests results, genomic data, radiologic images, imaging studies, blood product utilization, type of sample and storage location, social work encounter, medical and ethical consults, and surgery and other related clinical interactions.

RECORD SOURCE CATEGORIES:

Information contained within this system of records is obtained from the subject individuals; patient interviews; referring physicians; diagnostic, therapeutic, and research results; multi-disciplinary care teams; other medical facilities; relatives of patients; and others authorized by patients to provide information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Under the Privacy Act of 1974, as amended, NIH may disclose information about an individual from this system of records to parties outside HHS, without the individual's prior written consent, pursuant to the following routine uses. Note, however, that other federal laws may apply to the information contained in this system that place additional requirements on the use and disclosure of that information, beyond those found in the Privacy Act of 1974, as amended, or what is mentioned in this system of records notice.

1. To referring physicians for continuing patient care after discharge, unless otherwise notified by patient.

2. To appropriate medical or research organizations, experts, or consultants outside HHS, to obtain expert opinions regarding diagnostic problems, or cases having unusual scientific value in connection with the treatment of patients, or in order to accomplish the research purposes of this system.

3. To representatives of authorized accrediting agencies or organizations conducting established accreditation activities.

4. To report certain diseases, conditions, or other reportable events to federal, state, local or tribal government authorities that are authorized by law to receive such information, or as may be required to comply with applicable laws, provided that such reporting is also consistent with applicable agency policies.

5. To tumor registries for maintenance of health statistics or use in epidemiologic studies.

6. To other federal agencies, HHS contractors, or HHS volunteers who are engaged to work directly for HHS but are not within the definition of HHS employees and who require access to the records in order to assist HHS in accomplishing an HHS function related to the purposes of this system of records. These recipients are required to comply with the requirements of the Privacy Act of 1974, as amended.

7. To the Department of Justice (DOJ) or to a court or other tribunal when: (a) HHS, or any component thereof; (b) any

HHS employee in his/her official capacity; (c) any HHS employee in his/her individual capacity where the DOJ (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States Government, is a party to litigation or has a direct and substantial interest in the litigation and, by careful review, HHS determines that the record is both relevant and necessary to the litigation

8. Information concerning exposure to HIV may be disclosed consistent with applicable laws, policies, and procedures to the sexual and/or needle-sharing partner(s) of a subject individual who is infected with HIV under the following circumstances: (a) The information has been obtained in the course of clinical activities at NIH facilities; (b) NIH has made reasonable efforts to counsel and encourage the subject individual to provide information to the individual's sexual or needle-sharing partner(s); (c) NIH determines that the subject individual is unlikely to provide the information to the sexual or needle-sharing partner(s) or that the provision of such information cannot reasonably be verified; and (d) The notification of the partner(s) is made, whenever possible, by the subject individual's physician or by a professional counselor and shall follow standard counseling practices.

9. To designated organ procurement organizations/agencies that recover organs, eyes or tissue for transplantation or donation and to facilitate donor and recipient matching involving patients participating in clinical research. These recipients are required to apply reasonable safeguards to prevent unauthorized use or disclosure of the records.

10. To the National Archives and Records Administration (NARA), General Services Administration (GSA), or other relevant federal agencies pursuant to records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

11. To appropriate agencies, entities, and persons when (1) HHS suspects or has confirmed that there has been a breach of the system of records; (2) HHS has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, HHS (including its information systems, programs, and operations), the federal government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with HHS's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

12. To another federal agency or federal entity, when HHS 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.

NIH may also disclose information about an individual from this system of records to parties outside HHS, without the individual's prior written consent, for any of the purposes authorized directly in the Privacy Act at 5 U.S.C. 552a(b)(2) and (b)(4)–(11).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are stored in various electronic media and paper form, and maintained under secure conditions in areas with limited and/or controlled access. In accordance with established NIH, HHS and other applicable federal security requirements, policies and controls, records may also be stored and accessed from secure servers whenever feasible or stored on approved portable/mobile devices designed to hold any kind of digital data including, but not limited to laptops, tablets, PDAs, USB drives, media cards, portable hard drives, blackberrys, smartphones, CDs, DVDs, and/or other mobile storage devices.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by a patient's name or other unique identifier such as date of birth or medical record number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained and disposed of under the authority of the NIH Intramural Retention Schedule, which currently includes these disposition authorities:

- Clinical Care Services Records, DAA–0443–2012–0007–0006, are temporary records that can be destroyed seven years after cutoff.
- Patient Medical Records, DAA–0443–2012–0007–0010, are temporary records that can be destroyed when no longer needed for scientific reference.
- Radiology and Imaging Records, DAA–0443–2012–0007–0007, are temporary records that can be destroyed 60 years after inactivity. (This retention period is being re-examined, and may in the future be significantly shortened.)

Refer to the schedule for complete descriptions of each type of record and for complete disposition instructions: *https://www.archives.gov/records-mgmt/rcs/schedules/departments/department-of-health-and-human-services/rg-0443/daa-0443-2012-0007_sf115.pdf.*

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location or form of storage and for the types of records maintained. Safeguards conform to the HHS Information Security and Privacy Program, *https://www.hhs.gov/ocio/securityprivacy/index.html.* Site(s) implement personnel and procedural safeguards such as the following:

Authorized Users: Access to the records in this system is strictly limited to authorized users whose official duties require the use of information in the system.

Administrative Safeguards: Controls to ensure proper protection of information and information technology systems include, but are not limited to the completion of a security assessment and authorization (SA&A) package and a privacy impact assessment (PIA) and mandatory completion of annual NIH information security and privacy awareness training. The SA&A package consists of a security categorization, e-authentication risk assessment, system security plan, evidence of security control testing, plan of action and milestones, contingency plan, and evidence of contingency plan testing. When the design, development, or operation of a system of records on individuals is required to accomplish an agency function, the applicable Privacy Act Federal Acquisition Regulation (FAR) clauses are inserted in solicitations and contracts.

Physical Safeguards: Controls to secure the data and protect paper and electronic records, buildings, and related infrastructure against threats associated with their physical environment include, but are not limited to the use of the HHS employee ID and/or badge number and NIH key cards, security guards, cipher locks, biometrics and closed-circuit TV. Paper records are secured in locked file cabinets, offices and facilities. Electronic media are kept on secure servers or computer systems. Records are stored on portable/mobile devices only for valid business purposes and with prior approval.

Technical Safeguards: Controls that are generally executed by the computer system and are employed to minimize

the possibility of unauthorized access, use, or dissemination of the data in the system. They include, but are not limited to user identification, password protection, firewalls, virtual private network, encryption, intrusion detection system, common access cards, smart cards, biometrics and public key infrastructure.

RECORD ACCESS PROCEDURES:

An individual who wishes to access a record about him or her in this system of records must make an access request, in writing, to the System Manager at the address specified above. For purposes of verifying the requester's identity, the request should provide either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request of a record pertaining to an individual under false pretenses is a criminal offense under the Privacy Act, subject to a fine of up to five thousand dollars. If the request is made on behalf of a minor or incapacitated person, evidence of parent or guardian relationship must be included. Requests should include (a) full name, (b) address, (c) the approximate date(s) the information was collected, (d) the type(s) of information collected, and (e) the office(s) or official(s) responsible for the collection of information, if known. Individuals may also request an accounting of disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURES:

An individual who wishes to contest or amend records about him or her in this system of records must write to the System Manager at the address specified above and provide the information described under ''Record Access Procedure.'' In addition, the request must reasonably identify the record and specify the information being contested, the corrective action sought, and the reason(s) for requesting the correction, and include any supporting documentation. The right to contest records is limited to information that is factually inaccurate, incomplete, irrelevant, or untimely (obsolete).

NOTIFICATION PROCEDURES:

An individual who wishes to know whether this system of records contains a record about him or her may make a notification request. The request must be made in writing to the System Manager at the address specified above and provide the information described under ''Record Access Procedure.''

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

67 FR 60742 at 60755 (Sept. 26, 2002), 83 FR 6591 (Feb. 14, 2018).

[FR Doc. 2021–04483 Filed 3–3–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–MB–2021–N002; FF09M13200/201/FXMB12330900000; OMB Control Number 1018–0172]

Agency Information Collection Activities; Federal Migratory Bird Hunting and Conservation Stamp (Duck Stamp) and Junior Duck Stamp Contests

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), we, the U.S. Fish and Wildlife Service (Service), are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before May 3, 2021.

ADDRESSES: Send your comments on the information collection request by mail to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: PRB (JAO/3W), 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to *Info_Coll@fws.gov.* Please reference OMB Control Number 1018–0172 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Madonna L. Baucum, Service Information Collection Clearance Officer, by email at *Info_Coll@fws.gov,* or by telephone at (703) 358–2503. Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: In accordance with the PRA and its implementing regulations at 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract:

History of the Federal Duck Stamp

On March 16, 1934, Congress passed, and President Franklin D. Roosevelt signed, the Migratory Bird Hunting Stamp Act (16 U.S.C. 718–718k). Popularly known as the Duck Stamp Act, it required all waterfowl hunters 16 years or older to buy a stamp annually. The revenue generated was originally earmarked for the Department of Agriculture, but 5 years later was transferred to the Department of the Interior and the Service.

In the years since its enactment, the Federal Duck Stamp Program has become one of the most popular and successful conservation programs ever initiated. Today, some 1.5 million stamps are sold each year, and as of 2017, Federal Duck Stamps had

generated more than $1 billion for the preservation of more than 6 million acres of waterfowl habitat in the United States. Numerous other birds, mammals, fish, reptiles, and amphibians have similarly prospered because of habitat protection made possible by the program. An estimated one-third of the Nation's endangered and threatened species find food or shelter in refuges preserved by Duck Stamp funds. Moreover, the protected wetlands help dissipate storms, purify water supplies, store flood water, and nourish fish hatchlings important for sport and commercial fishermen.

History of the Duck Stamp Contest

Jay N. ''Ding'' Darling, a nationally known political cartoonist for the Des Moines Register and a noted hunter and wildlife conservationist, designed the first Federal Duck Stamp at President Roosevelt's request. In subsequent years, noted wildlife artists submitted designs. The first Federal Duck Stamp Contest was opened in 1949 to any U.S. artist who wished to enter, and 65 artists submitted a total of 88 design entries. Since then, the contest has been known as the Federal Migratory Bird Hunting and Conservation Stamp Art (Duck Stamp) Contest and has attracted large numbers of entrants.

The Duck Stamp Contest (50 CFR part 91) remains the only art competition of its kind regulated by the U.S. Government. The Secretary of the Interior appoints a panel of noted art, waterfowl, and philatelic authorities to select each year's winning design. Winners receive no compensation for the work, except a signed pane of their stamps; winners retain the copyright to their artwork and may sell the original and prints of their designs, which are sought by hunters, conservationists, and art collectors.

For the Duck Stamp Contest, the Service selects five or fewer species of waterfowl each year; each entry must employ one of the Service-designated species as the dominant feature (defined as being in the foreground and clearly the focus of attention). In 2020 a permanent theme was established and participants are currently also required to include a mandatory waterfowl hunting accessory or waterfowl hunting scene within their design. These may include objects such as hunting dogs, waterfowl decoys, waterfowl hunters and scenes illustrating the theme ''celebrating our waterfowl hunting heritage.'' Designs may also include national wildlife refuges as the background of habitat scenes, non-eligible species, or other scenes that depict uses of the stamp for conservation and collecting purposes. Entries may be in any media EXCEPT photography or computer-generated art. Designs must be the contestants' original hand-drawn creation and may not be copied or duplicated from previously published art, including photographs, or from images in any format published on the internet.

History of the Junior Duck Stamp Contest

The Federal Junior Duck Stamp Conservation and Design Program (Junior Duck Stamp Program) began in 1989 as an extension of the Migratory Bird Conservation and Hunting Stamp. The national Junior Duck Stamp art contest started in 1993, and the first stamp design was selected from entries from eight participating States. The program was recognized by Congress with the 1994 enactment of the Junior Duck Stamp Conservation and Design Program Act (16 U.S.C. 719). All 50 States, Washington DC, and 2 of the U.S. Territories currently participate in the annual contest.

The Junior Duck Stamp Program introduces wetland and waterfowl conservation to students in kindergarten through high school. It crosses cultural, ethnic, social, and geographic boundaries to teach greater awareness and guide students in exploring our nation's natural resources. It is the Service's premier conservation education initiative.

The Junior Duck Stamp Program includes a dynamic art- and science-based curriculum. This non-traditional pairing of subjects brings new interest to both the sciences and the arts. The program teaches students across the nation conservation through the arts, using scientific and wildlife observation principles to encourage visual communication about what they learn. Four curriculum guides, with activities and resources, were developed for use as a year-round study plan to assist students in exploring science in real-life situations.

Modeled after the Federal Duck Stamp Contest, the annual Junior Duck Stamp Art and Conservation Message Contest (Junior Duck Stamp Contest) was developed as a visual assessment of a student's learning and progression. The Junior Duck Stamp Contest encourages partnerships among Federal and State government agencies, nongovernmental organizations, businesses, and volunteers to help recognize and honor thousands of teachers and students throughout the United States for their participation in conservation-related activities. Since 2000, the contest has received more than 530,000 entries.

The winning artwork from the national art contest serves as the design for the Junior Duck Stamp, which the Service produces annually. This $5 stamp has become a much sought after collector's item. One hundred percent of the revenue from the sale of Junior Duck stamps goes to support recognition and environmental education activities for students who participate in the program. More than $1.25 million in Junior Duck Stamp proceeds have been used to provide recognition, incentives, and scholarships to participating students, teachers, and schools. The Program continues to educate youth about land stewardship and the importance of connecting to their natural worlds. Several students who have participated in the Junior Duck Stamp Program have gone on to become full-time wildlife artists and conservation professionals; many attribute their interest and success to their early exposure to the Junior Duck Stamp Program.

Who Can Enter the Federal Duck Stamp and Junior Duck Stamp Contests

The Duck Stamp Contest is open to all U.S. citizens, nationals, and resident aliens who are at least 18 years of age by June 1. Individuals enrolled in kindergarten through grade 12 may participate in the Junior Duck Stamp Contest. All eligible students are encouraged to participate in the Junior Duck Stamp Conservation and Design Program annual art and conservation message contest as part of the program curriculum through public, private, and homeschools, as well as through nonformal educational experiences such as those found in scouting, art studios, and nature centers.

Entry Requirements

Each entry in the Duck Stamp Contest requires a completed entry form and an entry fee. Information required on the entry form includes:

- ''Display, Participation & Reproduction Rights Agreement'' certification form;
- Basic contact information (name, address, phone numbers, and email address);
- Date of birth (to verify eligibility);
- Species portrayed and medium used; and
- Name of hometown newspaper (for press coverage).

Each entry in the Junior Duck Stamp Contest requires a completed entry form that requests:

• Basic contact information (name, address, phone numbers, and email address);
• Age (to verify eligibility);
• Parent's name and contact information;
• Whether the student has a Social Security or VISA immigration number or is a foreign exchange student (to verify eligibility to receive prizes);
• Grade of student (so they may be judged with their peers);
• The title, species, medium used, and conservation message associated with the drawing;
• Basic contact information for their teacher and school (name, address, phone numbers, and email address); and
• Certification of authenticity.

Students in Grades 7 through 12 and all national level students are also required to include citations for any resources they used to develop their designs. We use this information to verify that the student has not plagiarized or copied someone else's work. The Service also translates entry forms into other appropriate languages to increase the understanding of the rules and what the parents and students are signing.

Title of Collection: Federal Migratory Bird Hunting and Conservation Stamp (Duck Stamp) and Junior Duck Stamp Contests.

OMB Control Number: 1018–0172.

Form Number: None.

Type of Review: Extension of a currently approved information collection.

Respondents/Affected Public: Individuals.

Respondent's Obligation: Voluntary.

Frequency of Collection: Annually.

Total Estimated Annual Nonhour Burden Cost: $53,000.00 annually (entry fees of $125 plus an average of $15 for mailing costs, for an estimated 200 annual submissions to the Federal Duck Stamp Contest). There are no fees associated with the Junior Duck Stamp Contest submissions. We estimate the mailing costs associated with entering submissions to the Junior Duck Stamp contest to be approximately $25,000 annually. Most of the student entries are mailed directly by schools, who utilize the bulk mail option, thereby reducing the amount of postage and packages received.

Activity	Total number of annual respondents	Average number of submissions each	Total number of annual responses	Average completion time per response (min)	Total annual burden hours *
Duck Stamp Program Contest Entry Form: Individuals	200	1	200	7	23
Junior Duck Stamp Program Contest Entry Form: Individuals	25,000	1	25,000	** 20	8,333
Totals:	25,200	1	25,200	.....	8,356

* Rounded.
** Burden for Junior Duck Stamp Program entry form is longer since both the parents and teacher must sign the form, and the student must provide references.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: March 1, 2021.

Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2021–04455 Filed 3–3–21; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[201A2100DD/AAKC001030// A0A501010.999900; OMB Control Number 1076–0120]

Agency Information Collection Activities; Bureau of Indian Education Adult Education Program

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Bureau of Indian Education (BIE), are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before May 3, 2021.

ADDRESSES: Send written comments on this information collection request (ICR) to Ms. Juanita Mendoza, Program Analyst, Bureau of Indian Education, U.S. Department of the Interior, 1849 C Street NW, MS 3609–MIB, Washington, DC 20240; or by email to *Juanita.Mendoza@bie.edu.* Please reference OMB Control Number 1076–0120 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Juanita Mendoza by email at *Juanita.Mendoza@bie.edu,* or by telephone at (202) 208–3559. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the BIE; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the BIE enhance the quality, utility, and clarity of the information to be collected; and (5) how might the BIE minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made

publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The BIE is seeking renewal of the approval for the information collection conducted under 25 CFR part 46 to manage program resources and for fiscal accountability and appropriate direct services documentation. This information includes an annual report form.

Title of Collection: Bureau of Indian Education Adult Education Program.

OMB Control Number: 1076–0120.

Form Number: BIA 62123.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Individuals (Tribal Adult Education Program Administrators).

Total Estimated Number of Annual Respondents: 70 per year, on average.

Total Estimated Number of Annual Responses: 70 per year, on average.

Estimated Completion Time per Response: 4 hours.

Total Estimated Number of Annual Burden Hours: 280 hours.

Respondent's Obligation: Required to Obtain a Benefit.

Frequency of Collection: Once per year.

Total Estimated Annual Nonhour Burden Cost: $200.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*).

Elizabeth K. Appel,

Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2021–04496 Filed 3–3–21; 8:45 am]

BILLING CODE 4337–15–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 Smart Thermostat Systems, Smart HVAC Systems, Smart HVAC Controls Systems, and Components Thereof, DN 3535;* 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 EcoFactor, Inc. on February 26, 2021. 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 smart thermostat systems, smart HVAC systems, smart HVAC controls systems, and components thereof. The complainant names as respondents: Ecobee Ltd. of Canada; Ecobee, Inc. of Canada; Google LLC of Mountain View, CA; Carrier Global Corporation of Palm Beach Gardens, FL; Emerson Electric Co. of St. Louis, MO; Honeywell International Inc. of Charlotte, NC; Resideo Technologies, Inc. of Austin, TX; Johnson Controls International, PLC of Ireland; Siemens Industry, Inc. of Buffalo Grove, IL; and Siemens AG of Germany. 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. No other submissions will be accepted, unless requested by the Commission. 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. 3535'') 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.

Issued: February 26, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–04433 Filed 3–3–21; 8:45 am]

BILLING CODE 7020–02–P

[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.*

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–665 and 731–TA–1557 (Preliminary)]

Mobile Access Equipment From China; Institution of Antidumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping and countervailing duty investigation Nos. 701–TA–665 and 731–TA–1557 (Preliminary) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of certain mobile access equipment and subassemblies thereof (''mobile access equipment'') from China, provided for in statistical reporting numbers 8427.10.8020, 8427.10.8030, 8427.10.8070, 8427.10.8095, 8427.20.8020, 8427.20.8090, and 8431.20.0000 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value and alleged to be subsidized by the Government of China. Unless the Department of Commerce (''Commerce'') extends the time for initiation, the Commission must reach a preliminary determination in antidumping and countervailing duty investigations in 45 days, or in this case by April 12, 2021. The Commission's views must be transmitted to Commerce within five business days thereafter, or by April 19, 2021.

DATES: February 26, 2021.

FOR FURTHER INFORMATION CONTACT: Alejandro Orozco ((202) 205–3177), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)), in response to a petition filed on February 26, 2021, by the Coalition of American Manufacturers of Mobile Access Equipment. The Coalition is comprised of JLG Industries, Inc., Hagerstown, Maryland, and Terex Corporation, Redmond, Washington.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping duty and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.— In light of the restrictions on access to the Commission building due to the COVID–19 pandemic, the Commission is

conducting the staff conference through video conferencing on Friday, March 19, 2021. Requests to appear at the conference should be emailed to *preliminaryconferences@usitc.gov* (DO NOT FILE ON EDIS) on or before March 17, 2021. Please provide an email address for each conference participant in the email. Information on conference procedures will be provided separately and guidance on joining the video conference will be available on the Commission's Daily Calendar. A nonparty who has testimony that may aid the Commission's deliberations may request permission to participate by submitting a short statement.

Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

Written submissions.—As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before March 24, 2021, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties shall file written testimony and supplementary material in connection with their presentation at the conference no later than noon on March 18, 2021. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these investigations must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that any information that it submits to the Commission during these investigations may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of these or related investigations or reviews, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.12 of the Commission's rules.

By order of the Commission.

Issued: February 26, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–04439 Filed 3–3–21; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–662 and 731–TA–1554 (Preliminary)]

Pentafluoroethane (R–125) From China; Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of pentafluoroethane (R–125) (''R–125'') from China, provided for in subheading 2903.39.20 of the Harmonized Tariff Schedule of the United States and may also be included in certain mixtures provided for in subheading 3824.78.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (''LTFV'') and to be subsidized by the government of China.[2]

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in § 207.21 of the Commission's rules, upon notice from the U.S. Department of Commerce (''Commerce'') of affirmative preliminary determinations in the investigations under §§ 703(b) or 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under §§ 705(a) or 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On January 12, 2021, Honeywell International, Inc., Charlotte, North Carolina filed petitions with the Commission and Commerce, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized imports of R–125 from China and LTFV imports of R–125 from China. Accordingly, effective January 12, 2021, the Commission instituted countervailing duty investigation no. 701–TA–662 and antidumping duty investigation no. 731–TA–1554 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of January 19, 2021 (86 FR 5247). In light of the restrictions on access to the Commission building due to the COVID–19 pandemic, the Commission conducted its conference through written testimony and video conference on February 2, 2021. All persons who requested the opportunity were permitted to participate.

The Commission made these determinations pursuant to §§ 703(a) and 733(a) of the Act (19 U.S.C. 1671b(a) and 1673b(a)). It completed and filed its determinations in these investigations on February 26, 2021.

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] 86 FR 8583 and 86 FR 8589 (February 8, 2021).

The views of the Commission are contained in USITC Publication 5170 (March 2021), entitled *Pentafluoroethane (R–125) from China: Investigation Nos. 701–TA–662 and 731–TA–1554 (Preliminary).*

By order of the Commission.

Issued: February 26, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–04432 Filed 3–3–21; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1125–0003]

Agency Information Collection Activities; Proposed Collection Comments Requested; Fee Waiver Request

AGENCY: Executive Office for Immigration Review, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Executive Office for Immigration Review (EOIR), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until May 3, 2021.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2500, Falls Church, VA 22041, telephone: (703) 305–0289.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Executive Office for Immigration Review, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Revision and extension of a currently approved collection.

2. *The Title of the Form/Collection:* Fee Waiver Request.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is EOIR–26A, Executive Office for Immigration Review, United States Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: An individual submitting an appeal or motion to the Board of Immigration Appeals. An individual submitting an application or motion to the Office of the Chief Immigration Judge. Other: Attorneys and qualified representatives representing an alien in immigration proceedings before EOIR. Abstract: The information on the fee waiver request form is used by the Board of Immigration Appeals and the Office of the Chief Immigration Judge to determine whether the requisite fee for an application, motion or appeal will be waived due to an individual's financial situation.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 5,499 respondents will complete the form annually with an average of 1 hour per response.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 5,499 hours. It is estimated that respondents will take 1 hour to complete the form.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405B, Washington, DC 20530.

Dated: February 26, 2021.

Melody D. Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2021–04418 Filed 3–3–21; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Resource Conservation and Recovery Act

On January 20, 2021, the Department of Justice lodged a proposed consent decree with the United States District Court for the District of Utah in the lawsuit entitled *United States of America* v. *Magnesium Corporation of America, et al.,* Civil Action No. 2:01CV0040–DBB.

If approved by the court, the consent decree would resolve the claims of the United States against US Magnesium LLC (''USM''), the Renco Group, Inc. (''Group''), the Ira Leon Rennert Revocable Trusts (''Trusts''), and Mr. Ira Leon Rennert (''Rennert''), collectively ''Defendants,'' for injunctive relief and civil penalties for alleged violations of the Resource Conservation and Recovery Act (''RCRA'') at USM's magnesium production facility in Rowley, Utah. The consent decree would require USM to: (1) Make extensive process modifications at the facility, including construction of a filtration plant to treat all wastewaters, that will reduce the environmental impacts from its production operations and ensure greater protection for its workers; (2) establish appropriate financial assurance for closure or corrective action of certain waste management areas in the operating areas of the facility; (3) pay a civil penalty of $250,000; and (4) perform the CERCLA Response Action, which includes construction of a barrier wall around 1,700 acres of the operating portions of the facility to prevent leaks or breaches of hazardous materials to the Great Salt Lake, and the payment of EPA costs incurred in connection with the CERCLA Response Action.

In return for the Settling Defendants' compliance with these requirements, the consent decree would resolve past RCRA violations at the Rowley facility that the United States' complaint alleges. Provided that the Settling Defendants remain in compliance with the consent decree's requirements, including payment of EPA CERCLA Response Action costs, the United States would covenant not to sue the

Settling Defendants under CERCLA for the CERCLA Response Action and EPA's CERCLA Response Action costs.

On February 3, 2021, the Department of Justice published notice of the lodging of the proposed consent decree. 86 FR 8037. The notice started a 30-day period for the submission of comments on the proposed consent decree. The Department of Justice has received a request for an extension of the comment period, which expires on March 5, 2021. In consideration of the request, notice is hereby given that the Department of Justice has extended the comment period on the proposed consent decree by an additional 14 days, up to and including March 19, 2021. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States of America* v. *Magnesium Corporation of America, et al.,* Civil Action No. 2:01CV0040–DBB; D.J. Ref. No. 90–7–1–06980. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the consent decree may be examined and downloaded at this Justice Department website: *http://www.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 $101.00 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy without the Appendices and signature pages, the cost is $20.00.

Jeffrey Sands,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2021–04438 Filed 3–3–21; 8:45 am]

BILLING CODE 4410–15–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request; Grantee Reporting Requirements for the Graduate Research Fellowship Program

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to reinstate this collection. In accordance with the requirements of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting Office of Management and Budget (OMB) clearance of this collection for no longer than 3 years.

DATES: Written comments on this notice must be received by May 3, 2021 to be assured consideration. Comments received after that date will be considered to the extent practicable. Send comments to address below.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Suite W18253, Alexandria, Virginia 22314; telephone (703) 292–7556; or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including Federal holidays).

SUPPLEMENTARY INFORMATION:

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the NCSES, including whether the information will have practical utility; (b) the accuracy of the NCSES's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology.

Title of Collection: Grantee Reporting Requirements for the Graduate Research Fellowship Program.

OMB Number: 3145–0223.

Expiration Date of Approval: Not applicable.

Type of Request: Intent to seek approval to reinstate an information collection.

Abstract

Proposed Project: The purpose of the NSF Graduate Research Fellowship Program is to help ensure the vitality and diversity of the scientific and engineering workforce of the United States. The program recognizes and supports outstanding graduate students who are pursuing research-based master's and doctoral degrees in science, technology, engineering, and mathematics (STEM) and in STEM education. The GRFP provides three years of support, to be used during a five-year fellowship period, for the graduate education of individuals who have demonstrated their potential for significant research achievements in STEM and STEM education.

The Graduate Research Fellowship Program uses several sources of information in assessing and documenting program performance and impact. These sources include reports from program evaluation, the GRFP Committee of Visitors, and data compiled from the applications. In addition, GRFP Fellows submit annual activity reports to NSF.

The GRFP Completion report is proposed as a continuing component of the annual reporting requirement for the program. This report, submitted by the GRFP Institution, certifies the completion status of Fellows at the institution (*e.g.,* in progress, completed, graduated, transferred, or withdrawn). The existing Completion Report, Grants Roster Report, and the Program Expense Report comprise the GRFP Annual Reporting requirements from the Grantee GRFP institution. Through submission of the Completion Report to NSF GRFP institutions certify the current status of all GRFP Fellows at the institution as either: In Progress, Graduated, Transferred, or Withdrawn. For Graduate Fellows with Graduated status, the graduation date is a required reporting element. Collection of this information allows the program to obtain information on the current status of Fellows, the number and/or percentage of Graduate Fellowship recipients who complete a science or engineering graduate degree, and an estimate of time to degree completion. The report must be certified and submitted by the institution's designated Coordinating Official (CO) annually.

Use of the Information: The completion report data provides NSF with accurate Fellow information regarding completion of the Fellows'

graduate programs. The data is used by NSF in its assessment of the impact of its investments in the GRFP, and informs its program management.

Estimate of Burden: Overall average time will be 15 minutes per Fellow (8,250 Fellows) for a total of 2,063 hours for all institutions with Fellows. An estimate for institutions with 12 or fewer Fellows will be 1 hour, institutions with 12–48 fellows will be 4 hours, and institutions over 48 Fellows will be 10 hours.

Respondents: Academic institutions with NSF Graduate Fellows (GRFP Institutions).

Estimated Number of Responses per Report: One from each of the 271 current GRFP institutions.

Dated: March 1, 2021.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2021–04460 Filed 3–3–21; 8:45 am]

BILLING CODE 7555–01–P

POSTAL SERVICE

Notice of Intent To Prepare an Environmental Impact Statement for Purchase of Next Generation Delivery Vehicles

AGENCY: U.S. Postal Service.

ACTION: Notice.

SUMMARY: The U.S. Postal Service announces its intention to prepare an Environmental Impact Statement (EIS) for the purchase over 10 years of 50,000 to 165,000 purpose-built, right-hand-drive vehicles—the Next Generation Delivery Vehicle (NGDV)—to replace existing delivery vehicles nationwide that are approaching the end of their service life. While the Postal Service has not yet determined the precise mix of the powertrains in the new vehicles to be purchased, current plans are for the new vehicle purchases to consist of a mix of internal combustion engine and battery electric powertrains; the purchases will also be designed to be capable of retrofits to keep pace with advances in electric vehicle technologies. The EIS will evaluate the environmental impacts of the purchase and operation of the NGDV, as well as a commercial off-the-shelf (COTS) vehicle alternative and a ''no action'' alternative.

DATES: Comments should be received no later than April 5, 2021. The Postal Service will also publish a Notice of Availability to announce the availability of the Draft EIS and solicit comments on the Draft EIS during a 45-day public comment period.

ADDRESSES: Interested parties may direct comments, questions or requests for additional information to: Mr. Davon Collins, Environmental Counsel, United States Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260–6201, or at *NEPA@usps.gov.* Note that comments sent by mail may be subject to delay due to federal security screening.

SUPPLEMENTARY INFORMATION: This notice concerns the proposed purchase over 10 years of 50,000 to 165,000 new purpose-built delivery vehicles to replace the same number of existing delivery vehicles, and the intent of the U.S. Postal Service, pursuant to the requirements of the National Environmental Policy Act of 1969 (NEPA), its implementing procedures at 39 CFR 775, and the President's Council on Environmental Quality Regulations (40 CFR parts 1500–1508), to prepare an EIS to evaluate the environmental impacts of the proposed action versus a COTS vehicle alternative and a ''no action'' alternative. The EIS will consider the physical, biological, cultural, and socioeconomic environments. To assist in this process, the Postal Service is soliciting the public's input and comments.

Joshua J. Hofer,

Attorney, Ethics and Compliance.

[FR Doc. 2021–04457 Filed 3–3–21; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91217; File No. SR–NYSE–2021–14]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change To Amend the Schedule of Wireless Connectivity Fees and Charges To Add Circuits for Connectivity Into and Out of the Data Center in Mahwah, New Jersey

February 26, 2021.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on February 12, 2021, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the schedule of Wireless Connectivity Fees and Charges (the ''Fee Schedule'') to (1) add circuits for connectivity into and out of the data center in Mahwah, New Jersey (the ''Mahwah Data Center''); (2) add services available to customers of the Mahwah Data Center that are not colocation Users; and (3) change the name of the Fee Schedule to ''Mahwah Wireless, Circuits, and Non-Colocation Connectivity Fee Schedule.'' The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to add services (''NCL Services'') and related fees available to customers of the Mahwah Data Center that are not colocation Users (''NCL Customers''),[4] as well as circuits into and out of the Mahwah Data Center that are available to both colocation Users and NCL Customers. In addition, in a conforming change, because the Fee Schedule would no longer be limited to wireless services, the Exchange proposes to change the name of the Fee Schedule from ''Wireless Connectivity Fee Schedule'' to ''Mahwah Wireless,

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] For purposes of the Exchange's colocation services, a ''User'' means any market participant that requests to receive colocation services directly from the Exchange. *See* Securities Exchange Act Release No. 76008 (September 29, 2015), 80 FR 60190 (October 5, 2015) (SR–NYSE–2015–40).

Circuits, and Non-Colocation Connectivity Fee Schedule.'' [5]

The Exchange makes the current proposal solely as a result of its determination that the Commission's recent interpretations of the Act's definitions of the terms ''exchange'' and ''facility,'' as expressed in the Wireless Approval Order,[6] apply to connectivity services described herein that are offered by entities other than the Exchange. The Exchange disagrees with the Commission's interpretations, denies the services covered herein (and in the Wireless Approval Order) are offerings of an ''exchange'' or a ''facility'' thereof, and has sought review of the Commission's interpretations, as expressed in the Wireless Approval Order, in the Court of Appeals for the District of Columbia Circuit.[7] Pending resolution of such appeal, however, the Exchange is making this proposal in recognition that the Commission's current interpretation brings certain offerings of the Exchange's affiliates into the scope of the terms ''exchange'' or ''facility.''

The Exchange expects the proposed change to be operative 60 days after the present filing becomes effective.

Mahwah Circuits

Customers can connect into and out of the Mahwah Data Center using either wireless connections or wired fiber optic circuits. Both IDS and numerous third-party telecommunications service providers offer wired circuits into and out of the Mahwah Data Center. The circuits that IDS offers are described below. Such IDS circuits are available to all colocation Users and NCL Customers, but such customers are not obligated to use them; rather, both colocation Users and NCL Customers may instead choose to contract directly with third-party telecom carriers for circuits into and out of the Mahwah Data Center.

The Exchange proposes to add to the Fee Schedule the circuit options offered by IDS to both colocation Users and NCL Customers to connect into and out of the Mahwah Data Center. Specifically, the Exchange proposes to amend the Fee Schedule to add two different types of circuits, each available in three different sizes, under the new heading ''C. Mahwah Circuits.''

First, the Exchange proposes to amend the Fee Schedule to add ''Optic Access'' circuits, which are circuits that IDS operates and that customers can use to connect between the Mahwah Data Center and IDS access centers at the following six third-party owned data centers: (1) 111 Eighth Avenue, New York, NY; (2) 32 Avenue of the Americas, New York, NY; (3) 165 Halsey, Newark, NJ; (4) Secaucus, NJ (the ''Secaucus Access Center''); (5) Carteret, NJ (the ''Carteret Access Center''); and (6) Weehawken, NJ. Optic Access circuits are available in 1 Gb, 10 Gb, and 40 Gb sizes.

Second, the Exchange proposes to amend the Fee Schedule to add lower-latency Optic Low Latency circuits that IDS operates and that customers can use to connect between the Mahwah Data Center and IDS's Secaucus Access Center or Carteret Access Center. Optic Low Latency circuits are available in 1 Gb, 10 Gb, and 40 Gb sizes.

The Exchange proposes to add the following chart to the Fee Schedule to include these circuits, as follows:

Type of service	Amount of charge
Optic Access Circuit—1 Gb	$1,500 initial charge plus $1,500 monthly charge.
Optic Access Circuit—10 Gb	$5,000 initial charge plus $2,500 monthly charge.
Optic Access Circuit—40 Gb	$5,000 initial charge plus $6,000 monthly charge.
Optic Low Latency Circuit—1 Gb	$1,500 initial charge plus $2,750 monthly charge.
Optic Low Latency Circuit—10 Gb	$5,000 initial charge plus $3,950 monthly charge.
Optic Low Latency Circuit—40 Gb	$5,000 initial charge plus $8,250 monthly charge.

Non-Colocation Services

The Exchange proposes to amend the Fee Schedule to add several services available to NCL Customers as well as several notes, under the new heading ''D. Non-Colocation (''NCL'') Services.'' These are the services that IDS offers within the Mahwah Data Center that are not colocation services. The Exchange proposes to amend the Fee Schedule to add services that include ports to the IDS Network—a wide area network available in the Mahwah Data Center and other access centers—and ports to a dedicated network to access the NMS feeds for which the Securities Industry Automation Corporation is engaged as the securities information processor (the ''NMS Network'').[8] The Fee Schedule would also specify the data products and data feeds to which an NCL Customer could connect via these ports. The Exchange also proposes to amend the Fee Schedule to enable NCL Customers to purchase cross connects and to request services subject to an ''Expedite Fee'' or ''Change Fee.''

1. IDS Network Ports

The Exchange proposes to amend the Fee Schedule to add services that IDS offers enabling NCL Customers to connect to the IDS Network in the Mahwah Data Center.

The Exchange proposes to add the following fees and language to the Fee Schedule:

IDS NETWORK PORTS *

Type of service	Description	Amount of charge
NCL IDS Network Access—10 Gb	10 Gb IDS Network port	$10,000 initial charge plus $15,250 monthly charge.

[5] Each of the Exchange's affiliates (NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc.) (the ''Affiliate SROs'') has submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSEAMER–2021–10, SR–NYSEArca–2021–13, SR–NYSECHX–2021–03, and SR–NYSENAT–2021–04.

[6] *See* Securities Exchange Act Release No. 90209 (October 15, 2020), 85 FR 67044 (October 21, 2020) (SR–NYSE–2020–05, SR–NYSEAMER–2020–05, SR–NYSEArca–2020–08, SR–NYSECHX–2020–02, SR–NYSENAT–2020–03, SR–NYSE–2020–11, SR–NYSEAMER–2020–10, SR–NYSEArca-2020–15, SR–NYSECHX–2020–05, SR–NYSENAT–2020–08) (''Wireless Approval Order'').

[7] *Intercontinental Exchange, Inc.* v. *SEC,* No. 20–1470 (D.C. Cir. 2020).

[8] *See* Securities Exchange Act Release Nos. 88837 (May 7, 2020), 85 FR 28671 (May 13, 2020) (SR–NYSE–2019–46, SR–NYSEAMER–2019–34, SR–NYSEArca–2019–61, SR–NYSENAT–2019–19) (''NMS Network Approval Order'') and 88972 (May 29, 2020), 85 FR 34472 (June 4, 2020) (''NYSE Chicago NMS Network Approval Order'').

IDS NETWORK PORTS *—Continued

Type of service	Description	Amount of charge
NCL IDS Network Access—40 Gb	40 Gb IDS Network port	$10,000 initial charge plus $19,750 monthly charge.

See note 1.

The Exchange also proposes to add to the Fee Schedule several notes regarding these services that are based on General Notes 4, 5, and 6 of the Exchange's Price List regarding colocation.

Specifically, the Exchange proposes to add the heading ''NCL Notes'' after the tables in the proposed section of the Fee Schedule titled ''D. Non-Colocation (''NCL'') Services.'' Note 1 would establish that when an NCL Customer purchases access to the IDS Network, the NCL Customer would receive (a) the ability to access the trading and execution systems of the Exchange and Affiliate SROs (''Exchange Systems'') as well as of the Global OTC System (''Global OTC''), and (b) connectivity to any of the listed data products (''Included Data Products'') that it selects. References in the proposed Fee Schedule would refer customers to the applicable note.

Proposed Note 1 would be titled ''Note 1: IDS Network'' and would provide:

When an NCL Customer purchases access to the IDS Network, it receives the ability to access the trading and execution systems of the NYSE, NYSE American, NYSE Arca, NYSE Chicago, and NYSE National (together, the Exchange Systems) as well as of Global OTC (the Global OTC System), subject, in each case, to authorization by the NYSE, NYSE American, NYSE Arca, NYSE Chicago, NYSE National, or Global OTC, as applicable. Each Exchange listed above offers access to its Exchange Systems to its members and Global OTC offers access to the Global OTC System to its subscribers, such that an NCL Customer does not have to purchase a service that includes access to the IDS Network to obtain access to Exchange Systems or the Global OTC System. When an NCL Customer purchases access to the IDS Network, it receives connectivity to any of the Included Data Products that it selects, subject to any necessary technical provisioning requirements, authorization, and licensing by the provider of the Included Data Feed. Fees for the Included Data Products are charged by the provider of such Included Data Products. An NCL Customer can change the Included Data Products to which it receives connectivity at any time, subject to authorization from the provider of such Included Data Product. Because access to the IDS Network is not the exclusive method to connect to the Included Data Products, an NCL Customer does not have to purchase a service that includes access to the IDS Network to connect to such Included Data Products. The Included Data Products are as follows:

NMS feeds
- CTS
- CQS
- OPRA

NYSE
NYSE American
NYSE American Options
NYSE Arca
NYSE Arca Options
NYSE Best Quote and Trades (BQT)
NYSE Bonds
NYSE Chicago
NYSE National

2. NCL Connectivity to Third Party Systems, Data Feeds, Testing and Certification Feeds, and DTCC

The Exchange also proposes to amend the Fee Schedule to provide for the connectivity services that IDS offers for NCL Customers to Third Party Systems, Third Party Data Feeds, third party testing and certification feeds, and DTCC. The Exchange proposes to adopt substantially similar services and fees as set forth in the Exchange's Price List regarding colocation.[9]

Connectivity to Third Party Systems: The Exchange proposes to specify in the Fee Schedule services that IDS offers NCL Customers to access the trading and execution services of Third Party markets and other content service providers (''Third Party Systems'') for a fee. NCL Customers connect to Third Party Systems over the IDS Network.

In order to obtain access to a Third Party System, an NCL Customer enters into an agreement with the relevant third-party content service provider, pursuant to which the third-party content service provider charges the NCL Customer for access to the Third Party System. When such services are requested, IDS establishes a connection between the NCL Customer and the relevant third party content service provider over the IDS Network. IDS charges the NCL Customer for the connectivity to the Third Party System. An NCL Customer only receives, and is only charged by IDS for, connectivity to each Third Party System for which the customer enters into an agreement with the third-party content service provider.

Neither the Exchange nor IDS has an affiliation with the providers of the Third Party Systems. Establishing an NCL Customer's access to a Third Party System does not give either IDS or the Exchange any right to use the Third Party Systems. Connectivity to a Third Party System does not provide access or order entry to the Exchange's execution system, and an NCL Customer's connection to a Third Party System is not through the Exchange's execution system.

IDS charges a monthly recurring fee for connectivity to a Third Party System, which the Exchange proposes to add to its Fee Schedule. Specifically, when an NCL Customer requests access to a Third Party System, IDS identifies the applicable third-party market or other content service provider and the bandwidth connection it requires.

The Exchange proposes to add the following fees and language to the Fee Schedule:

CONNECTIVITY TO THIRD PARTY SYSTEMS OVER IDS NETWORK *

Description	Amount of charge
1Mb	$200 per connection monthly charge.
3Mb	$400 per connection monthly charge.
5Mb	$500 per connection monthly charge.
10Mb	$800 per connection monthly charge.
25Mb	$1,200 per connection monthly charge.
50Mb	$1,800 per connection monthly charge.

[9] *See* Securities Exchange Act Release No. 80311 (March 24, 2017), 82 FR 15749 (March 30, 2017) (SR–NYSE–2016–45).

CONNECTIVITY TO THIRD PARTY SYSTEMS OVER IDS NETWORK *—Continued

Description	Amount of charge
100Mb	$2,500 per connection monthly charge.
200Mb	$3,000 per connection monthly charge.
1Gb	$3,500 per connection monthly charge.

* (see note 2)

The Exchange proposes to add Note 2 to the section of the Fee Schedule titled ''D. Non-Colocation (''NCL'') Services.'' Proposed Note 2 would be titled ''Note 2: Third Party Systems'' and would provide:

When an NCL Customer purchases a connection that includes access to Third Party Systems, it receives access to Third Party Systems it selects subject to any technical provisioning requirements, authorization, and licensing from such Third Party System. Fees for the Third Party Systems are charged by the provider of such Third Party System. The Exchange is not the exclusive method to connect to Third Party Systems. The Third Party Systems are as follows:

Third Party Systems

Americas Trading Group (ATG)
BM&F Bovespa
Boston Options Exchange (BOX)
Canadian Securities Exchange (CSE)
Cboe BYX Exchange (CboeBYX), Cboe BZX Exchange (CboeBZX), Cboe EDGA Exchange (CboeEDGA), and Cboe EDGX Exchange (CboeEDGX)
Cboe Exchange (Cboe) and Cboe C2 Exchange (C2)
Chicago Mercantile Exchange (CME Group)
Credit Suisse
Euronext Optiq Cash and Derivatives Unicast (EUA)
Euronext Optiq Cash and Derivatives Unicast (Production)
Investors Exchange (IEX)
ITG TriAct Matchnow
Long Term Stock Exchange (LTSE)
Members Exchange (MEMX)
MIAX Options, MIAX PEARL Options, MIAX PEARL Equities, and MIAX Emerald
Morgan Stanley
Nasdaq
NASDAQ Canada (CXC, CXD, CX2)
NASDAQ ISE
Neo Aequitas
NYFIX Marketplace
Omega
OneChicago
OTC Markets Group
TD Ameritrade
TMX Group

Connectivity to Third Party Data Feeds: The Exchange proposes to specify in the Fee Schedule connectivity services that IDS offers NCL Customers to connect to data feeds from third-party markets and other content service providers (''Third Party Data Feeds'') for a fee. IDS receives Third Party Data Feeds from multiple national securities exchanges and other content service providers at the Mahwah Data Center. IDS provides connectivity to that data to NCL Customers for a fee. NCL Customers connect to Third Party Data Feeds over the IDS Network.

In order to connect to a Third Party Data Feed, an NCL Customer enters into a contract with the relevant third-party market or other content service provider, pursuant to which the content service provider charges the NCL Customer for the Third Party Data Feed. IDS receives the Third Party Data Feed over its fiber optic network and, after the data provider and NCL Customer enter into an agreement and IDS receives authorization from the data provider, IDS retransmits the data to the NCL Customer over the NCL Customer's IDS Network port. IDS charges the NCL Customer for the connectivity to the Third Party Data Feed. An NCL Customer only receives, and is only charged for, connectivity to the Third Party Data Feeds for which it entered into contracts.

With the exception of the ICE Data Services, ICE, and Global OTC feeds, neither the Exchange nor IDS has any affiliation with the sellers of the Third Party Data Feeds. The Exchange and IDS have no right to use the Third Party Data Feeds other than as a redistributor of the data. The Third Party Data Feeds do not provide access or order entry to the Exchange's execution system. With the exception of the ICE feed, the Third Party Data Feeds do not provide access or order entry to the execution systems of the third party generating the feed. IDS receives Third Party Data Feeds via arms-length agreements and has no inherent advantage over any other distributor of such data.

IDS charges a monthly recurring fee for connectivity to each Third Party Data Feed. The monthly recurring fee is per Third Party Data Feed, with the exception that the monthly recurring fee for the ICE Data Services Consolidated Feeds (including the ICE Data Services Consolidated Feed Shared Farm feeds), Vela—SuperFeeds, and MSCI feeds vary by the bandwidth of the connection. Depending on its needs and bandwidth, an NCL Customer may opt to receive all or some of the Third Party Data Feeds.

Third Party Data Feed providers may charge redistribution fees. The Exchange proposes that, when IDS is charged a redistribution fee by the Third Party Data Feed provider, IDS would pass through the charge to the NCL Customer, without change to the fee. The fee would be labeled as a pass-through of a redistribution fee on the NCL Customer's invoice.

The Exchange proposes that it would not charge NCL Customers that are third-party markets or content providers for connectivity to their own feeds, as it understands that such parties generally receive their own feeds for purposes of diagnostics and testing.

The Exchange proposes to add the following fees and language to the Fee Schedule:

CONNECTIVITY TO THIRD PARTY DATA FEEDS OVER THE IDS NETWORK *

Description	Monthly charge
BM&F Bovespa	$3,000
Boston Options Exchange (BOX)	1,000
Canadian Securities Exchange (CSE)	1,000
Cboe BZX Exchange (CboeBZX) and Cboe BYX Exchange (CboeBYX)	2,000
Cboe EDGX Exchange (CboeEDGX) and Cboe EDGA Exchange (CboeEDGA)	2,000
Cboe Exchange (Cboe) and Cboe C2 Exchange (C2)	2,000
CME Group	3,000
Euronext Optiq Compressed Cash	900
Euronext Optiq Compressed Derivatives	600

CONNECTIVITY TO THIRD PARTY DATA FEEDS OVER THE IDS NETWORK *—Continued

Description	Monthly charge
Euronext Optiq Shaped Cash	1,200
Euronext Optiq Shaped Derivatives	900
Financial Industry Regulatory Authority (FINRA)	500
Global OTC	100
ICE Data Services Consolidated Feed ≤ 100 Mb	200
ICE Data Services Consolidated Feed > 100 Mb to ≤1 Gb	500
ICE Data Services Consolidated Feed > 1 Gb	1,000
ICE Data Services Consolidated Feed Shared Farm ≤ 100Mb	200
ICE Data Services Consolidated Feed Shared Farm > 100 Mb to ≤ 1 Gb	500
ICE Data Services Consolidated Feed Shared Farm > 1 Gb	1,000
ICE Data Services—ICE TMC	200
ICE Data Services PRD	200
ICE Data Services PRD CEP	400
Intercontinental Exchange (ICE)	1,500
Investors Exchange (IEX)	1,000
ITG TriAct Matchnow	1,000
Members Exchange (MEMX)	3,000
MIAX Emerald	3,500
MIAX Options/MIAX PEARL Options	2,000
MIAX PEARL Equities	2,500
Montréal Exchange (MX)	1,000
MSCI 5 Mb	500
MSCI 25 Mb	1,200
NASDAQ Stock Market	2,000
NASDAQ OMX Global Index Data Service	100
NASDAQ UQDF & UTDF	500
NASDAQ Canada (CXC, CXD, CX2)	1,500
NASDAQ ISE	1,000
Neo Aequitas	1,200
Omega	1,000
OneChicago	1,000
OTC Markets Group	1,000
Vela—SuperFeed <500 Mb	250
Vela—SuperFeed >500 Mb to <1.25 Gb	800
Vela—SuperFeed >1.25 Gb	1,000
TMX Group	2,500

* (see Note 3)

The Exchange proposes to add Note 3 to the section of the Fee Schedule titled ''D. Non-Colocation (''NCL'') Services.'' Proposed Note 3 would be titled ''Note 3: Third Party Systems'' and would provide:

Pricing for data feeds from third party markets and other service providers (Third Party Data Feeds) is for connectivity only. Connectivity to Third Party Data Feeds is subject to any technical provisioning requirements, authorization, and licensing from the provider of the data feed. Connectivity to Third Party Data Feeds is over the IDS Network. Fees for Third Party Data Feeds are charged by the provider of such data feeds. Third Party Data Feed providers may charge redistribution fees. When IDS is charged a redistribution fee, IDS passes the charge through to the customer, without change to the fee. The fee is labeled as a pass-through of a redistribution fee on the customer's invoice. IDS does not charge third party markets or content providers for connectivity to their own feeds. IDS is not the exclusive method to connect to Third Party Data Feeds.

Connectivity to Third Party Data Testing and Certification Feeds: The Exchange proposes to specify in the Fee Schedule that NCL Customers may obtain connectivity to third-party testing and certification feeds. Certification feeds are used to certify that an NCL Customer conforms to any of the relevant content service provider's requirements for accessing Third Party Systems or receiving Third Party Data Feeds, while testing feeds would provide NCL Customers an environment in which to conduct tests with non-live data. Such feeds, which are solely used for certification and testing and do not carry live production data, are available over the IDS Network.

Connectivity to third party testing and certification feeds would be subject to any technical provisioning requirements, authorization, and licensing from the provider of the data feed. Fees for such feeds are charged by the provider of the feed. The Exchange is not the exclusive method to connect to third-party testing and certification feeds.

The Exchange proposes to add the following fees and language to the Fee Schedule:

Connectivity to Third Party Testing and Certification Feeds	100 monthly recurring charge per feed.

Connectivity to DTCC: The Exchange proposes to specify in the Fee Schedule services that IDS provides to connect NCL Customers to Depository Trust & Clearing Corporation (''DTCC'') for clearing, fund transfer, insurance, and settlement services.

In order to connect to DTCC, an NCL Customer enters into a contract with DTCC, pursuant to which DTCC charges the NCL Customer for the services provided. IDS receives the DTCC feed over its fiber optic network and, after DTCC and the NCL Customer entered into the services contract and IDS received authorization from DTCC, IDS provides connectivity to DTCC to the

NCL Customer over the NCL Customer's IDS Network port. IDS charges the NCL Customer for the connectivity to DTCC.

Connectivity to DTCC does not provide access or order entry to the Exchange's execution system, and an NCL Customer's connection to DTCC is not through the Exchange's execution system.

Connectivity to DTCC is subject to any technical provisioning requirements, authorization, and licensing from DTCC. Fees for such feeds are charged by DTCC. IDS is not the exclusive provider to connect to DTCC feeds.

The Exchange proposes to add the following fees and language to the Fee Schedule:

CONNECTIVITY TO DTCC

Description	Amount of charge
5 Mb connection to DTCC.	$500 monthly recurring charge.
50 Mb connection to DTCC.	$2,500 monthly recurring charge.

3. NCL NMS Network Ports

The Exchange proposes to amend the Fee Schedule to add services that IDS currently offers enabling NCL Customers to connect to the NMS Network in the Mahwah Data Center.

The Exchange proposes to add the following fees and language to the Fee Schedule:

NCL NMS NETWORK PORTS

Type of service	Description	Amount of charge
NCL NMS Network Access—10 Gb	10 Gb NCL NMS Network port	$10,000 initial charge plus $11,000 monthly charge.
NCL NMS Network Access—40 Gb	40 Gb NCL NMS Network port	$10,000 initial charge plus $18,000 monthly charge.

* (see note 4)

The Exchange also proposes to add Note 4 to the section of the Fee Schedule titled ''D. Non-Colocation (''NCL'') Services,'' to establish that, when an NCL Customer purchases an NMS Network port, it has the option of receiving the NMS feeds over the NMS Network.

Proposed Note 4 would be titled ''Note 4: NMS Network'' and would provide:

When an NCL Customer purchases access to the NMS Network, upon its request, it will receive connectivity to any of the NMS feeds that it selects, subject to any necessary technical provisioning requirements, authorization, and licensing from the provider of such NMS feed. Fees for the NMS feeds are charged by the provider of such NMS feed. The NMS feeds are as follows:

NMS feeds
CTS
CQS
OPRA

4. NCL Cross Connect

The Exchange proposes to amend the Fee Schedule to specify fiber cross connect services that IDS offers NCL Customers for an initial and monthly charge.[10] A cross connect is used to connect a circuit to a port. NCL Customers use such cross connects to connect from the IDS Network or NMS Network to a circuit connecting outside the Mahwah Data Center. The Exchange proposes that the fees for this service would be identical to the fees for the corresponding service in colocation.

The Exchange proposes to add the following fees and language to the Fee Schedule:

Type of service	Description	Amount of charge
NCL Cross Connect	Furnish and install one cross-connect.	$500 initial charge plus $600 monthly charge.

5. NCL Expedite Fee

The Exchange proposes to amend the Fee Schedule to specify optional services that IDS offers NCL Customers to expedite the completion of services purchased or ordered by the NCL Customer, for which IDS charges an ''Expedite Fee.'' Similar to the ''Expedite Fee'' applicable to Users in colocation,[11] if an NCL Customer wishes to obtain NCL Services earlier than the expected completion date, the NCL Customer may pay the Expedite Fee. The time saved would vary depending on the type(s) of service(s) ordered, but the Expedite Fee would always be a flat $4,000, allowing the NCL Customer to determine if the expected time savings warrants payment of the fee.

The Exchange proposes to add the following fees and language to the Fee Schedule:

Type of service	Description	Amount of charge
NCL Expedite Fee	Expedited installation/completion of a customer's NCL service.	$4,000 per request.

6. NCL Change Fee

The Exchange proposes to amend the Fee Schedule to specify the ''Change Fee'' that IDS charges an NCL Customer if the NCL Customer requests a change to one or more existing NCL Services that IDS has already established or completed for the NCL Customer.

In this regard, the Exchange notes that several of the proposed services that would be added to the Fee Schedule include an initial fee in addition to an ongoing monthly fee. These initial fees

[10] Because NCL Customers do not co-locate any equipment in the Mahwah Data Center, they generally require fewer fiber cross connects than colocation Users. Accordingly, the Exchange does not propose amending the Fee Schedule to include bundles of 6, 12, 18, or 24 cross connects as are available to colocation Users.

[11] *See* Securities Exchange Act Release No. 67666 (August 15, 2012), 77 FR 50742 (August 22, 2012) (SR–NYSE–2012–18).

are related to IDS's initial cost of establishing or installing a particular service for the NCL Customer. Similar to the ''Change Fee'' applicable to Users in colocation,[12] IDS charges a fee of $950 per order if the NCL Customer requests a change to one or more existing NCL Services that IDS has already established or completed for the NCL Customer. For example, the initial installation of an IDS Network connection would include establishing and configuring market data services requested by the NCL Customer, which would be covered by the initial install fee. However, if the NCL Customer requests that IDS establish and configure additional market data services for its IDS Network connection, the NCL Customer would be charged a one-time Change Fee of $950 for that request. If an NCL Customer orders two or more services at one time (for example, through submitting an order form requesting multiple services), the NCL Customer would be charged a one-time Change Fee of $950, which would cover the multiple services.

The Exchange proposes to add the following fees and language to the Fee Schedule:

Type of service	Description	Amount of charge
NCL Change Fee	Change to an NCL service that has already been installed/completed for a customer.	$950 per request.

Fee Schedule Name

In addition, the Exchange proposes to change the name of the ''Wireless Connectivity Fee Schedule'' to ''Connectivity Fee Schedule.'' [sic] Because the Fee Schedule will no longer be limited to wireless services, the Exchange proposes to change the name of the Fee Schedule from ''Wireless Connectivity Fee Schedule'' [sic] to ''Mahwah Wireless, Circuits, and Non-Colocation Connectivity Fee Schedule.''

Application and Impact of the Proposed Changes

There are currently few NCL Customers. Accordingly, the Exchange expects that the impact of the proposed change would be minimal.

The proposed change is not targeted at, or expected to be limited in applicability to, a specific segment of market participant. The Mahwah Circuits are available for purchase for any potential customer requiring a circuit between the Mahwah Data Center and a remote location. The NCL Services are available for purchase by any customer. The proposed changes do not apply differently to distinct types or sizes of customers. Rather, they apply to all customers equally.

Use of the services proposed in this filing are completely voluntary and available to all market participants on a non-discriminatory basis.

Competitive Environment

IDS operates in a highly competitive market in which exchanges, third party telecommunications providers, Hosting Users,[13] and other third-party vendors offer connectivity services as a means to facilitate the trading and other market activities of market participants. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [14]

The proposed changes are not otherwise intended to address any other issues relating to services related to the Mahwah Data Center and/or related fees, and the Exchange is not aware of any problems that market participants would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change 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, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[17] because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Proposed Change Is Reasonable

The Exchange believes that the proposed rule change is reasonable and would perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest, for the following reasons.

General: Only the market participants that voluntarily select to receive the IDS services described herein are charged for them, and those services are available to all market participants. Furthermore, the IDS services described in this filing are available to all market participants on an equal basis (*i.e.,* the same products and services are available to all market participants). All market participants that voluntarily select a specific proposed IDS service would be charged the same amount for that service as all other market participants purchasing that service.

In addition, the Exchange believes that the proposed rule change is reasonable because the IDS services described herein are offered as a convenience to market participants, but offering them requires the provision, maintenance, and operation of the Mahwah Data Center, including the

[12] *See id.*

[13] ''Hosting'' is a service offered by a User to another entity In the User's space within the Mahwah Data Center. The Exchange allows Users to act as Hosting Users for a monthly fee. *See* Securities Exchange Act Release No. 76008 (September 29, 2015), 80 FR 60190 (October 5, 2015) (SR–NYSE–2015–40).

[14] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78f(b)(4).

installation, monitoring, support, and maintenance of the services.

Mahwah Circuits: The Exchange believes the fees proposed herein for IDS's Mahwah Circuits are reasonable. The market for circuits into and out of the Mahwah Data Center is competitive, and the proposed IDS offerings are merely one of several options from which market participants can choose. Each of the third-party telecommunications providers that has a presence in the Mahwah Data Center's ''Meet Me Rooms'' offers similar circuits to market participants, in competition with the IDS offerings proposed here. Each market participant considering whether to purchase a circuit directly can weigh that option against similar circuits offered by those third-party carriers, and can choose which circuit to purchase based on which combination of latency, bandwidth, price, and other factors best meets its business needs. Indeed, the Exchange understands that most of the third-party telecommunications providers that provide circuits do so at fees lower than those proposed herein, and that most NCL Customers and colocation Users use such third party telecommunication circuits into and out of the Mahwah Data Center.

IDS Network Ports: The Exchange believes that the IDS Network ports proposed herein are reasonable. The market for connecting with the Exchange's trading and execution systems is competitive, and the proposed IDS Network ports that IDS provides are merely one of several options that market participants may choose. As alternatives to the IDS Network ports, a market participant would be able to access or connect to Exchange Systems, Third Party Systems, Included Data Products, Third Party Data Feeds, third party testing and certification feeds, and DTCC through (a) a connection to an IDS access center outside of the Mahwah Data Center, (b) a third-party access center, (c) a third-party vendor, (d) a Hosting User, or (e) colocation.

Market participants consider various factors in determining which connectivity options to choose, including latency; bandwidth size; amount of network uptime; the equipment that the network uses; the cost of the connection; and the applicable contractual provisions. IDS's offering of connectivity services via IDS Network ports gives market participants another service to evaluate and consider, thereby broadening their options for connectivity to the Exchange Systems and allowing them to tailor their connectivity options to their specific needs.

The Exchange further believes that the proposed fees for IDS Network ports for NCL Customers are reasonable because such prices are constrained by competition with the numerous other providers that offer connectivity to the Exchange Systems. If IDS were to attempt to offer such ports at a supra-competitive price, potential customers would likely respond by seeking out less expensive substitutes from other providers.

NCL NMS Network Ports: The Exchange believes that the proposed fees for NMS Network ports for NCL Customers are reasonable to recoup the costs of building the NMS Network. Until 2019, SIAC was required to provide connectivity to the NMS feeds only via the IP network. Although the operating committees for the CTA/CQ Plans authorized SIAC to offer connectivity to the NMS feeds in the Mahwah Data Center via an alternate, dedicated, low-latency NMS Network, the operating committee did not assume the costs of creating such a network; instead, the Exchange and the Affiliate SROs funded the capital and operational expenses to build and operate the NMS Network. The implementation costs of approximately $3.8 million are applicable only to the NMS Network, which is used for the sole purpose of providing access to the NMS feeds. None of the implementation costs are applicable to any other Exchange services. As of the date of this filing, only one customer has contracted with IDS for an NCL NMS Network port, and the Exchange expects that demand for NMS Network ports outside of colocation will be very low. The service is nevertheless available, and so the Exchange proposes to add it to the Fee Schedule.

NCL Notes: With respect to proposed NCL Notes 1, 2, 3, and 4, the Exchange believes they are reasonable because they provide detailed descriptions of the access and connectivity that NCL Customers receive when they purchase IDS Network or NMS Network ports. Such detailed descriptions remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because they provide market participants with transparency and clarity as to what connectivity is included in the purchase of IDS Network or NMS Network ports by NCL Customers.[18] The notes would also make clear that all NCL Customers that voluntarily select to access the IDS Network or NMS Network receive the same access and connectivity, and are not subject to a charge above and beyond the fee paid for the relevant IDS Network or NMS Network ports. The notes further make clear that NCL Customers are not required to use any of their bandwidth to access Exchange systems or connect to an Included Data Product unless they wish to do so; rather, an NCL Customer only receives the access and connectivity that it selects, and can change what access or connectivity it receives at any time, subject to authorization from the data provider or the relevant Exchange or Affiliate SRO.[19] Notes 1, 2, 3, and 4 are all based on similar provisions in the Exchange's Price List for colocation.

Other NCL Services: The Exchange believes it is reasonable to specify in the Fee Schedule NCL Services that IDS offers including NCL cross connects, the NCL Expedite Fee, the NCL Change Fee, and NCL connectivity to Third Party Systems, Third Party Data Feeds, third-party testing and certification feeds, and DTCC.

The Exchange believes that the specific fees it has proposed for NCL cross connects, the NCL Expedite Fee, and the NCL Change Fee are reasonable. As noted above, IDS faces competition in the market for connectivity from Hosting Users, IDS access centers outside of the Mahwah Data Center, third-party access centers, and third-party vendors. Market participants can consider IDS's proposed fees for the specific services listed above in the context of this competition, and choose the connectivity provider that offers the services the market participant needs at the optimal cost. As such, the proposed fees for these IDS services are constrained by competition.

The Exchange believes that charging distinct fees for different NCL Services is reasonable because not all market participants need or wish to utilize the same NCL Services. The proposed choice of services allows market participants to select which NCL Services to use, based on their business needs, and market participants are only charged for the services that they select.

[18] *See* Securities Exchange Act Release Nos. 79730 (January 4, 2017), 82 FR 3045 (January 10, 2017) (SR–NYSE–2016–92); 79728 (January 4, 2017), 82 FR 3035 (January 10, 2017) (SR–NYSEMKT–2016–126); 79729 (January 4, 2017), 82 FR 3061 (January 10, 2017) (SR–NYSEArca–2016–172).

[19] The General Note on page 1 of the Fee Schedule would also apply to all of the services proposed herein. A market participant that incurs fees for NCL connectivity or other NCL Services from the Exchange or one of the Affiliate SROs would not be subject to fees for the same service charged by the other Affiliate SROs.

By charging only those market participants that utilize an NCL Service the related fee, those market participants that directly benefit from a service support its cost.

In addition, the Exchange believes that the proposed fees are reasonable because they allow the costs associated with offering different NCL Services to be defrayed or covered while providing market participants the benefit of such services. The Exchange believes that the proposed charges are reasonable because IDS offers NCL Services as conveniences to market participants, but in order to do so must provide, maintain, and operate the Mahwah Data Center facility hardware and technology infrastructure. IDS needs to provide network infrastructure that keeps pace with the number of services available to NCL Customers, including any increasing demand for bandwidth, and handle the installation, administration, monitoring, support, and maintenance of such services, including by responding to any production issues. In addition, in order to provide connectivity to Third Party Data Feeds, Third Party Systems, third party testing and certification feeds, and DTCC, IDS must establish and maintain multiple connections to each Third Party Data Feed, Third Party System, and DTCC, allowing IDS to provide resilient and redundant connections, adapt to any changes made by the relevant third party, and cover any applicable fees (other than redistribution fees) charged by the relevant third party, such as port fees.

The Exchange believes it is reasonable for redistribution fees charged by providers of Third Party Data Feeds to be passed through to NCL Customers, without change to the fee. If not passed through, the cost of the redistribution fees would be factored into the proposed fees for connectivity to Third Party Data Feeds. The Exchange believes that passing through the fees makes them more transparent to the NCL Customer, allowing the NCL Customer to better assess the cost of the connectivity to a Third Party Data Feed by seeing the individual components of the cost, *i.e.,* IDS's fee and redistribution fee.

The Exchange believes that it is reasonable to not charge third-party markets or content providers for connectivity to their own Third Party Data Feeds, as the Exchange understands that such parties generally receive their own feeds for purposes of diagnostics and testing. The Exchange believes that facilitating such diagnostics and testing removes impediments to, and perfects the mechanisms of, a free and open market and a national market system and, in general, protects investors and the public interest.

Finally, the Exchange believes it is reasonable to make available third party testing and certification feeds to enable customers to test and certify their connections to third party data feeds.

The Proposed Change Is Equitable

The Exchange believes that its proposal equitably allocates its fees among market participants.

The Exchange believes that the proposed change is equitable because it would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all NCL Customers equally.

In addition, the Exchange believes that the proposal is equitable because only the market participants that voluntarily select to receive the services described herein would be charged for them. The services described in this filing are available to all market participants on an equal basis (*i.e.,* the same products and services are available to all market participants), and all market participants that voluntarily select a specific proposed service are charged the same amount for that service as all other market participants purchasing that service.

IDS faces competition from numerous other providers that offer market participants choices for connectivity to the Mahwah Data Center, Exchange Systems, Third Party Systems, Included Data Products, Third Party Data Feeds, third party testing and certification feeds, and DTCC. Without this proposed rule change, market participants seeking such connectivity would have fewer options. With this proposal, market participants would have more choices with respect to the form and price of the services they use, allowing market participants to select the services and connectivity options that better suit their needs, thereby helping them tailor their connectivity operations to the requirements of their businesses.

The Exchange believes that the proposed NCL Notes 1 and 4 are equitable because they specify that NCL Customers that voluntarily select to access the IDS Network or NMS Network would not be subject to charges above and beyond the fee paid for the relevant IDS Network or NMS Network port. Further, Notes 1, 2, 3, and 4 specify that NCL Customers will not be charged for any access or connectivity that they had not selected.

The Proposed Change Is Not Unfairly Discriminatory

The Exchange believes its proposal is not unfairly discriminatory. The proposed change does not apply differently to distinct types or sizes of market participants. Rather, it applies to all market participants equally. The purchase of any proposed service is completely voluntarily and the Fee Schedule will be applied uniformly to all market participants.

IDS faces competition from numerous other providers that offer market participants choices for connectivity to the Mahwah Data Center, Exchange Systems, Third Party Systems, Included Data Products, Third Party Data Feeds, third party testing and certification feeds, and DTCC. Without this proposed rule change, market participants seeking such connectivity would have fewer options. With this proposal, market participants would have more choices with respect to the form and price of the services they use, allowing market participants to select the services and connectivity options that better suit their needs, thereby helping them tailor their connectivity operations to the requirements of their businesses.

The Exchange believes that the proposed NCL Notes 1 and 4 are not be unfairly discriminatory because they specify that NCL Customers that voluntarily select to access the IDS Network or NMS Network are not be subject to charges above and beyond the fee paid for the relevant IDS Network or NMS Network port. Further, Notes 1, 2, 3, and 4 specify that NCL Customers will not be charged for any access or connectivity that they had not selected.[20]

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed change does not affect competition among national securities exchanges or among members of the Exchange, but rather between IDS and its commercial competitors.

As noted above, the Exchange is making the current proposal solely as a result of the Commission's recent interpretation of the definitions of ''exchange'' and ''facility'' in the Wireless Approval Order, which the Exchange is presently challenging on appeal to the Court of Appeals for the

[20] In addition, the General Note on page 1 of the Fee Schedule would apply to all of the services proposed herein. *See supra* note 19.

District of Columbia Circuit.[21] The Exchange has nevertheless proposed this rule change in order to preserve the ability of IDS to offer the services at issue herein. If IDS were compelled to stop offering such services, consumers would have fewer service providers to choose from for their connectivity needs, which would be a detriment to competition overall.

Notwithstanding the foregoing, the Exchange notes that there are numerous other third parties that provide circuits and connectivity at the Mahwah Data Center, and that IDS competes with those third parties for the provision of such services to customers. None of these third parties have been compelled to file their services or fees with the Commission, and requiring IDS to do so puts IDS at a competitive disadvantage vis-à-vis its competitors. Requiring the Exchange to file IDS services and fees herein is therefore a burden on competition.

The Exchange believes competition would be best served by allowing IDS to freely compete with the other providers of connectivity services, without the additional burden on IDS alone to file any proposed changes to services and fees with the Commission.

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

Within 45 days of the date of publication of this notice in the **Federal Register**, or such longer period *up to 90 days* (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2021–14 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–2021–14. 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–2021–14, and should be submitted on or before March 25, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–04424 Filed 3–3–21; 8:45 am]

BILLING CODE 8011–01–P

[21] *Intercontinental Exchange, Inc.* v. *SEC,* No. 20–1470 (DC Cir. 2020).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91219; File No. SR–NYSECHX–2021–03]

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing of Proposed Rule Change To Amend the Schedule of Wireless Connectivity Fees and Charges To Add Circuits for Connectivity Into and Out of the Data Center in Mahwah, New Jersey

February 26, 2021.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on February 12, 2021, the NYSE Chicago, Inc. (''NYSE Chicago'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the schedule of Wireless Connectivity Fees and Charges (the ''Fee Schedule'') to (1) add circuits for connectivity into and out of the data center in Mahwah, New Jersey (the ''Mahwah Data Center''); (2) add services available to customers of the Mahwah Data Center that are not colocation Users; and (3) change the name of the Fee Schedule to ''Mahwah Wireless, Circuits, and Non-Colocation Connectivity Fee Schedule.'' The proposed 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,

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to add services (''NCL Services'') and related fees available to customers of the Mahwah Data Center that are not colocation Users (''NCL Customers''),[4] as well as circuits into and out of the Mahwah Data Center that are available to both colocation Users and NCL Customers. In addition, in a conforming change, because the Fee Schedule would no longer be limited to wireless services, the Exchange proposes to change the name of the Fee Schedule from ''Wireless Connectivity Fee Schedule'' to ''Mahwah Wireless, Circuits, and Non-Colocation Connectivity Fee Schedule.'' [5]

The Exchange makes the current proposal solely as a result of its determination that the Commission's recent interpretations of the Act's definitions of the terms ''exchange'' and ''facility,'' as expressed in the Wireless Approval Order,[6] apply to connectivity services described herein that are offered by entities other than the Exchange. The Exchange disagrees with the Commission's interpretations, denies the services covered herein (and in the Wireless Approval Order) are offerings of an ''exchange'' or a ''facility'' thereof, and has sought review of the Commission's interpretations, as expressed in the Wireless Approval Order, in the Court of Appeals for the District of Columbia Circuit.[7] Pending resolution of such appeal, however, the Exchange is making this proposal in recognition that the Commission's current interpretation brings certain offerings of the Exchange's affiliates into the scope of the terms ''exchange'' or ''facility.''

The Exchange expects the proposed change to be operative 60 days after the present filing becomes effective.

Mahwah Circuits

Customers can connect into and out of the Mahwah Data Center using either wireless connections or wired fiber optic circuits. Both IDS and numerous third-party telecommunications service providers offer wired circuits into and out of the Mahwah Data Center. The circuits that IDS offers are described below. Such IDS circuits are available to all colocation Users and NCL Customers, but such customers are not obligated to use them; rather, both colocation Users and NCL Customers may instead choose to contract directly with third-party telecom carriers for circuits into and out of the Mahwah Data Center.

The Exchange proposes to add to the Fee Schedule the circuit options offered by IDS to both colocation Users and NCL Customers to connect into and out of the Mahwah Data Center. Specifically, the Exchange proposes to amend the Fee Schedule to add two different types of circuits, each available in three different sizes, under the new heading ''C. Mahwah Circuits.''

First, the Exchange proposes to amend the Fee Schedule to add ''Optic Access'' circuits, which are circuits that IDS operates and that customers can use to connect between the Mahwah Data Center and IDS access centers at the following six third-party owned data centers: (1) 111 Eighth Avenue, New York, NY; (2) 32 Avenue of the Americas, New York, NY; (3) 165 Halsey, Newark, NJ; (4) Secaucus, NJ (the ''Secaucus Access Center''); (5) Carteret, NJ (the ''Carteret Access Center''); and (6) Weehawken, NJ. Optic Access circuits are available in 1 Gb, 10 Gb, and 40 Gb sizes.

Second, the Exchange proposes to amend the Fee Schedule to add lower-latency Optic Low Latency circuits that IDS operates and that customers can use to connect between the Mahwah Data Center and IDS's Secaucus Access Center or Carteret Access Center. Optic Low Latency circuits are available in 1 Gb, 10 Gb, and 40 Gb sizes.

The Exchange proposes to add the following chart to the Fee Schedule to include these circuits, as follows:

Type of service	Amount of charge
Optic Access Circuit—1 Gb	$1,500 initial charge plus $1,500 monthly charge.
Optic Access Circuit—10 Gb	$5,000 initial charge plus $2,500 monthly charge.
Optic Access Circuit—40 Gb	$5,000 initial charge plus $6,000 monthly charge.
Optic Low Latency Circuit—1 Gb	$1,500 initial charge plus $2,750 monthly charge.
Optic Low Latency Circuit—10 Gb	$5,000 initial charge plus $3,950 monthly charge.
Optic Low Latency Circuit—40 Gb	$5,000 initial charge plus $8,250 monthly charge.

Non-Colocation Services

The Exchange proposes to amend the Fee Schedule to add several services available to NCL Customers as well as several notes, under the new heading ''D. Non-Colocation (''NCL'') Services.'' These are the services that IDS offers within the Mahwah Data Center that are not colocation services. The Exchange proposes to amend the Fee Schedule to add services that include ports to the IDS Network—a wide area network available in the Mahwah Data Center and other access centers—and ports to a dedicated network to access the NMS feeds for which the Securities Industry Automation Corporation is engaged as the securities information processor (the ''NMS Network'').[8] The Fee Schedule would also specify the data products and data feeds to which an NCL Customer could connect via these ports. The Exchange also proposes to amend the Fee Schedule to enable NCL Customers to purchase cross connects and to request services subject to an ''Expedite Fee'' or ''Change Fee.''

[4] For purposes of the Exchange's colocation services, a ''User'' means any market participant that requests to receive colocation services directly from the Exchange. *See* Securities Exchange Act Release No. 87408 (October 28, 2019), 84 FR 58778 at n.6 (November 1, 2019) (SR–NYSECHX–2019–12) (''NYSE Chicago Colocation Notice'').

[5] Each of the Exchange's affiliates (New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., and NYSE National, Inc.) (the ''Affiliate SROs'') has submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2021–14, SR–NYSEAMER–2021–10, SR–NYSEArca–2021–13, and SR–NYSENAT–2021–04.

[6] *See* Securities Exchange Act Release No. 90209 (October 15, 2020), 85 FR 67044 (October 21, 2020) (SR–NYSE–2020–05, SR–NYSEAMER–2020–05, SR–NYSEArca–2020–08, SR–NYSECHX–2020–02, SR–NYSENAT–2020–03, SR–NYSE–2020–11, SR–NYSEAMER–2020–10, SR–NYSEArca–2020–15, SR–NYSECHX–2020–05, SR–NYSENAT–2020–08) (''Wireless Approval Order'').

[7] *Intercontinental Exchange, Inc.* v. *SEC,* No. 20–1470 (DC Cir. 2020).

[8] *See* Securities Exchange Act Release Nos. 88837 (May 7, 2020), 85 FR 28671 (May 13, 2020) (SR–NYSE–2019–46, SR–NYSEAMER–2019–34, SR–NYSEArca–2019–61, SR–NYSENAT–2019–19) (''NMS Network Approval Order'') and 88972 (May 29, 2020), 85 FR 34472 (June 4, 2020) (''NYSE Chicago NMS Network Approval Order'').

1. IDS Network Ports

The Exchange proposes to amend the Fee Schedule to add services that IDS offers enabling NCL Customers to connect to the IDS Network in the Mahwah Data Center.

The Exchange proposes to add the following fees and language to the Fee Schedule:

1. IDS Network Ports

Type of service	Description	Amount of charge
NCL IDS Network Access—10 Gb	10 Gb IDS Network port	$10,000 initial charge plus $15,250 monthly charge.
NCL IDS Network Access—40 Gb	40 Gb IDS Network port	$10,000 initial charge plus $19,750 monthly charge.

* (see note 1)

The Exchange also proposes to add to the Fee Schedule several notes regarding these services that are based on General Notes 4, 5, and 6 of the Exchange's Price List regarding colocation.

Specifically, the Exchange proposes to add the heading ''NCL Notes'' after the tables in the proposed section of the Fee Schedule titled ''D. Non-Colocation (''NCL'') Services.'' Note 1 would establish that when an NCL Customer purchases access to the IDS Network, the NCL Customer would receive (a) the ability to access the trading and execution systems of the Exchange and Affiliate SROs (''Exchange Systems'') as well as of the Global OTC System (''Global OTC''), and (b) connectivity to any of the listed data products (''Included Data Products'') that it selects. References in the proposed Fee Schedule would refer customers to the applicable note.

Proposed Note 1 would be titled ''Note 1: IDS Network'' and would provide:

When an NCL Customer purchases access to the IDS Network, it receives the ability to access the trading and execution systems of the NYSE, NYSE American, NYSE Arca, NYSE Chicago, and NYSE National (together, the Exchange Systems) as well as of Global OTC (the Global OTC System), subject, in each case, to authorization by the NYSE, NYSE American, NYSE Arca, NYSE Chicago, NYSE National, or Global OTC, as applicable. Each Exchange listed above offers access to its Exchange Systems to its members and Global OTC offers access to the Global OTC System to its subscribers, such that an NCL Customer does not have to purchase a service that includes access to the IDS Network to obtain access to Exchange Systems or the Global OTC System.

When an NCL Customer purchases access to the IDS Network, it receives connectivity to any of the Included Data Products that it selects, subject to any necessary technical provisioning requirements, authorization, and licensing by the provider of the Included Data Feed. Fees for the Included Data Products are charged by the provider of such Included Data Products. An NCL Customer can change the Included Data Products to which it receives connectivity at any time, subject to authorization from the provider of such Included Data Product. Because access to the IDS Network is not the exclusive method to connect to the Included Data Products, an NCL Customer does not have to purchase a service that includes access to the IDS Network to connect to such Included Data Products. The Included Data Products are as follows:

NMS feeds
- CTS
- CQS
- OPRA

NYSE
NYSE American
NYSE American Options
NYSE Arca
NYSE Arca Options
NYSE Best Quote and Trades (BQT)
NYSE Bonds
NYSE Chicago
NYSE National

2. NCL Connectivity to Third Party Systems, Data Feeds, Testing and Certification Feeds, and DTCC

The Exchange also proposes to amend the Fee Schedule to provide for the connectivity services that IDS offers for NCL Customers to Third Party Systems, Third Party Data Feeds, third party testing and certification feeds, and DTCC. The Exchange proposes to adopt substantially similar services and fees as set forth in the Exchange's Price List regarding colocation.[9]

Connectivity to Third Party Systems: The Exchange proposes to specify in the Fee Schedule services that IDS offers NCL Customers to access the trading and execution services of Third Party markets and other content service providers (''Third Party Systems'') for a fee. NCL Customers connect to Third Party Systems over the IDS Network.

In order to obtain access to a Third Party System, an NCL Customer enters into an agreement with the relevant third-party content service provider, pursuant to which the third-party content service provider charges the NCL Customer for access to the Third Party System. When such services are requested, IDS establishes a connection between the NCL Customer and the relevant third party content service provider over the IDS Network. IDS charges the NCL Customer for the connectivity to the Third Party System. An NCL Customer only receives, and is only charged by IDS for, connectivity to each Third Party System for which the customer enters into an agreement with the third-party content service provider.

Neither the Exchange nor IDS has an affiliation with the providers of the Third Party Systems. Establishing an NCL Customer's access to a Third Party System does not give either IDS or the Exchange any right to use the Third Party Systems. Connectivity to a Third Party System does not provide access or order entry to the Exchange's execution system, and an NCL Customer's connection to a Third Party System is not through the Exchange's execution system.

IDS charges a monthly recurring fee for connectivity to a Third Party System, which the Exchange proposes to add to its Fee Schedule. Specifically, when an NCL Customer requests access to a Third Party System, IDS identifies the applicable third-party market or other content service provider and the bandwidth connection it requires.

The Exchange proposes to add the following fees and language to the Fee Schedule:

[9] *See* NYSE Chicago Colocation Notice, *supra* note 4 at 58786–89.

CONNECTIVITY TO THIRD PARTY SYSTEMS OVER IDS NETWORK *

Description	Amount of charge
1Mb	$200 per connection monthly charge.
3Mb	$400 per connection monthly charge.
5Mb	$500 per connection monthly charge.
10Mb	$800 per connection monthly charge.
25Mb	$1,200 per connection monthly charge.
50Mb	$1,800 per connection monthly charge.
100Mb	$2,500 per connection monthly charge.
200Mb	$3,000 per connection monthly charge.
1Gb	$3,500 per connection monthly charge.

* (see note 2)

The Exchange proposes to add Note 2 to the section of the Fee Schedule titled ''D. Non-Colocation (''NCL'') Services.'' Proposed Note 2 would be titled ''Note 2: Third Party Systems'' and would provide:

When an NCL Customer purchases a connection that includes access to Third Party Systems, it receives access to Third Party Systems it selects subject to any technical provisioning requirements, authorization, and licensing from such Third Party System. Fees for the Third Party Systems are charged by the provider of such Third Party System. The Exchange is not the exclusive method to connect to Third Party Systems. The Third Party Systems are as follows:

Third Party Systems

Americas Trading Group (ATG)
BM&F Bovespa
Boston Options Exchange (BOX)
Canadian Securities Exchange (CSE)
Cboe BYX Exchange (CboeBYX), Cboe BZX Exchange (CboeBZX), Cboe EDGA Exchange (CboeEDGA), and Cboe EDGX Exchange (CboeEDGX)
Cboe Exchange (Cboe) and Cboe C2 Exchange (C2)
Chicago Mercantile Exchange (CME Group)
Credit Suisse
Euronext Optiq Cash and Derivatives Unicast (EUA)
Euronext Optiq Cash and Derivatives Unicast (Production)
Investors Exchange (IEX)
ITG TriAct Matchnow
Long Term Stock Exchange (LTSE)
Members Exchange (MEMX)
MIAX Options, MIAX PEARL Options, MIAX PEARL Equities, and MIAX Emerald
Morgan Stanley
Nasdaq
NASDAQ Canada (CXC, CXD, CX2)
NASDAQ ISE
Neo Aequitas
NYFIX Marketplace
Omega
OneChicago
OTC Markets Group
TD Ameritrade
TMX Group

Connectivity to Third Party Data Feeds: The Exchange proposes to specify in the Fee Schedule connectivity services that IDS offers NCL Customers to connect to data feeds from third-party markets and other content service providers (''Third Party Data Feeds'') for a fee. IDS receives Third Party Data Feeds from multiple national securities exchanges and other content service providers at the Mahwah Data Center. IDS provides connectivity to that data to NCL Customers for a fee. NCL Customers connect to Third Party Data Feeds over the IDS Network.

In order to connect to a Third Party Data Feed, an NCL Customer enters into a contract with the relevant third-party market or other content service provider, pursuant to which the content service provider charges the NCL Customer for the Third Party Data Feed. IDS receives the Third Party Data Feed over its fiber optic network and, after the data provider and NCL Customer enter into an agreement and IDS receives authorization from the data provider, IDS retransmits the data to the NCL Customer over the NCL Customer's IDS Network port. IDS charges the NCL Customer for the connectivity to the Third Party Data Feed. An NCL Customer only receives, and is only charged for, connectivity to the Third Party Data Feeds for which it entered into contracts.

With the exception of the ICE Data Services, ICE, and Global OTC feeds, neither the Exchange nor IDS has any affiliation with the sellers of the Third Party Data Feeds. The Exchange and IDS have no right to use the Third Party Data Feeds other than as a redistributor of the data. The Third Party Data Feeds do not provide access or order entry to the Exchange's execution system. With the exception of the ICE feed, the Third Party Data Feeds do not provide access or order entry to the execution systems of the third party generating the feed. IDS receives Third Party Data Feeds via arms-length agreements and has no inherent advantage over any other distributor of such data.

IDS charges a monthly recurring fee for connectivity to each Third Party Data Feed. The monthly recurring fee is per Third Party Data Feed, with the exception that the monthly recurring fee for the ICE Data Services Consolidated Feeds (including the ICE Data Services Consolidated Feed Shared Farm feeds), Vela—SuperFeeds, and MSCI feeds vary by the bandwidth of the connection. Depending on its needs and bandwidth, an NCL Customer may opt to receive all or some of the Third Party Data Feeds.

Third Party Data Feed providers may charge redistribution fees. The Exchange proposes that, when IDS is charged a redistribution fee by the Third Party Data Feed provider, IDS would pass through the charge to the NCL Customer, without change to the fee. The fee would be labeled as a pass-through of a redistribution fee on the NCL Customer's invoice.

The Exchange proposes that it would not charge NCL Customers that are third-party markets or content providers for connectivity to their own feeds, as it understands that such parties generally receive their own feeds for purposes of diagnostics and testing.

The Exchange proposes to add the following fees and language to the Fee Schedule:

CONNECTIVITY TO THIRD PARTY DATA FEEDS OVER THE IDS NETWORK *

Description	Monthly charge
BM&F Bovespa	$3,000
Boston Options Exchange (BOX)	1,000
Canadian Securities Exchange (CSE)	1,000

CONNECTIVITY TO THIRD PARTY DATA FEEDS OVER THE IDS NETWORK *—Continued

Description	Monthly charge
Cboe BZX Exchange (CboeBZX) and Cboe BYX Exchange (CboeBYX)	2,000
Cboe EDGX Exchange (CboeEDGX) and Cboe EDGA Exchange (CboeEDGA)	2,000
Cboe Exchange (Cboe) and Cboe C2 Exchange (C2)	2,000
CME Group	3,000
Euronext Optiq Compressed Cash	900
Euronext Optiq Compressed Derivatives	600
Euronext Optiq Shaped Cash	1,200
Euronext Optiq Shaped Derivatives	900
Financial Industry Regulatory Authority (FINRA)	500
Global OTC	100
ICE Data Services Consolidated Feed ≤100 Mb	200
ICE Data Services Consolidated Feed >100 Mb to ≤1 Gb	500
ICE Data Services Consolidated Feed >1 Gb	1,000
ICE Data Services Consolidated Feed Shared Farm ≤100Mb	200
ICE Data Services Consolidated Feed Shared Farm >100 Mb to ≤1 Gb	500
ICE Data Services Consolidated Feed Shared Farm >1 Gb	1,000
ICE Data Services—ICE TMC	200
ICE Data Services PRD	200
ICE Data Services PRD CEP	400
Intercontinental Exchange (ICE)	1,500
Investors Exchange (IEX)	1,000
ITG TriAct Matchnow	1,000
Members Exchange (MEMX)	3,000
MIAX Emerald	3,500
MIAX Options/MIAX PEARL Options	2,000
MIAX PEARL Equities	2,500
Montréal Exchange (MX)	1,000
MSCI 5 Mb	500
MSCI 25 Mb	1,200
NASDAQ Stock Market	2,000
NASDAQ OMX Global Index Data Service	100
NASDAQ UQDF & UTDF	500
NASDAQ Canada (CXC, CXD, CX2)	1,500
NASDAQ ISE	1,000
Neo Aequitas	1,200
Omega	1,000
OneChicago	1,000
OTC Markets Group	1,000
Vela—SuperFeed <500 Mb	250
Vela—SuperFeed >500 Mb to <1.25 Gb	800
Vela—SuperFeed >1.25 Gb	1,000
TMX Group	2,500

* (see note 3)

The Exchange proposes to add Note 3 to the section of the Fee Schedule titled ''D. Non-Colocation (''NCL'') Services.'' Proposed Note 3 would be titled ''Note 3: Third Party Systems'' and would provide:

Pricing for data feeds from third party markets and other service providers (Third Party Data Feeds) is for connectivity only. Connectivity to Third Party Data Feeds is subject to any technical provisioning requirements, authorization, and licensing from the provider of the data feed. Connectivity to Third Party Data Feeds is over the IDS Network. Fees for Third Party Data Feeds are charged by the provider of such data feeds. Third Party Data Feed providers may charge redistribution fees. When IDS is charged a redistribution fee, IDS passes the charge through to the customer, without change to the fee. The fee is labeled as a pass-through of a redistribution fee on the customer's invoice. IDS does not charge third party markets or content providers for connectivity to their own feeds. IDS is not the exclusive method to connect to Third Party Data Feeds.

Connectivity to Third Party Data Testing and Certification Feeds: The Exchange proposes to specify in the Fee Schedule that NCL Customers may obtain connectivity to third-party testing and certification feeds. Certification feeds are used to certify that an NCL Customer conforms to any of the relevant content service provider's requirements for accessing Third Party Systems or receiving Third Party Data Feeds, while testing feeds would provide NCL Customers an environment in which to conduct tests with non-live data. Such feeds, which are solely used for certification and testing and do not carry live production data, are available over the IDS Network.

Connectivity to third party testing and certification feeds would be subject to any technical provisioning requirements, authorization, and licensing from the provider of the data feed. Fees for such feeds are charged by the provider of the feed. The Exchange is not the exclusive method to connect to third-party testing and certification feeds.

The Exchange proposes to add the following fees and language to the Fee Schedule:

Connectivity to Third Party Testing and Certification Feeds ..... $100 monthly recurring charge per feed.

Connectivity to DTCC: The Exchange proposes to specify in the Fee Schedule services that IDS provides to connect NCL Customers to Depository Trust & Clearing Corporation (''DTCC'') for clearing, fund transfer, insurance, and settlement services.

In order to connect to DTCC, an NCL Customer enters into a contract with DTCC, pursuant to which DTCC charges the NCL Customer for the services provided. IDS receives the DTCC feed over its fiber optic network and, after DTCC and the NCL Customer entered into the services contract and IDS received authorization from DTCC, IDS provides connectivity to DTCC to the NCL Customer over the NCL Customer's IDS Network port. IDS charges the NCL Customer for the connectivity to DTCC.

Connectivity to DTCC does not provide access or order entry to the Exchange's execution system, and an NCL Customer's connection to DTCC is not through the Exchange's execution system.

Connectivity to DTCC is subject to any technical provisioning requirements, authorization, and licensing from DTCC. Fees for such feeds are charged by DTCC. IDS is not the exclusive provider to connect to DTCC feeds.

The Exchange proposes to add the following fees and language to the Fee Schedule:

CONNECTIVITY TO DTCC

Description	Amount of charge
5 Mb connection to DTCC	$500 monthly recurring charge.
50 Mb connection to DTCC	$2,500 monthly recurring charge.

3. NCL NMS Network Ports

The Exchange proposes to amend the Fee Schedule to add services that IDS currently offers enabling NCL Customers to connect to the NMS Network in the Mahwah Data Center.

The Exchange proposes to add the following fees and language to the Fee Schedule:

NCL NMS NETWORK PORTS

Type of service	Description	Amount of charge
NCL NMS Network Access—10 Gb	10 Gb NCL NMS Network port	$10,000 initial charge plus $11,000 monthly charge.
NCL NMS Network Access—40 Gb	40 Gb NCL NMS Network port	$10,000 initial charge plus $18,000 monthly charge.

* (see Note 4)

The Exchange also proposes to add Note 4 to the section of the Fee Schedule titled ''D. Non-Colocation (''NCL'') Services,'' to establish that, when an NCL Customer purchases an NMS Network port, it has the option of receiving the NMS feeds over the NMS Network.

Proposed Note 4 would be titled ''Note 4: NMS Network'' and would provide: When an NCL Customer purchases access to the NMS Network, upon its request, it will receive connectivity to any of the NMS feeds that it selects, subject to any necessary technical provisioning requirements, authorization, and licensing from the provider of such NMS feed. Fees for the NMS feeds are charged by the provider of such NMS feed. The NMS feeds are as follows:

NMS feeds
- CTS
- CQS
- OPRA

4. NCL Cross Connect

The Exchange proposes to amend the Fee Schedule to specify fiber cross connect services that IDS offers NCL Customers for an initial and monthly charge.[10] A cross connect is used to connect a circuit to a port. NCL Customers use such cross connects to connect from the IDS Network or NMS Network to a circuit connecting outside the Mahwah Data Center. The Exchange proposes that the fees for this service would be identical to the fees for the corresponding service in colocation.

The Exchange proposes to add the following fees and language to the Fee Schedule:

Type of service	Description	Amount of charge
NCL Cross Connect	Furnish and install one cross-connect	$500 initial charge plus $600 monthly charge.

5. NCL Expedite Fee

The Exchange proposes to amend the Fee Schedule to specify optional services that IDS offers NCL Customers to expedite the completion of services purchased or ordered by the NCL Customer, for which IDS charges an ''Expedite Fee.'' Similar to the ''Expedite Fee'' applicable to Users in colocation,[11] if an NCL Customer wishes to obtain NCL Services earlier than the expected completion date, the NCL Customer may pay the Expedite Fee. The time saved would vary depending on the type(s) of service(s) ordered, but the Expedite Fee would always be a flat $4,000, allowing the NCL Customer to determine if the expected time savings warrants payment of the fee.

The Exchange proposes to add the following fees and language to the Fee Schedule:

[10] Because NCL Customers do not co-locate any equipment in the Mahwah Data Center, they generally require fewer fiber cross connects than colocation Users. Accordingly, the Exchange does not propose amending the Fee Schedule to include bundles of 6, 12, 18, or 24 cross connects as are available to colocation Users.

[11] *See* NYSE Chicago Colocation Notice, *supra* note 4, at 58783.

Type of service	Description	Amount of charge
NCL Expedite Fee	Expedited installation/completion of a customer's NCL service.	$4,000 per request.

6. NCL Change Fee

The Exchange proposes to amend the Fee Schedule to specify the ''Change Fee'' that IDS charges an NCL Customer if the NCL Customer requests a change to one or more existing NCL Services that IDS has already established or completed for the NCL Customer.

In this regard, the Exchange notes that several of the proposed services that would be added to the Fee Schedule include an initial fee in addition to an ongoing monthly fee. These initial fees are related to IDS's initial cost of establishing or installing a particular service for the NCL Customer. Similar to the ''Change Fee'' applicable to Users in colocation,[12] IDS charges a fee of $950 per order if the NCL Customer requests a change to one or more existing NCL Services that IDS has already established or completed for the NCL Customer. For example, the initial installation of an IDS Network connection would include establishing and configuring market data services requested by the NCL Customer, which would be covered by the initial install fee. However, if the NCL Customer requests that IDS establish and configure additional market data services for its IDS Network connection, the NCL Customer would be charged a one-time Change Fee of $950 for that request. If an NCL Customer orders two or more services at one time (for example, through submitting an order form requesting multiple services), the NCL Customer would be charged a one-time Change Fee of $950, which would cover the multiple services.

The Exchange proposes to add the following fees and language to the Fee Schedule:

Type of service	Description	Amount of charge
NCL Change Fee	Change to an NCL service that has already been installed/completed for a customer.	$950 per request.

Fee Schedule Name

In addition, the Exchange proposes to change the name of the ''Wireless Connectivity Fee Schedule'' to ''Connectivity Fee Schedule.'' [sic] Because the Fee Schedule will no longer be limited to wireless services, the Exchange proposes to change the name of the Fee Schedule from ''Wireless Connectivity Fee Schedule'' [sic] to ''Mahwah Wireless, Circuits, and Non-Colocation Connectivity Fee Schedule.''

Application and Impact of the Proposed Changes

There are currently few NCL Customers. Accordingly, the Exchange expects that the impact of the proposed change would be minimal.

The proposed change is not targeted at, or expected to be limited in applicability to, a specific segment of market participant. The Mahwah Circuits are available for purchase for any potential customer requiring a circuit between the Mahwah Data Center and a remote location. The NCL Services are available for purchase by any customer. The proposed changes do not apply differently to distinct types or sizes of customers. Rather, they apply to all customers equally.

Use of the services proposed in this filing are completely voluntary and available to all market participants on a non-discriminatory basis.

Competitive Environment

IDS operates in a highly competitive market in which exchanges, third party telecommunications providers, Hosting Users,[13] and other third-party vendors offer connectivity services as a means to facilitate the trading and other market activities of market participants. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [14]

The proposed changes are not otherwise intended to address any other issues relating to services related to the Mahwah Data Center and/or related fees, and the Exchange is not aware of any problems that market participants would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change 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, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[17] because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Proposed Change Is Reasonable

The Exchange believes that the proposed rule change is reasonable and

[12] *See id.*

[13] ''Hosting'' is a service offered by a User to another entity In the User's space within the Mahwah Data Center. The Exchange allows Users to act as Hosting Users for a monthly fee. *See* NYSE Chicago Colocation Notice, *supra* note 4, at 58782–83.

[14] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78f(b)(4).

would perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest, for the following reasons.

General: Only the market participants that voluntarily select to receive the IDS services described herein are charged for them, and those services are available to all market participants. Furthermore, the IDS services described in this filing are available to all market participants on an equal basis (*i.e.,* the same products and services are available to all market participants). All market participants that voluntarily select a specific proposed IDS service would be charged the same amount for that service as all other market participants purchasing that service.

In addition, the Exchange believes that the proposed rule change is reasonable because the IDS services described herein are offered as a convenience to market participants, but offering them requires the provision, maintenance, and operation of the Mahwah Data Center, including the installation, monitoring, support, and maintenance of the services.

Mahwah Circuits: The Exchange believes the fees proposed herein for IDS's Mahwah Circuits are reasonable. The market for circuits into and out of the Mahwah Data Center is competitive, and the proposed IDS offerings are merely one of several options from which market participants can choose. Each of the third-party telecommunications providers that has a presence in the Mahwah Data Center's ''Meet Me Rooms'' offers similar circuits to market participants, in competition with the IDS offerings proposed here. Each market participant considering whether to purchase a circuit directly can weigh that option against similar circuits offered by those third-party carriers, and can choose which circuit to purchase based on which combination of latency, bandwidth, price, and other factors best meets its business needs. Indeed, the Exchange understands that most of the third-party telecommunications providers that provide circuits do so at fees lower than those proposed herein, and that most NCL Customers and colocation Users use such third party telecommunication circuits into and out of the Mahwah Data Center.

IDS Network Ports: The Exchange believes that the IDS Network ports proposed herein are reasonable. The market for connecting with the Exchange's trading and execution systems is competitive, and the proposed IDS Network ports that IDS provides are merely one of several options that market participants may choose. As alternatives to the IDS Network ports, a market participant would be able to access or connect to Exchange Systems, Third Party Systems, Included Data Products, Third Party Data Feeds, third party testing and certification feeds, and DTCC through (a) a connection to an IDS access center outside of the Mahwah Data Center, (b) a third-party access center, (c) a third-party vendor, (d) a Hosting User, or (e) colocation.

Market participants consider various factors in determining which connectivity options to choose, including latency; bandwidth size; amount of network uptime; the equipment that the network uses; the cost of the connection; and the applicable contractual provisions. IDS's offering of connectivity services via IDS Network ports gives market participants another service to evaluate and consider, thereby broadening their options for connectivity to the Exchange Systems and allowing them to tailor their connectivity options to their specific needs.

The Exchange further believes that the proposed fees for IDS Network ports for NCL Customers are reasonable because such prices are constrained by competition with the numerous other providers that offer connectivity to the Exchange Systems. If IDS were to attempt to offer such ports at a supra-competitive price, potential customers would likely respond by seeking out less expensive substitutes from other providers.

NCL NMS Network Ports: The Exchange believes that the proposed fees for NMS Network ports for NCL Customers are reasonable to recoup the costs of building the NMS Network. Until 2019, SIAC was required to provide connectivity to the NMS feeds only via the IP network. Although the operating committees for the CTA/CQ Plans authorized SIAC to offer connectivity to the NMS feeds in the Mahwah Data Center via an alternate, dedicated, low-latency NMS Network, the operating committee did not assume the costs of creating such a network; instead, the Exchange and the Affiliate SROs funded the capital and operational expenses to build and operate the NMS Network. The implementation costs of approximately $3.8 million are applicable only to the NMS Network, which is used for the sole purpose of providing access to the NMS feeds. None of the implementation costs are applicable to any other Exchange services. As of the date of this filing, only one customer has contracted with IDS for an NCL NMS Network port, and the Exchange expects that demand for NMS Network ports outside of colocation will be very low. The service is nevertheless available, and so the Exchange proposes to add it to the Fee Schedule.

NCL Notes: With respect to proposed NCL Notes 1, 2, 3, and 4, the Exchange believes they are reasonable because they provide detailed descriptions of the access and connectivity that NCL Customers receive when they purchase IDS Network or NMS Network ports. Such detailed descriptions remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because they provide market participants with transparency and clarity as to what connectivity is included in the purchase of IDS Network or NMS Network ports by NCL Customers.[18] The notes would also make clear that all NCL Customers that voluntarily select to access the IDS Network or NMS Network receive the same access and connectivity, and are not subject to a charge above and beyond the fee paid for the relevant IDS Network or NMS Network ports. The notes further make clear that NCL Customers are not required to use any of their bandwidth to access Exchange systems or connect to an Included Data Product unless they wish to do so; rather, an NCL Customer only receives the access and connectivity that it selects, and can change what access or connectivity it receives at any time, subject to authorization from the data provider or the relevant Exchange or Affiliate SRO.[19] Notes 1, 2, 3, and 4 are all based on similar provisions in the Exchange's Price List for colocation.

Other NCL Services: The Exchange believes it is reasonable to specify in the Fee Schedule NCL Services that IDS offers including NCL cross connects, the NCL Expedite Fee, the NCL Change Fee, and NCL connectivity to Third Party Systems, Third Party Data Feeds, third-party testing and certification feeds, and DTCC.

The Exchange believes that the specific fees it has proposed for NCL

[18] *See* Securities Exchange Act Release Nos. 79730 (January 4, 2017), 82 FR 3045 (January 10, 2017) (SR–NYSE–2016–92); 79728 (January 4, 2017), 82 FR 3035 (January 10, 2017) (SR–NYSEMKT–2016–126); 79729 (January 4, 2017), 82 FR 3061 (January 10, 2017) (SR–NYSEArca–2016–172).

[19] The General Note on page 1 of the Fee Schedule would also apply to all of the services proposed herein. A market participant that incurs fees for NCL connectivity or other NCL Services from the Exchange or one of the Affiliate SROs would not be subject to fees for the same service charged by the other Affiliate SROs.

cross connects, the NCL Expedite Fee, and the NCL Change Fee are reasonable. As noted above, IDS faces competition in the market for connectivity from Hosting Users, IDS access centers outside of the Mahwah Data Center, third-party access centers, and third-party vendors. Market participants can consider IDS's proposed fees for the specific services listed above in the context of this competition, and choose the connectivity provider that offers the services the market participant needs at the optimal cost. As such, the proposed fees for these IDS services are constrained by competition.

The Exchange believes that charging distinct fees for different NCL Services is reasonable because not all market participants need or wish to utilize the same NCL Services. The proposed choice of services allows market participants to select which NCL Services to use, based on their business needs, and market participants are only charged for the services that they select. By charging only those market participants that utilize an NCL Service the related fee, those market participants that directly benefit from a service support its cost.

In addition, the Exchange believes that the proposed fees are reasonable because they allow the costs associated with offering different NCL Services to be defrayed or covered while providing market participants the benefit of such services. The Exchange believes that the proposed charges are reasonable because IDS offers NCL Services as conveniences to market participants, but in order to do so must provide, maintain, and operate the Mahwah Data Center facility hardware and technology infrastructure. IDS needs to provide network infrastructure that keeps pace with the number of services available to NCL Customers, including any increasing demand for bandwidth, and handle the installation, administration, monitoring, support, and maintenance of such services, including by responding to any production issues. In addition, in order to provide connectivity to Third Party Data Feeds, Third Party Systems, third party testing and certification feeds, and DTCC, IDS must establish and maintain multiple connections to each Third Party Data Feed, Third Party System, and DTCC, allowing IDS to provide resilient and redundant connections, adapt to any changes made by the relevant third party, and cover any applicable fees (other than redistribution fees) charged by the relevant third party, such as port fees.

The Exchange believes it is reasonable for redistribution fees charged by providers of Third Party Data Feeds to be passed through to NCL Customers, without change to the fee. If not passed through, the cost of the redistribution fees would be factored into the proposed fees for connectivity to Third Party Data Feeds. The Exchange believes that passing through the fees makes them more transparent to the NCL Customer, allowing the NCL Customer to better assess the cost of the connectivity to a Third Party Data Feed by seeing the individual components of the cost, *i.e.,* IDS's fee and redistribution fee.

The Exchange believes that it is reasonable to not charge third-party markets or content providers for connectivity to their own Third Party Data Feeds, as the Exchange understands that such parties generally receive their own feeds for purposes of diagnostics and testing. The Exchange believes that facilitating such diagnostics and testing removes impediments to, and perfects the mechanisms of, a free and open market and a national market system and, in general, protects investors and the public interest.

Finally, the Exchange believes it is reasonable to make available third party testing and certification feeds to enable customers to test and certify their connections to third party data feeds.

The Proposed Change Is Equitable

The Exchange believes that its proposal equitably allocates its fees among market participants.

The Exchange believes that the proposed change is equitable because it would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all NCL Customers equally.

In addition, the Exchange believes that the proposal is equitable because only the market participants that voluntarily select to receive the services described herein would be charged for them. The services described in this filing are available to all market participants on an equal basis (*i.e.,* the same products and services are available to all market participants), and all market participants that voluntarily select a specific proposed service are charged the same amount for that service as all other market participants purchasing that service.

IDS faces competition from numerous other providers that offer market participants choices for connectivity to the Mahwah Data Center, Exchange Systems, Third Party Systems, Included Data Products, Third Party Data Feeds, third party testing and certification feeds, and DTCC. Without this proposed rule change, market participants seeking such connectivity would have fewer options. With this proposal, market participants would have more choices with respect to the form and price of the services they use, allowing market participants to select the services and connectivity options that better suit their needs, thereby helping them tailor their connectivity operations to the requirements of their businesses.

The Exchange believes that the proposed NCL Notes 1 and 4 are equitable because they specify that NCL Customers that voluntarily select to access the IDS Network or NMS Network would not be subject to charges above and beyond the fee paid for the relevant IDS Network or NMS Network port. Further, Notes 1, 2, 3, and 4 specify that NCL Customers will not be charged for any access or connectivity that they had not selected.

The Proposed Change Is Not Unfairly Discriminatory

The Exchange believes its proposal is not unfairly discriminatory. The proposed change does not apply differently to distinct types or sizes of market participants. Rather, it applies to all market participants equally. The purchase of any proposed service is completely voluntarily and the Fee Schedule will be applied uniformly to all market participants.

IDS faces competition from numerous other providers that offer market participants choices for connectivity to the Mahwah Data Center, Exchange Systems, Third Party Systems, Included Data Products, Third Party Data Feeds, third party testing and certification feeds, and DTCC. Without this proposed rule change, market participants seeking such connectivity would have fewer options. With this proposal, market participants would have more choices with respect to the form and price of the services they use, allowing market participants to select the services and connectivity options that better suit their needs, thereby helping them tailor their connectivity operations to the requirements of their businesses.

The Exchange believes that the proposed NCL Notes 1 and 4 are not be unfairly discriminatory because they specify that NCL Customers that voluntarily select to access the IDS Network or NMS Network are not be subject to charges above and beyond the fee paid for the relevant IDS Network or NMS Network port. Further, Notes 1, 2, 3, and 4 specify that NCL Customers will not be charged for any access or

connectivity that they had not selected.[20]

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed change does not affect competition among national securities exchanges or among members of the Exchange, but rather between IDS and its commercial competitors.

As noted above, the Exchange is making the current proposal solely as a result of the Commission's recent interpretation of the definitions of ''exchange'' and ''facility'' in the Wireless Approval Order, which the Exchange is presently challenging on appeal to the Court of Appeals for the District of Columbia Circuit.[21] The Exchange has nevertheless proposed this rule change in order to preserve the ability of IDS to offer the services at issue herein. If IDS were compelled to stop offering such services, consumers would have fewer service providers to choose from for their connectivity needs, which would be a detriment to competition overall.

Notwithstanding the foregoing, the Exchange notes that there are numerous other third parties that provide circuits and connectivity at the Mahwah Data Center, and that IDS competes with those third parties for the provision of such services to customers. None of these third parties have been compelled to file their services or fees with the Commission, and requiring IDS to do so puts IDS at a competitive disadvantage vis-à-vis its competitors. Requiring the Exchange to file IDS services and fees herein is therefore a burden on competition.

The Exchange believes competition would be best served by allowing IDS to freely compete with the other providers of connectivity services, without the additional burden on IDS alone to file any proposed changes to services and fees with the Commission.

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.

[20] In addition, the General Note on page 1 of the Fee Schedule would apply to all of the services proposed herein. *See supra* note 19.

[21] *Intercontinental Exchange, Inc.* v. *SEC,* No. 20–1470 (D.C. Cir. 2020).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register**, or such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSECHX–2021–03 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–2021–03. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSECHX–2021–03, and should be submitted on or before March 25, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–04426 Filed 3–3–21; 8:45 am]

BILLING CODE 8011–01–P

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91220; File No. SR–Phlx–2021–03]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Modify Phlx Options 8, Section 26, ''Trading Halts, Business Continuity and Disaster Recovery''

February 26, 2021.

On January 7, 2021, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify Phlx Options 8, Section 26 (Trading Halts, Business Continuity and Disaster Recovery) to make available an audio and video communication program to serve as a ''virtual trading crowd'' in the event the physical trading floor becomes unavailable, the back-up trading floor becomes inoperable or the Exchange otherwise determines not to operate its back-up trading floor. The proposed rule change was published in the **Federal Register** on January 14, 2021.[3]

Section 19(b)(2) of the Act[4] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 90880 (January 8, 2021), 86 FR 3217.

[4] 15 U.S.C. 78s(b)(2).

to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is February 28, 2021. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposal so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates April 14, 2021, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–Phlx–2021–03).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–04427 Filed 3–3–21; 8:45 am]

BILLING CODE 8011–01–P

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34217]

[Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

February 26, 2021.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of February 2021. A copy of each application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at *Secretarys-Office@sec.gov* and serving the relevant applicant with a copy of the request by email, if an email address is listed for the relevant applicant below, or personally or by mail, if a physical address is listed for the relevant applicant below. Hearing requests should be received by the SEC by 5:30 p.m. on March 23, 2021, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to Rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary at *Secretarys-Office@sec.gov*.

ADDRESSES: The Commission: *Secretarys-Office@sec.gov*.

FOR FURTHER INFORMATION CONTACT: Shawn Davis, Assistant Director, at (202) 551–6413 or Chief Counsel's Office at (202) 551–6821; SEC, Division of Investment Management, Chief Counsel's Office, 100 F Street NE, Washington, DC 20549–8010.

2017 Mandatory Exchangeable Trust [File No. 811–23316]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On December 1, 2020, applicant made liquidating distributions to its shareholders based on net asset value. Expenses of $1,500 incurred in connection with the liquidation were paid by Inversora Carso, S.A. de C.V. (Mexico), Control Empresarial de Capitales, S.A. de C.V. (Mexico), and Banco Inbursa, S.A., Institución de Banca Múltiple, Grupo Financiero Inbursa.

Filing Date: The application was filed on December 10, 2020.

Applicant's Address: wendell.faria@dentons.com, dpuglisi@puglisiassoc.com.

Morgan Stanley New York Municipal Money Market Trust [File No. 811–05987]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 16, 2020, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of $85,000 incurred in connection with the liquidation were paid by the applicant.

Filing Date: The application was filed on January 5, 2021.

Applicant's Address: Jill.Whitelaw@morganstanley.com.

Mutual of America Institutional Funds Inc. [811–08922]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Mutual of America Investment Corporation, and on December 16, 2020 made a final distribution to its shareholders based on net asset value. Expenses of $457,705.50 incurred in connection with the reorganization were paid by the applicant's investment advisor.

Filing Date: The application was filed on December 21, 2020, and amended on February 9, 2021.

Applicant's Address: james.roth@mutualofamerica.com.

Nicholas High Income Fund, Inc. [File No. 811–00216]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On July 24, 2020, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of $23,257.82 incurred in connection with the liquidation were paid by the applicant's investment advisor. Applicant also has an account receivable in the amount of $4,500, which is retained for the payment due on a voluntary consent solicitation for a bond which was tendered prior to liquidation.

Filing Date: The application was filed on January 5, 2021.

Applicant's Address: jtthompson@michaelbest.com.

Tigershares Trust [811–23371]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On November 25, 2020, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of $10,000 incurred in connection with the liquidation were paid by the applicant's investment adviser, and/or their affiliates.

Filing Date: The application was filed on December 11, 2020.

Applicant's Address: Stacy.Fuller@klgates.com.

XAI Octagon Credit Trust [File No. 811–23364]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Date: The application was filed on January 5, 2021.

Applicant's Address: kevin.hardy@skadden.com.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–04411 Filed 3–3–21; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91216; File No. SR–NYSEArca–2021–13]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To Amend the Schedule of Wireless Connectivity Fees and Charges To Add Circuits for Connectivity Into and Out of the Data Center in Mahwah, New Jersey

February 26, 2021.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on February 12, 2021, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the schedule of Wireless Connectivity Fees and Charges (the ''Fee Schedule'') to (1) add circuits for connectivity into and out of the data center in Mahwah, New Jersey (the ''Mahwah Data Center''); (2) add services available to customers of the Mahwah Data Center that are not colocation Users; and (3) change the name of the Fee Schedule to ''Mahwah Wireless, Circuits, and Non-Colocation Connectivity Fee Schedule.'' The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to add services (''NCL Services'') and related fees available to customers of the Mahwah Data Center that are not colocation Users (''NCL Customers''),[4] as well as circuits into and out of the Mahwah Data Center that are available to both colocation Users and NCL Customers. In addition, in a conforming change, because the Fee Schedule would no longer be limited to wireless services, the Exchange proposes to change the name of the Fee Schedule from ''Wireless Connectivity Fee Schedule'' to ''Mahwah Wireless, Circuits, and Non-Colocation Connectivity Fee Schedule.'' [5]

The Exchange makes the current proposal solely as a result of its determination that the Commission's recent interpretations of the Act's definitions of the terms ''exchange'' and ''facility,'' as expressed in the Wireless Approval Order,[6] apply to connectivity services described herein that are offered by entities other than the Exchange. The Exchange disagrees with the Commission's interpretations, denies the services covered herein (and in the Wireless Approval Order) are offerings of an ''exchange'' or a ''facility'' thereof, and has sought review of the Commission's interpretations, as expressed in the Wireless Approval Order, in the Court of Appeals for the District of Columbia Circuit.[7] Pending resolution of such appeal, however, the Exchange is making this proposal in recognition that the Commission's current interpretation brings certain offerings of the Exchange's affiliates into the scope of the terms ''exchange'' or ''facility.''

The Exchange expects the proposed change to be operative 60 days after the present filing becomes effective.

Mahwah Circuits

Customers can connect into and out of the Mahwah Data Center using either wireless connections or wired fiber optic circuits. Both IDS and numerous third-party telecommunications service providers offer wired circuits into and out of the Mahwah Data Center. The circuits that IDS offers are described below. Such IDS circuits are available to all colocation Users and NCL Customers, but such customers are not obligated to use them; rather, both colocation Users and NCL Customers may instead choose to contract directly with third-party telecom carriers for circuits into and out of the Mahwah Data Center.

The Exchange proposes to add to the Fee Schedule the circuit options offered by IDS to both colocation Users and NCL Customers to connect into and out of the Mahwah Data Center. Specifically, the Exchange proposes to amend the Fee Schedule to add two different types of circuits, each available in three different sizes, under the new heading ''C. Mahwah Circuits.''

First, the Exchange proposes to amend the Fee Schedule to add ''Optic Access'' circuits, which are circuits that IDS operates and that customers can use to connect between the Mahwah Data Center and IDS access centers at the following six third-party owned data centers: (1) 111 Eighth Avenue, New York, NY; (2) 32 Avenue of the Americas, New York, NY; (3) 165 Halsey, Newark, NJ; (4) Secaucus, NJ (the ''Secaucus Access Center''); (5) Carteret, NJ (the ''Carteret Access Center''); and (6) Weehawken, NJ. Optic Access circuits are available in 1 Gb, 10 Gb, and 40 Gb sizes.

Second, the Exchange proposes to amend the Fee Schedule to add lower-latency Optic Low Latency circuits that IDS operates and that customers can use to connect between the Mahwah Data Center and IDS's Secaucus Access Center or Carteret Access Center. Optic

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] For purposes of the Exchange's colocation services, a ''User'' means any market participant that requests to receive colocation services directly from the Exchange. *See* Securities Exchange Act Release No. 76010 (September 29, 2015), 80 FR 60197 (October 5, 2015) (SR–NYSEArca–2015–82).

[5] Each of the Exchange's affiliates (New York Stock Exchange LLC, NYSE American LLC, NYSE Chicago, Inc., and NYSE National, Inc.) (the ''Affiliate SROs'') has submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2021–14, SR–NYSEAMER–2021–10, SR–NYSECHX–2021–03, and SR–NYSENAT–2021–04.

[6] *See* Securities Exchange Act Release No. 90209 (October 15, 2020), 85 FR 67044 (October 21, 2020) (SR–NYSE–2020–05, SR–NYSEAMER–2020–05, SR–NYSEArca–2020–08, SR–NYSECHX–2020–02, SR–NYSENAT–2020–03, SR–NYSE–2020–11, SR–NYSEAMER–2020–10, SR–NYSEArca–2020–15, SR–NYSECHX–2020–05, SR–NYSENAT–2020–08) (''Wireless Approval Order'').

[7] *Intercontinental Exchange, Inc.* v. *SEC,* No. 20–1470 (D.C. Cir. 2020).

Low Latency circuits are available in 1 Gb, 10 Gb, and 40 Gb sizes.

The Exchange proposes to add the following chart to the Fee Schedule to include these circuits, as follows:

Type of service	Amount of charge
Optic Access Circuit—1 Gb	$1,500 initial charge plus $1,500 monthly charge.
Optic Access Circuit—10 Gb	$5,000 initial charge plus $2,500 monthly charge.
Optic Access Circuit—40 Gb	$5,000 initial charge plus $6,000 monthly charge.
Optic Low Latency Circuit—1 Gb	$1,500 initial charge plus $2,750 monthly charge.
Optic Low Latency Circuit—10 Gb	$5,000 initial charge plus $3,950 monthly charge.
Optic Low Latency Circuit—40 Gb	$5,000 initial charge plus $8,250 monthly charge.

Non-Colocation Services

The Exchange proposes to amend the Fee Schedule to add several services available to NCL Customers as well as several notes, under the new heading ''D. Non-Colocation (''NCL'') Services.'' These are the services that IDS offers within the Mahwah Data Center that are not colocation services. The Exchange proposes to amend the Fee Schedule to add services that include ports to the IDS Network—a wide area network available in the Mahwah Data Center and other access centers—and ports to a dedicated network to access the NMS feeds for which the Securities Industry Automation Corporation is engaged as the securities information processor (the ''NMS Network'').[8] The Fee Schedule would also specify the data products and data feeds to which an NCL Customer could connect via these ports. The Exchange also proposes to amend the Fee Schedule to enable NCL Customers to purchase cross connects and to request services subject to an ''Expedite Fee'' or ''Change Fee.''

1. IDS Network Ports

The Exchange proposes to amend the Fee Schedule to add services that IDS offers enabling NCL Customers to connect to the IDS Network in the Mahwah Data Center.

The Exchange proposes to add the following fees and language to the Fee Schedule:

IDS NETWORK PORTS *

Type of service	Description	Amount of charge
NCL IDS Network Access—10 Gb	10 Gb IDS Network port	$10,000 initial charge plus $15,250 monthly charge.
NCL IDS Network Access—40 Gb	40 Gb IDS Network port	$10,000 initial charge plus $19,750 monthly charge.

* See Note 1.

The Exchange also proposes to add to the Fee Schedule several notes regarding these services that are based on General Notes 4, 5, and 6 of the Exchange's Price List regarding colocation.

Specifically, the Exchange proposes to add the heading ''NCL Notes'' after the tables in the proposed section of the Fee Schedule titled ''D. Non-Colocation (''NCL'') Services.'' Note 1 would establish that when an NCL Customer purchases access to the IDS Network, the NCL Customer would receive (a) the ability to access the trading and execution systems of the Exchange and Affiliate SROs (''Exchange Systems'') as well as of the Global OTC System (''Global OTC''), and (b) connectivity to any of the listed data products (''Included Data Products'') that it selects. References in the proposed Fee Schedule would refer customers to the applicable note.

Proposed Note 1 would be titled ''Note 1: IDS Network'' and would provide:

When an NCL Customer purchases access to the IDS Network, it receives the ability to access the trading and execution systems of the NYSE, NYSE American, NYSE Arca, NYSE Chicago, and NYSE National (together, the Exchange Systems) as well as of Global OTC (the Global OTC System), subject, in each case, to authorization by the NYSE, NYSE American, NYSE Arca, NYSE Chicago, NYSE National, or Global OTC, as applicable. Each Exchange listed above offers access to its Exchange Systems to its members and Global OTC offers access to the Global OTC System to its subscribers, such that an NCL Customer does not have to purchase a service that includes access to the IDS Network to obtain access to Exchange Systems or the Global OTC System.

When an NCL Customer purchases access to the IDS Network, it receives connectivity to any of the Included Data Products that it selects, subject to any necessary technical provisioning requirements, authorization, and licensing by the provider of the Included Data Feed. Fees for the Included Data Products are charged by the provider of such Included Data Products. An NCL Customer can change the Included Data Products to which it receives connectivity at any time, subject to authorization from the provider of such Included Data Product. Because access to the IDS Network is not the exclusive method to connect to the Included Data Products, an NCL Customer does not have to purchase a service that includes access to the IDS Network to connect to such Included Data Products. The Included Data Products are as follows:

NMS feeds
- CTS
- CQS
- OPRA

NYSE
NYSE American
NYSE American Options
NYSE Arca
NYSE Arca Options
NYSE Best Quote and Trades (BQT)
NYSE Bonds
NYSE Chicago
NYSE National

2. NCL Connectivity to Third Party Systems, Data Feeds, Testing and Certification Feeds, and DTCC

The Exchange also proposes to amend the Fee Schedule to provide for the connectivity services that IDS offers for NCL Customers to Third Party Systems, Third Party Data Feeds, third party testing and certification feeds, and DTCC. The Exchange proposes to adopt substantially similar services and fees as

[8] *See* Securities Exchange Act Release Nos. 88837 (May 7, 2020), 85 FR 28671 (May 13, 2020) (SR–NYSE–2019–46, SR–NYSEAMER–2019–34, SR–NYSEArca–2019–61, SR–NYSENAT–2019–19) (''NMS Network Approval Order'') and 88972 (May 29, 2020), 85 FR 34472 (June 4, 2020) (''NYSE Chicago NMS Network Approval Order'').

set forth in the Exchange's Price List regarding colocation.[9]

Connectivity to Third Party Systems: The Exchange proposes to specify in the Fee Schedule services that IDS offers NCL Customers to access the trading and execution services of Third Party markets and other content service providers (''Third Party Systems'') for a fee. NCL Customers connect to Third Party Systems over the IDS Network.

In order to obtain access to a Third Party System, an NCL Customer enters into an agreement with the relevant third-party content service provider, pursuant to which the third-party content service provider charges the NCL Customer for access to the Third Party System. When such services are requested, IDS establishes a connection between the NCL Customer and the relevant third party content service provider over the IDS Network. IDS charges the NCL Customer for the connectivity to the Third Party System. An NCL Customer only receives, and is only charged by IDS for, connectivity to each Third Party System for which the customer enters into an agreement with the third-party content service provider.

Neither the Exchange nor IDS has an affiliation with the providers of the Third Party Systems. Establishing an NCL Customer's access to a Third Party System does not give either IDS or the Exchange any right to use the Third Party Systems. Connectivity to a Third Party System does not provide access or order entry to the Exchange's execution system, and an NCL Customer's connection to a Third Party System is not through the Exchange's execution system.

IDS charges a monthly recurring fee for connectivity to a Third Party System, which the Exchange proposes to add to its Fee Schedule. Specifically, when an NCL Customer requests access to a Third Party System, IDS identifies the applicable third-party market or other content service provider and the bandwidth connection it requires.

The Exchange proposes to add the following fees and language to the Fee Schedule:

CONNECTIVITY TO THIRD PARTY SYSTEMS OVER IDS NETWORK *

Description	Amount of charge
1Mb	$200 per connection monthly charge.
3Mb	$400 per connection monthly charge.
5Mb	$500 per connection monthly charge.
10Mb	$800 per connection monthly charge.
25Mb	$1,200 per connection monthly charge.
50Mb	$1,800 per connection monthly charge.
100Mb	$2,500 per connection monthly charge.
200Mb	$3,000 per connection monthly charge.
1Gb	$3,500 per connection monthly charge.

* See Note 2.

The Exchange proposes to add Note 2 to the section of the Fee Schedule titled ''D. Non-Colocation (''NCL'') Services.'' Proposed Note 2 would be titled ''Note 2: Third Party Systems'' and would provide:

When an NCL Customer purchases a connection that includes access to Third Party Systems, it receives access to Third Party Systems it selects subject to any technical provisioning requirements, authorization, and licensing from such Third Party System. Fees for the Third Party Systems are charged by the provider of such Third Party System. The Exchange is not the exclusive method to connect to Third Party Systems. The Third Party Systems are as follows:

Third Party Systems

Americas Trading Group (ATG)
BM&F Bovespa
Boston Options Exchange (BOX)
Canadian Securities Exchange (CSE)
Cboe BYX Exchange (CboeBYX), Cboe BZX Exchange (CboeBZX), Cboe EDGA Exchange (CboeEDGA), and Cboe EDGX Exchange (CboeEDGX)
Cboe Exchange (Cboe) and Cboe C2 Exchange (C2)
Chicago Mercantile Exchange (CME Group)
Credit Suisse
Euronext Optiq Cash and Derivatives Unicast (EUA)
Euronext Optiq Cash and Derivatives Unicast (Production)
Investors Exchange (IEX)
ITG TriAct Matchnow
Long Term Stock Exchange (LTSE)
Members Exchange (MEMX)
MIAX Options, MIAX PEARL Options, MIAX PEARL Equities, and MIAX Emerald
Morgan Stanley
Nasdaq
NASDAQ Canada (CXC, CXD, CX2)
NASDAQ ISE
Neo Aequitas
NYFIX Marketplace
Omega
OneChicago
OTC Markets Group
TD Ameritrade
TMX Group

Connectivity to Third Party Data Feeds: The Exchange proposes to specify in the Fee Schedule connectivity services that IDS offers NCL Customers to connect to data feeds from third-party markets and other content service providers (''Third Party Data Feeds'') for a fee. IDS receives Third Party Data Feeds from multiple national securities exchanges and other content service providers at the Mahwah Data Center. IDS provides connectivity to that data to NCL Customers for a fee. NCL Customers connect to Third Party Data Feeds over the IDS Network.

In order to connect to a Third Party Data Feed, an NCL Customer enters into a contract with the relevant third-party market or other content service provider, pursuant to which the content service provider charges the NCL Customer for the Third Party Data Feed. IDS receives the Third Party Data Feed over its fiber optic network and, after the data provider and NCL Customer enter into an agreement and IDS receives authorization from the data provider, IDS retransmits the data to the NCL Customer over the NCL Customer's IDS Network port. IDS charges the NCL Customer for the connectivity to the Third Party Data Feed. An NCL Customer only receives, and is only charged for, connectivity to the Third Party Data Feeds for which it entered into contracts.

With the exception of the ICE Data Services, ICE, and Global OTC feeds, neither the Exchange nor IDS has any affiliation with the sellers of the Third Party Data Feeds. The Exchange and IDS

[9] *See* Securities Exchange Act Release No. 80310 (March 24, 2017), 82 FR 15763 (March 30, 2017) (SR–NYSEArca–2016–89).

have no right to use the Third Party Data Feeds other than as a redistributor of the data. The Third Party Data Feeds do not provide access or order entry to the Exchange's execution system. With the exception of the ICE feed, the Third Party Data Feeds do not provide access or order entry to the execution systems of the third party generating the feed. IDS receives Third Party Data Feeds via arms-length agreements and has no inherent advantage over any other distributor of such data.

IDS charges a monthly recurring fee for connectivity to each Third Party Data Feed. The monthly recurring fee is per Third Party Data Feed, with the exception that the monthly recurring fee for the ICE Data Services Consolidated Feeds (including the ICE Data Services Consolidated Feed Shared Farm feeds), Vela—SuperFeeds, and MSCI feeds vary by the bandwidth of the connection. Depending on its needs and bandwidth, an NCL Customer may opt to receive all or some of the Third Party Data Feeds.

Third Party Data Feed providers may charge redistribution fees. The Exchange proposes that, when IDS is charged a redistribution fee by the Third Party Data Feed provider, IDS would pass through the charge to the NCL Customer, without change to the fee. The fee would be labeled as a pass-through of a redistribution fee on the NCL Customer's invoice.

The Exchange proposes that it would not charge NCL Customers that are third-party markets or content providers for connectivity to their own feeds, as it understands that such parties generally receive their own feeds for purposes of diagnostics and testing.

The Exchange proposes to add the following fees and language to the Fee Schedule:

CONNECTIVITY TO THIRD PARTY DATA FEEDS OVER THE IDS NETWORK *

Description	Monthly charge
BM&F Bovespa	$3,000
Boston Options Exchange (BOX)	1,000
Canadian Securities Exchange (CSE)	1,000
Cboe BZX Exchange (CboeBZX) and Cboe BYX Exchange (CboeBYX)	2,000
Cboe EDGX Exchange (CboeEDGX) and Cboe EDGA Exchange (CboeEDGA)	2,000
Cboe Exchange (Cboe) and Cboe C2 Exchange (C2)	2,000
CME Group	3,000
Euronext Optiq Compressed Cash	900
Euronext Optiq Compressed Derivatives	600
Euronext Optiq Shaped Cash	1,200
Euronext Optiq Shaped Derivatives	900
Financial Industry Regulatory Authority (FINRA)	500
Global OTC	100
ICE Data Services Consolidated Feed ≤100 Mb	200
ICE Data Services Consolidated Feed >100 Mb to ≤1 Gb	500
ICE Data Services Consolidated Feed >1 Gb	1,000
ICE Data Services Consolidated Feed Shared Farm ≤100Mb	200
ICE Data Services Consolidated Feed Shared Farm >100 Mb to ≤1 Gb	500
ICE Data Services Consolidated Feed Shared Farm >1 Gb	1,000
ICE Data Services—ICE TMC	200
ICE Data Services PRD	200
ICE Data Services PRD CEP	400
Intercontinental Exchange (ICE)	1,500
Investors Exchange (IEX)	1,000
ITG TriAct Matchnow	1,000
Members Exchange (MEMX)	3,000
MIAX Emerald	3,500
MIAX Options/MIAX PEARL Options	2,000
MIAX PEARL Equities	2,500
Montréal Exchange (MX)	1,000
MSCI 5 Mb	500
MSCI 25 Mb	1,200
NASDAQ Stock Market	2,000
NASDAQ OMX Global Index Data Service	100
NASDAQ UQDF & UTDF	500
NASDAQ Canada (CXC, CXD, CX2)	1,500
NASDAQ ISE	1,000
Neo Aequitas	1,200
Omega	1,000
OneChicago	1,000
OTC Markets Group	1,000
Vela—SuperFeed <500 Mb	250
Vela—SuperFeed >500 Mb to <1.25 Gb	800
Vela—SuperFeed >1.25 Gb	1,000
TMX Group	2,500

* See Note 3.

The Exchange proposes to add Note 3 to the section of the Fee Schedule titled ''D. Non-Colocation (''NCL'') Services.'' Proposed Note 3 would be titled ''Note 3: Third Party Systems'' and would provide:

Pricing for data feeds from third party markets and other service providers (Third Party Data Feeds) is for connectivity only. Connectivity to Third Party Data Feeds is subject to any technical provisioning requirements, authorization, and licensing

from the provider of the data feed. Connectivity to Third Party Data Feeds is over the IDS Network. Fees for Third Party Data Feeds are charged by the provider of such data feeds. Third Party Data Feed providers may charge redistribution fees. When IDS is charged a redistribution fee, IDS passes the charge through to the customer, without change to the fee. The fee is labeled as a pass-through of a redistribution fee on the customer's invoice. IDS does not charge third party markets or content providers for connectivity to their own feeds. IDS is not the exclusive method to connect to Third Party Data Feeds.

Connectivity to Third Party Data Testing and Certification Feeds: The Exchange proposes to specify in the Fee Schedule that NCL Customers may obtain connectivity to third-party testing and certification feeds. Certification feeds are used to certify that an NCL Customer conforms to any of the relevant content service provider's requirements for accessing Third Party Systems or receiving Third Party Data Feeds, while testing feeds would provide NCL Customers an environment in which to conduct tests with non-live data. Such feeds, which are solely used for certification and testing and do not carry live production data, are available over the IDS Network.

Connectivity to third party testing and certification feeds would be subject to any technical provisioning requirements, authorization, and licensing from the provider of the data feed. Fees for such feeds are charged by the provider of the feed. The Exchange is not the exclusive method to connect to third-party testing and certification feeds.

The Exchange proposes to add the following fees and language to the Fee Schedule:

Connectivity to Third Party Testing and Certification Feeds ..... $100 monthly recurring charge per feed.

Connectivity to DTCC: The Exchange proposes to specify in the Fee Schedule services that IDS provides to connect NCL Customers to Depository Trust & Clearing Corporation (''DTCC'') for clearing, fund transfer, insurance, and settlement services.

In order to connect to DTCC, an NCL Customer enters into a contract with DTCC, pursuant to which DTCC charges the NCL Customer for the services provided. IDS receives the DTCC feed over its fiber optic network and, after DTCC and the NCL Customer entered into the services contract and IDS received authorization from DTCC, IDS provides connectivity to DTCC to the NCL Customer over the NCL Customer's IDS Network port. IDS charges the NCL Customer for the connectivity to DTCC.

Connectivity to DTCC does not provide access or order entry to the Exchange's execution system, and an NCL Customer's connection to DTCC is not through the Exchange's execution system.

Connectivity to DTCC is subject to any technical provisioning requirements, authorization, and licensing from DTCC. Fees for such feeds are charged by DTCC. IDS is not the exclusive provider to connect to DTCC feeds.

The Exchange proposes to add the following fees and language to the Fee Schedule:

CONNECTIVITY TO DTCC

Description	Amount of charge
5 Mb connection to DTCC	$500 monthly recurring charge.
50 Mb connection to DTCC	$2,500 monthly recurring charge.

3. NCL NMS Network Ports

The Exchange proposes to amend the Fee Schedule to add services that IDS currently offers enabling NCL Customers to connect to the NMS Network in the Mahwah Data Center.

The Exchange proposes to add the following fees and language to the Fee Schedule:

NCL NMS NETWORK PORTS *

Type of service	Description	Amount of charge
NCL NMS Network Access—10 Gb	10 Gb NCL NMS Network port	$10,000 initial charge plus $11,000 monthly charge.
NCL NMS Network Access—40 Gb	40 Gb NCL NMS Network port	$10,000 initial charge plus $18,000 monthly charge.

* See Note 4.

The Exchange also proposes to add Note 4 to the section of the Fee Schedule titled ''D. Non-Colocation (''NCL'') Services,'' to establish that, when an NCL Customer purchases an NMS Network port, it has the option of receiving the NMS feeds over the NMS Network.

Proposed Note 4 would be titled ''Note 4: NMS Network'' and would provide:

When an NCL Customer purchases access to the NMS Network, upon its request, it will receive connectivity to any of the NMS feeds that it selects, subject to any necessary technical provisioning requirements, authorization, and licensing from the provider of such NMS feed. Fees for the NMS feeds are charged by the provider of such NMS feed. The NMS feeds are as follows:

NMS feeds
CTS
CQS
OPRA

4. NCL Cross Connect

The Exchange proposes to amend the Fee Schedule to specify fiber cross connect services that IDS offers NCL Customers for an initial and monthly charge.[10] A cross connect is used to connect a circuit to a port. NCL Customers use such cross connects to connect from the IDS Network or NMS Network to a circuit connecting outside the Mahwah Data Center. The Exchange

[10] Because NCL Customers do not co-locate any equipment in the Mahwah Data Center, they generally require fewer fiber cross connects than colocation Users. Accordingly, the Exchange does not propose amending the Fee Schedule to include bundles of 6, 12, 18, or 24 cross connects as are available to colocation Users.

proposes that the fees for this service would be identical to the fees for the corresponding service in colocation.

The Exchange proposes to add the following fees and language to the Fee Schedule:

Type of service	Description	Amount of charge
NCL Cross Connect	Furnish and install one cross-connect	$500 initial charge plus $600 monthly charge.

5. NCL Expedite Fee

The Exchange proposes to amend the Fee Schedule to specify optional services that IDS offers NCL Customers to expedite the completion of services purchased or ordered by the NCL Customer, for which IDS charges an ''Expedite Fee.'' Similar to the ''Expedite Fee'' applicable to Users in colocation,[11] if an NCL Customer wishes to obtain NCL Services earlier than the expected completion date, the NCL Customer may pay the Expedite Fee. The time saved would vary depending on the type(s) of service(s) ordered, but the Expedite Fee would always be a flat $4,000, allowing the NCL Customer to determine if the expected time savings warrants payment of the fee.

The Exchange proposes to add the following fees and language to the Fee Schedule:

Type of service	Description	Amount of charge
NCL Expedite Fee	Expedited installation/completion of a customer's NCL service.	$4,000 per request.

6. NCL Change Fee

The Exchange proposes to amend the Fee Schedule to specify the ''Change Fee'' that IDS charges an NCL Customer if the NCL Customer requests a change to one or more existing NCL Services that IDS has already established or completed for the NCL Customer.

In this regard, the Exchange notes that several of the proposed services that would be added to the Fee Schedule include an initial fee in addition to an ongoing monthly fee. These initial fees are related to IDS's initial cost of establishing or installing a particular service for the NCL Customer. Similar to the ''Change Fee'' applicable to Users in colocation,[12] IDS charges a fee of $950 per order if the NCL Customer requests a change to one or more existing NCL Services that IDS has already established or completed for the NCL Customer. For example, the initial installation of an IDS Network connection would include establishing and configuring market data services requested by the NCL Customer, which would be covered by the initial install fee. However, if the NCL Customer requests that IDS establish and configure additional market data services for its IDS Network connection, the NCL Customer would be charged a one-time Change Fee of $950 for that request. If an NCL Customer orders two or more services at one time (for example, through submitting an order form requesting multiple services), the NCL Customer would be charged a one-time Change Fee of $950, which would cover the multiple services.

The Exchange proposes to add the following fees and language to the Fee Schedule:

Type of service	Description	Amount of charge
NCL Change Fee	Change to an NCL service that has already been installed/completed for a customer.	$950 per request.

Fee Schedule Name

In addition, the Exchange proposes to change the name of the ''Wireless Connectivity Fee Schedule'' to ''Connectivity Fee Schedule.'' [sic] Because the Fee Schedule will no longer be limited to wireless services, the Exchange proposes to change the name of the Fee Schedule from ''Wireless Connectivity Fee Schedule'' [sic] to ''Mahwah Wireless, Circuits, and Non-Colocation Connectivity Fee Schedule.''

Application and Impact of the Proposed Changes

There are currently few NCL Customers. Accordingly, the Exchange expects that the impact of the proposed change would be minimal.

The proposed change is not targeted at, or expected to be limited in applicability to, a specific segment of market participant. The Mahwah Circuits are available for purchase for any potential customer requiring a circuit between the Mahwah Data Center and a remote location. The NCL Services are available for purchase by any customer. The proposed changes do not apply differently to distinct types or sizes of customers. Rather, they apply to all customers equally.

Use of the services proposed in this filing are completely voluntary and available to all market participants on a non-discriminatory basis.

Competitive Environment

IDS operates in a highly competitive market in which exchanges, third party telecommunications providers, Hosting Users,[13] and other third-party vendors offer connectivity services as a means to facilitate the trading and other market activities of market participants. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission

[11] *See* Securities Exchange Act Release No. 67669 (August 15, 2012), 77 FR 50746 (August 22, 2012) (SR–NYSEArca–2012–62) and No. 67667 (August 15, 2012), 77 FR 50743 (August 22, 2012) (SR–NYSEArca–2012–63).

[12] *See id.*

[13] ''Hosting'' is a service offered by a User to another entity In the User's space within the Mahwah Data Center. The Exchange allows Users to act as Hosting Users for a monthly fee. *See* Securities Exchange Act Release No. 76010 (September 29, 2015), 80 FR 60197 (October 5, 2015) (SR–NYSEArca–2015–82).

highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [14]

The proposed changes are not otherwise intended to address any other issues relating to services related to the Mahwah Data Center and/or related fees, and the Exchange is not aware of any problems that market participants would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change 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, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[17] because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Proposed Change Is Reasonable

The Exchange believes that the proposed rule change is reasonable and would perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest, for the following reasons.

General: Only the market participants that voluntarily select to receive the IDS services described herein are charged for them, and those services are available to all market participants. Furthermore, the IDS services described in this filing are available to all market participants on an equal basis (*i.e.,* the same products and services are available to all market participants). All market participants that voluntarily select a specific proposed IDS service would be charged the same amount for that service as all other market participants purchasing that service.

In addition, the Exchange believes that the proposed rule change is reasonable because the IDS services described herein are offered as a convenience to market participants, but offering them requires the provision, maintenance, and operation of the Mahwah Data Center, including the installation, monitoring, support, and maintenance of the services.

Mahwah Circuits: The Exchange believes the fees proposed herein for IDS's Mahwah Circuits are reasonable. The market for circuits into and out of the Mahwah Data Center is competitive, and the proposed IDS offerings are merely one of several options from which market participants can choose. Each of the third-party telecommunications providers that has a presence in the Mahwah Data Center's ''Meet Me Rooms'' offers similar circuits to market participants, in competition with the IDS offerings proposed here. Each market participant considering whether to purchase a circuit directly can weigh that option against similar circuits offered by those third-party carriers, and can choose which circuit to purchase based on which combination of latency, bandwidth, price, and other factors best meets its business needs. Indeed, the Exchange understands that most of the third-party telecommunications providers that provide circuits do so at fees lower than those proposed herein, and that most NCL Customers and colocation Users use such third party telecommunication circuits into and out of the Mahwah Data Center.

IDS Network Ports: The Exchange believes that the IDS Network ports proposed herein are reasonable. The market for connecting with the Exchange's trading and execution systems is competitive, and the proposed IDS Network ports that IDS provides are merely one of several options that market participants may choose. As alternatives to the IDS Network ports, a market participant would be able to access or connect to Exchange Systems, Third Party Systems, Included Data Products, Third Party Data Feeds, third party testing and certification feeds, and DTCC through (a) a connection to an IDS access center outside of the Mahwah Data Center, (b) a third-party access center, (c) a third-party vendor, (d) a Hosting User, or (e) colocation.

Market participants consider various factors in determining which connectivity options to choose, including latency; bandwidth size; amount of network uptime; the equipment that the network uses; the cost of the connection; and the applicable contractual provisions. IDS's offering of connectivity services via IDS Network ports gives market participants another service to evaluate and consider, thereby broadening their options for connectivity to the Exchange Systems and allowing them to tailor their connectivity options to their specific needs.

The Exchange further believes that the proposed fees for IDS Network ports for NCL Customers are reasonable because such prices are constrained by competition with the numerous other providers that offer connectivity to the Exchange Systems. If IDS were to attempt to offer such ports at a supra-competitive price, potential customers would likely respond by seeking out less expensive substitutes from other providers.

NCL NMS Network Ports: The Exchange believes that the proposed fees for NMS Network ports for NCL Customers are reasonable to recoup the costs of building the NMS Network. Until 2019, SIAC was required to provide connectivity to the NMS feeds only via the IP network. Although the operating committees for the CTA/CQ Plans authorized SIAC to offer connectivity to the NMS feeds in the Mahwah Data Center via an alternate, dedicated, low-latency NMS Network, the operating committee did not assume the costs of creating such a network; instead, the Exchange and the Affiliate SROs funded the capital and operational expenses to build and operate the NMS Network. The implementation costs of approximately $3.8 million are applicable only to the NMS Network, which is used for the sole purpose of providing access to the NMS feeds. None of the implementation costs are applicable to any other Exchange services. As of the date of this filing, only one customer has contracted with IDS for an NCL NMS Network port, and the Exchange expects that demand for NMS Network ports outside of colocation will be very low. The service is nevertheless available, and so the Exchange proposes to add it to the Fee Schedule.

NCL Notes: With respect to proposed NCL Notes 1, 2, 3, and 4, the Exchange believes they are reasonable because they provide detailed descriptions of the access and connectivity that NCL

[14] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78f(b)(4).

Customers receive when they purchase IDS Network or NMS Network ports. Such detailed descriptions remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because they provide market participants with transparency and clarity as to what connectivity is included in the purchase of IDS Network or NMS Network ports by NCL Customers.[18] The notes would also make clear that all NCL Customers that voluntarily select to access the IDS Network or NMS Network receive the same access and connectivity, and are not subject to a charge above and beyond the fee paid for the relevant IDS Network or NMS Network ports. The notes further make clear that NCL Customers are not required to use any of their bandwidth to access Exchange systems or connect to an Included Data Product unless they wish to do so; rather, an NCL Customer only receives the access and connectivity that it selects, and can change what access or connectivity it receives at any time, subject to authorization from the data provider or the relevant Exchange or Affiliate SRO.[19] Notes 1, 2, 3, and 4 are all based on similar provisions in the Exchange's Price List for colocation.

Other NCL Services: The Exchange believes it is reasonable to specify in the Fee Schedule NCL Services that IDS offers including NCL cross connects, the NCL Expedite Fee, the NCL Change Fee, and NCL connectivity to Third Party Systems, Third Party Data Feeds, third-party testing and certification feeds, and DTCC.

The Exchange believes that the specific fees it has proposed for NCL cross connects, the NCL Expedite Fee, and the NCL Change Fee are reasonable. As noted above, IDS faces competition in the market for connectivity from Hosting Users, IDS access centers outside of the Mahwah Data Center, third-party access centers, and third-party vendors. Market participants can consider IDS's proposed fees for the specific services listed above in the context of this competition, and choose the connectivity provider that offers the services the market participant needs at the optimal cost. As such, the proposed fees for these IDS services are constrained by competition.

The Exchange believes that charging distinct fees for different NCL Services is reasonable because not all market participants need or wish to utilize the same NCL Services. The proposed choice of services allows market participants to select which NCL Services to use, based on their business needs, and market participants are only charged for the services that they select. By charging only those market participants that utilize an NCL Service the related fee, those market participants that directly benefit from a service support its cost.

In addition, the Exchange believes that the proposed fees are reasonable because they allow the costs associated with offering different NCL Services to be defrayed or covered while providing market participants the benefit of such services. The Exchange believes that the proposed charges are reasonable because IDS offers NCL Services as conveniences to market participants, but in order to do so must provide, maintain, and operate the Mahwah Data Center facility hardware and technology infrastructure. IDS needs to provide network infrastructure that keeps pace with the number of services available to NCL Customers, including any increasing demand for bandwidth, and handle the installation, administration, monitoring, support, and maintenance of such services, including by responding to any production issues. In addition, in order to provide connectivity to Third Party Data Feeds, Third Party Systems, third party testing and certification feeds, and DTCC, IDS must establish and maintain multiple connections to each Third Party Data Feed, Third Party System, and DTCC, allowing IDS to provide resilient and redundant connections, adapt to any changes made by the relevant third party, and cover any applicable fees (other than redistribution fees) charged by the relevant third party, such as port fees.

The Exchange believes it is reasonable for redistribution fees charged by providers of Third Party Data Feeds to be passed through to NCL Customers, without change to the fee. If not passed through, the cost of the redistribution fees would be factored into the proposed fees for connectivity to Third Party Data Feeds. The Exchange believes that passing through the fees makes them more transparent to the NCL Customer, allowing the NCL Customer to better assess the cost of the connectivity to a Third Party Data Feed by seeing the individual components of the cost, *i.e.,* IDS's fee and redistribution fee.

The Exchange believes that it is reasonable to not charge third-party markets or content providers for connectivity to their own Third Party Data Feeds, as the Exchange understands that such parties generally receive their own feeds for purposes of diagnostics and testing. The Exchange believes that facilitating such diagnostics and testing removes impediments to, and perfects the mechanisms of, a free and open market and a national market system and, in general, protects investors and the public interest.

Finally, the Exchange believes it is reasonable to make available third party testing and certification feeds to enable customers to test and certify their connections to third party data feeds.

The Proposed Change Is Equitable

The Exchange believes that its proposal equitably allocates its fees among market participants.

The Exchange believes that the proposed change is equitable because it would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all NCL Customers equally.

In addition, the Exchange believes that the proposal is equitable because only the market participants that voluntarily select to receive the services described herein would be charged for them. The services described in this filing are available to all market participants on an equal basis (*i.e.,* the same products and services are available to all market participants), and all market participants that voluntarily select a specific proposed service are charged the same amount for that service as all other market participants purchasing that service.

IDS faces competition from numerous other providers that offer market participants choices for connectivity to the Mahwah Data Center, Exchange Systems, Third Party Systems, Included Data Products, Third Party Data Feeds, third party testing and certification feeds, and DTCC. Without this proposed rule change, market participants seeking such connectivity would have fewer options. With this proposal, market participants would have more choices with respect to the form and price of the services they use, allowing market participants to select the services and connectivity options that better suit their needs, thereby helping them tailor their connectivity operations to the requirements of their businesses.

[18] *See* Securities Exchange Act Release Nos. 79730 (January 4, 2017), 82 FR 3045 (January 10, 2017) (SR–NYSE–2016–92); 79728 (January 4, 2017), 82 FR 3035 (January 10, 2017) (SR–NYSEMKT–2016–126); 79729 (January 4, 2017), 82 FR 3061 (January 10, 2017) (SR–NYSEArca–2016–172).

[19] The General Note on page 1 of the Fee Schedule would also apply to all of the services proposed herein. A market participant that incurs fees for NCL connectivity or other NCL Services from the Exchange or one of the Affiliate SROs would not be subject to fees for the same service charged by the other Affiliate SROs.

The Exchange believes that the proposed NCL Notes 1 and 4 are equitable because they specify that NCL Customers that voluntarily select to access the IDS Network or NMS Network would not be subject to charges above and beyond the fee paid for the relevant IDS Network or NMS Network port. Further, Notes 1, 2, 3, and 4 specify that NCL Customers will not be charged for any access or connectivity that they had not selected.

The Proposed Change Is Not Unfairly Discriminatory

The Exchange believes its proposal is not unfairly discriminatory. The proposed change does not apply differently to distinct types or sizes of market participants. Rather, it applies to all market participants equally. The purchase of any proposed service is completely voluntarily and the Fee Schedule will be applied uniformly to all market participants.

IDS faces competition from numerous other providers that offer market participants choices for connectivity to the Mahwah Data Center, Exchange Systems, Third Party Systems, Included Data Products, Third Party Data Feeds, third party testing and certification feeds, and DTCC. Without this proposed rule change, market participants seeking such connectivity would have fewer options. With this proposal, market participants would have more choices with respect to the form and price of the services they use, allowing market participants to select the services and connectivity options that better suit their needs, thereby helping them tailor their connectivity operations to the requirements of their businesses.

The Exchange believes that the proposed NCL Notes 1 and 4 are not be unfairly discriminatory because they specify that NCL Customers that voluntarily select to access the IDS Network or NMS Network are not be subject to charges above and beyond the fee paid for the relevant IDS Network or NMS Network port. Further, Notes 1, 2, 3, and 4 specify that NCL Customers will not be charged for any access or connectivity that they had not selected.[20]

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed change does not affect competition among national securities exchanges or among members of the Exchange, but rather between IDS and its commercial competitors.

As noted above, the Exchange is making the current proposal solely as a result of the Commission's recent interpretation of the definitions of ''exchange'' and ''facility'' in the Wireless Approval Order, which the Exchange is presently challenging on appeal to the Court of Appeals for the District of Columbia Circuit.[21] The Exchange has nevertheless proposed this rule change in order to preserve the ability of IDS to offer the services at issue herein. If IDS were compelled to stop offering such services, consumers would have fewer service providers to choose from for their connectivity needs, which would be a detriment to competition overall.

Notwithstanding the foregoing, the Exchange notes that there are numerous other third parties that provide circuits and connectivity at the Mahwah Data Center, and that IDS competes with those third parties for the provision of such services to customers. None of these third parties have been compelled to file their services or fees with the Commission, and requiring IDS to do so puts IDS at a competitive disadvantage vis-à-vis its competitors. Requiring the Exchange to file IDS services and fees herein is therefore a burden on competition.

The Exchange believes competition would be best served by allowing IDS to freely compete with the other providers of connectivity services, without the additional burden on IDS alone to file any proposed changes to services and fees with the Commission.

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

Within 45 days of the date of publication of this notice in the **Federal Register**, or such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2021–13 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–2021–13. 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–2021–13, and should be submitted on or before March 25, 2021.

[20] In addition, the General Note on page 1 of the Fee Schedule would apply to all of the services proposed herein. *See supra* note 19.

[21] *Intercontinental Exchange, Inc.* v. *SEC,* No. 20–1470 (D.C. Cir. 2020).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–04423 Filed 3–3–21; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91218; File No. SR–NYSEAMER–2021–10]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing of Proposed Rule Change To Amend the Schedule of Wireless Connectivity Fees and Charges To Add Circuits for Connectivity Into and Out of the Data Center in Mahwah, New Jersey

February 26, 2021.

Pursuant to Section 19(b)(1) [1]of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on February 12, 2021, NYSE American LLC (''NYSE American'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the schedule of Wireless Connectivity Fees and Charges (the ''Fee Schedule'') to (1) add circuits for connectivity into and out of the data center in Mahwah, New Jersey (the ''Mahwah Data Center''); (2) add services available to customers of the Mahwah Data Center that are not colocation Users; and (3) change the name of the Fee Schedule to ''Mahwah Wireless, Circuits, and Non-Colocation Connectivity Fee Schedule.'' The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to add services (''NCL Services'') and related fees available to customers of the Mahwah Data Center that are not colocation Users (''NCL Customers''),[4] as well as circuits into and out of the Mahwah Data Center that are available to both colocation Users and NCL Customers. In addition, in a conforming change, because the Fee Schedule would no longer be limited to wireless services, the Exchange proposes to change the name of the Fee Schedule from ''Wireless Connectivity Fee Schedule'' to ''Mahwah Wireless, Circuits, and Non-Colocation Connectivity Fee Schedule.'' [5]

The Exchange makes the current proposal solely as a result of its determination that the Commission's recent interpretations of the Act's definitions of the terms ''exchange'' and ''facility,'' as expressed in the Wireless Approval Order,[6] apply to connectivity services described herein that are offered by entities other than the Exchange. The Exchange disagrees with the Commission's interpretations, denies the services covered herein (and in the Wireless Approval Order) are offerings of an ''exchange'' or a ''facility'' thereof, and has sought review of the Commission's interpretations, as expressed in the Wireless Approval Order, in the Court of Appeals for the District of Columbia Circuit.[7] Pending resolution of such appeal, however, the Exchange is making this proposal in recognition that the Commission's current interpretation brings certain offerings of the Exchange's affiliates into the scope of the terms ''exchange'' or ''facility.''

The Exchange expects the proposed change to be operative 60 days after the present filing becomes effective.

Mahwah Circuits

Customers can connect into and out of the Mahwah Data Center using either wireless connections or wired fiber optic circuits. Both IDS and numerous third-party telecommunications service providers offer wired circuits into and out of the Mahwah Data Center. The circuits that IDS offers are described below. Such IDS circuits are available to all colocation Users and NCL Customers, but such customers are not obligated to use them; rather, both colocation Users and NCL Customers may instead choose to contract directly with third-party telecom carriers for circuits into and out of the Mahwah Data Center.

The Exchange proposes to add to the Fee Schedule the circuit options offered by IDS to both colocation Users and NCL Customers to connect into and out of the Mahwah Data Center. Specifically, the Exchange proposes to amend the Fee Schedule to add two different types of circuits, each available in three different sizes, under the new heading ''C. Mahwah Circuits.''

First, the Exchange proposes to amend the Fee Schedule to add ''Optic Access'' circuits, which are circuits that IDS operates and that customers can use to connect between the Mahwah Data Center and IDS access centers at the following six third-party owned data centers: (1) 111 Eighth Avenue, New York, NY; (2) 32 Avenue of the Americas, New York, NY; (3) 165 Halsey, Newark, NJ; (4) Secaucus, NJ (the ''Secaucus Access Center''); (5) Carteret, NJ (the ''Carteret Access Center''); and (6) Weehawken, NJ. Optic Access circuits are available in 1 Gb, 10 Gb, and 40 Gb sizes.

Second, the Exchange proposes to amend the Fee Schedule to add lower-latency Optic Low Latency circuits that IDS operates and that customers can use to connect between the Mahwah Data Center and IDS's Secaucus Access Center or Carteret Access Center. Optic

[22] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] For purposes of the Exchange's colocation services, a ''User'' means any market participant that requests to receive colocation services directly from the Exchange. *See* Securities Exchange Act Release No. 76009 (September 29, 2015), 80 FR 60213 (October 5, 2015) (SR–NYSEMKT–2015–67).

[5] Each of the Exchange's affiliates (New York Stock Exchange LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc.) (the ''Affiliate SROs'') has submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2021–14, SR–NYSEArca–2021–13, SR–NYSECHX–2021–03, and SR–NYSENAT–2021–04.

[6] *See* Securities Exchange Act Release No. 90209 (October 15, 2020), 85 FR 67044 (October 21, 2020) (SR–NYSE–2020–05, SR–NYSEAMER–2020–05, SR–NYSEArca-2020–08, SR–NYSECHX–2020–02, SR–NYSENAT–2020–03, SR–NYSE–2020–11, SR–NYSEAMER–2020–10, SR–NYSEArca-2020–15, SR–NYSECHX–2020–05, SR–NYSENAT–2020–08) (''Wireless Approval Order'').

[7] *Intercontinental Exchange, Inc.* v. *SEC,* No. 20–1470 (D.C. Cir. 2020).

Low Latency circuits are available in 1 Gb, 10 Gb, and 40 Gb sizes.

The Exchange proposes to add the following chart to the Fee Schedule to include these circuits, as follows:

Type of service	Amount of charge
Optic Access Circuit—1 Gb	$1,500 initial charge plus $1,500 monthly charge.
Optic Access Circuit—10 Gb	$5,000 initial charge plus $2,500 monthly charge.
Optic Access Circuit—40 Gb	$5,000 initial charge plus $6,000 monthly charge.
Optic Low Latency Circuit—1 Gb	$1,500 initial charge plus $2,750 monthly charge.
Optic Low Latency Circuit—10 Gb	$5,000 initial charge plus $3,950 monthly charge.
Optic Low Latency Circuit—40 Gb	$5,000 initial charge plus $8,250 monthly charge.

Non-Colocation Services

The Exchange proposes to amend the Fee Schedule to add several services available to NCL Customers as well as several notes, under the new heading ''D. Non-Colocation (''NCL'') Services.'' These are the services that IDS offers within the Mahwah Data Center that are not colocation services. The Exchange proposes to amend the Fee Schedule to add services that include ports to the IDS Network—a wide area network available in the Mahwah Data Center and other access centers—and ports to a dedicated network to access the NMS feeds for which the Securities Industry Automation Corporation is engaged as the securities information processor (the ''NMS Network'').[8] The Fee Schedule would also specify the data products and data feeds to which an NCL Customer could connect via these ports. The Exchange also proposes to amend the Fee Schedule to enable NCL Customers to purchase cross connects and to request services subject to an ''Expedite Fee'' or ''Change Fee.''

1. IDS Network Ports

The Exchange proposes to amend the Fee Schedule to add services that IDS offers enabling NCL Customers to connect to the IDS Network in the Mahwah Data Center.

The Exchange proposes to add the following fees and language to the Fee Schedule:

IDS network ports (see note 1)		
Type of service	Description	Amount of charge
NCL IDS Network Access—10 Gb	10 Gb IDS Network port	$10,000 initial charge plus $15,250 monthly charge.
NCL IDS Network Access—40 Gb	40 Gb IDS Network port	$10,000 initial charge plus $19,750 monthly charge.

The Exchange also proposes to add to the Fee Schedule several notes regarding these services that are based on General Notes 4, 5, and 6 of the Exchange's Price List regarding colocation.

Specifically, the Exchange proposes to add the heading ''NCL Notes'' after the tables in the proposed section of the Fee Schedule titled ''D. Non-Colocation (''NCL'') Services.'' Note 1 would establish that when an NCL Customer purchases access to the IDS Network, the NCL Customer would receive (a) the ability to access the trading and execution systems of the Exchange and Affiliate SROs (''Exchange Systems'') as well as of the Global OTC System (''Global OTC''), and (b) connectivity to any of the listed data products (''Included Data Products'') that it selects. References in the proposed Fee Schedule would refer customers to the applicable note.

Proposed Note 1 would be titled ''Note 1: IDS Network'' and would provide:

When an NCL Customer purchases access to the IDS Network, it receives the ability to access the trading and execution systems of the NYSE, NYSE American, NYSE Arca, NYSE Chicago, and NYSE National (together, the Exchange Systems) as well as of Global OTC (the Global OTC System), subject, in each case, to authorization by the NYSE, NYSE American, NYSE Arca, NYSE Chicago, NYSE National, or Global OTC, as applicable. Each Exchange listed above offers access to its Exchange Systems to its members and Global OTC offers access to the Global OTC System to its subscribers, such that an NCL Customer does not have to purchase a service that includes access to the IDS Network to obtain access to Exchange Systems or the Global OTC System. When an NCL Customer purchases access to the IDS Network, it receives connectivity to any of the Included Data Products that it selects, subject to any necessary technical provisioning requirements, authorization, and licensing by the provider of the Included Data Feed. Fees for the Included Data Products are charged by the provider of such Included Data Products. An NCL Customer can change the Included Data Products to which it receives connectivity at any time, subject to authorization from the provider of such Included Data Product. Because access to the IDS Network is not the exclusive method to connect to the Included Data Products, an NCL Customer does not have to purchase a service that includes access to the IDS Network to connect to such Included Data Products. The Included Data Products are as follows:

NMS feeds
- CTS
- CQS
- OPRA

NYSE
NYSE American
NYSE American Options
NYSE Arca
NYSE Arca Options
NYSE Best Quote and Trades (BQT)
NYSE Bonds
NYSE Chicago
NYSE National

2. NCL Connectivity to Third Party Systems, Data Feeds, Testing and Certification Feeds, and DTCC

The Exchange also proposes to amend the Fee Schedule to provide for the connectivity services that IDS offers for NCL Customers to Third Party Systems, Third Party Data Feeds, third party testing and certification feeds, and DTCC. The Exchange proposes to adopt substantially similar services and fees as set forth in the Exchange's Price List regarding colocation.[9]

[8] *See* Securities Exchange Act Release Nos. 88837 (May 7, 2020), 85 FR 28671 (May 13, 2020) (SR–NYSE–2019–46, SR–NYSEAMER–2019–34, SR–NYSEArca–2019–61, SR–NYSENAT–2019–19) (''NMS Network Approval Order'') and 88972 (May 29, 2020), 85 FR 34472 (June 4, 2020) (''NYSE Chicago NMS Network Approval Order'').

[9] *See* Securities Exchange Act Release No. 80390 (March 24, 2017), 82 FR 15725 (March 30, 2017) (SR–NYSEMKT–2016–63).

Connectivity to Third Party Systems: The Exchange proposes to specify in the Fee Schedule services that IDS offers NCL Customers to access the trading and execution services of Third Party markets and other content service providers (''Third Party Systems'') for a fee. NCL Customers connect to Third Party Systems over the IDS Network.

In order to obtain access to a Third Party System, an NCL Customer enters into an agreement with the relevant third-party content service provider, pursuant to which the third-party content service provider charges the NCL Customer for access to the Third Party System. When such services are requested, IDS establishes a connection between the NCL Customer and the relevant third party content service provider over the IDS Network. IDS charges the NCL Customer for the connectivity to the Third Party System. An NCL Customer only receives, and is only charged by IDS for, connectivity to each Third Party System for which the customer enters into an agreement with the third-party content service provider.

Neither the Exchange nor IDS has an affiliation with the providers of the Third Party Systems. Establishing an NCL Customer's access to a Third Party System does not give either IDS or the Exchange any right to use the Third Party Systems. Connectivity to a Third Party System does not provide access or order entry to the Exchange's execution system, and an NCL Customer's connection to a Third Party System is not through the Exchange's execution system.

IDS charges a monthly recurring fee for connectivity to a Third Party System, which the Exchange proposes to add to its Fee Schedule. Specifically, when an NCL Customer requests access to a Third Party System, IDS identifies the applicable third-party market or other content service provider and the bandwidth connection it requires.

The Exchange proposes to add the following fees and language to the Fee Schedule:

Connectivity to third party systems over IDS network (see note 2)

Description	Amount of charge
1Mb	$200 per connection monthly charge.
3Mb	$400 per connection monthly charge.
5Mb	$500 per connection monthly charge.
10Mb	$800 per connection monthly charge.
25Mb	$1,200 per connection monthly charge.
50Mb	$1,800 per connection monthly charge.
100Mb	$2,500 per connection monthly charge.
200Mb	$3,000 per connection monthly charge.
1Gb	$3,500 per connection monthly charge.

The Exchange proposes to add Note 2 to the section of the Fee Schedule titled ''D. Non-Colocation (''NCL'') Services.'' Proposed Note 2 would be titled ''Note 2: Third Party Systems'' and would provide:

When an NCL Customer purchases a connection that includes access to Third Party Systems, it receives access to Third Party Systems it selects subject to any technical provisioning requirements, authorization, and licensing from such Third Party System. Fees for the Third Party Systems are charged by the provider of such Third Party System. The Exchange is not the exclusive method to connect to Third Party Systems. The Third Party Systems are as follows:

Third Party Systems

Americas Trading Group (ATG)
BM&F Bovespa
Boston Options Exchange (BOX)
Canadian Securities Exchange (CSE)
Cboe BYX Exchange (CboeBYX), Cboe BZX Exchange (CboeBZX), Cboe EDGA Exchange (CboeEDGA), and Cboe EDGX Exchange (CboeEDGX)
Cboe Exchange (Cboe) and Cboe C2 Exchange (C2)
Chicago Mercantile Exchange (CME Group)
Credit Suisse
Euronext Optiq Cash and Derivatives Unicast (EUA)
Euronext Optiq Cash and Derivatives Unicast (Production)
Investors Exchange (IEX)
ITG TriAct Matchnow
Long Term Stock Exchange (LTSE)
Members Exchange (MEMX)
MIAX Options, MIAX PEARL Options, MIAX PEARL Equities, and MIAX Emerald
Morgan Stanley
Nasdaq
NASDAQ Canada (CXC, CXD, CX2)
NASDAQ ISE
Neo Aequitas
NYFIX Marketplace
Omega
OneChicago
OTC Markets Group
TD Ameritrade
TMX Group

Connectivity to Third Party Data Feeds: The Exchange proposes to specify in the Fee Schedule connectivity services that IDS offers NCL Customers to connect to data feeds from third-party markets and other content service providers (''Third Party Data Feeds'') for a fee. IDS receives Third Party Data Feeds from multiple national securities exchanges and other content service providers at the Mahwah Data Center. IDS provides connectivity to that data to NCL Customers for a fee. NCL Customers connect to Third Party Data Feeds over the IDS Network.

In order to connect to a Third Party Data Feed, an NCL Customer enters into a contract with the relevant third-party market or other content service provider, pursuant to which the content service provider charges the NCL Customer for the Third Party Data Feed. IDS receives the Third Party Data Feed over its fiber optic network and, after the data provider and NCL Customer enter into an agreement and IDS receives authorization from the data provider, IDS retransmits the data to the NCL Customer over the NCL Customer's IDS Network port. IDS charges the NCL Customer for the connectivity to the Third Party Data Feed. An NCL Customer only receives, and is only charged for, connectivity to the Third Party Data Feeds for which it entered into contracts.

With the exception of the ICE Data Services, ICE, and Global OTC feeds, neither the Exchange nor IDS has any affiliation with the sellers of the Third Party Data Feeds. The Exchange and IDS have no right to use the Third Party Data Feeds other than as a redistributor of the data. The Third Party Data Feeds do not provide access or order entry to the Exchange's execution system. With the exception of the ICE feed, the Third Party Data Feeds do not provide access or order entry to the execution systems of the third party generating the feed. IDS receives Third Party Data Feeds via arms-length agreements and has no inherent advantage over any other distributor of such data.

IDS charges a monthly recurring fee for connectivity to each Third Party

Data Feed. The monthly recurring fee is per Third Party Data Feed, with the exception that the monthly recurring fee for the ICE Data Services Consolidated Feeds (including the ICE Data Services Consolidated Feed Shared Farm feeds), Vela—SuperFeeds, and MSCI feeds vary by the bandwidth of the connection. Depending on its needs and bandwidth, an NCL Customer may opt to receive all or some of the Third Party Data Feeds.

Third Party Data Feed providers may charge redistribution fees. The Exchange proposes that, when IDS is charged a redistribution fee by the Third Party Data Feed provider, IDS would pass through the charge to the NCL Customer, without change to the fee. The fee would be labeled as a pass-through of a redistribution fee on the NCL Customer's invoice.

The Exchange proposes that it would not charge NCL Customers that are third-party markets or content providers for connectivity to their own feeds, as it understands that such parties generally receive their own feeds for purposes of diagnostics and testing.

The Exchange proposes to add the following fees and language to the Fee Schedule:

Connectivity to third party data feeds over the IDS network
(see note 3)

Description	Monthly charge
BM&F Bovespa	$3,000
Boston Options Exchange (BOX)	1,000
Canadian Securities Exchange (CSE)	1,000
Cboe BZX Exchange (CboeBZX) and Cboe BYX Exchange (CboeBYX)	2,000
Cboe EDGX Exchange (CboeEDGX) and Cboe EDGA Exchange (CboeEDGA)	2,000
Cboe Exchange (Cboe) and Cboe C2 Exchange (C2)	2,000
CME Group	3,000
Euronext Optiq Compressed Cash	900
Euronext Optiq Compressed Derivatives	600
Euronext Optiq Shaped Cash	1,200
Euronext Optiq Shaped Derivatives	900
Financial Industry Regulatory Authority (FINRA)	500
Global OTC	100
ICE Data Services Consolidated Feed ≤ 100 Mb	200
ICE Data Services Consolidated Feed > 100 Mb to ≤1 Gb	500
ICE Data Services Consolidated Feed > 1 Gb	1,000
ICE Data Services Consolidated Feed Shared Farm ≤ 100Mb	200
ICE Data Services Consolidated Feed Shared Farm > 100 Mb to ≤ 1 Gb	500
ICE Data Services Consolidated Feed Shared Farm > 1 Gb	1,000
ICE Data Services—ICE TMC	200
ICE Data Services PRD	200
ICE Data Services PRD CEP	400
Intercontinental Exchange (ICE)	1,500
Investors Exchange (IEX)	1,000
ITG TriAct Matchnow	1,000
Members Exchange (MEMX)	3,000
MIAX Emerald	3,500
MIAX Options/MIAX PEARL Options	2,000
MIAX PEARL Equities	2,500
Montréal Exchange (MX)	1,000
MSCI 5 Mb	500
MSCI 25 Mb	1,200
NASDAQ Stock Market	2,000
NASDAQ OMX Global Index Data Service	100
NASDAQ UQDF & UTDF	500
NASDAQ Canada (CXC, CXD, CX2)	1,500
NASDAQ ISE	1,000
Neo Aequitas	1,200
Omega	1,000
OneChicago	1,000
OTC Markets Group	1,000
Vela—SuperFeed <500 Mb	250
Vela—SuperFeed >500 Mb to <1.25 Gb	800
Vela—SuperFeed >1.25 Gb	1,000
TMX Group	2,500

The Exchange proposes to add Note 3 to the section of the Fee Schedule titled ''D. Non-Colocation (''NCL'') Services.'' Proposed Note 3 would be titled ''Note 3: Third Party Systems'' and would provide:

Pricing for data feeds from third party markets and other service providers (Third Party Data Feeds) is for connectivity only. Connectivity to Third Party Data Feeds is subject to any technical provisioning requirements, authorization, and licensing from the provider of the data feed. Connectivity to Third Party Data Feeds is over the IDS Network. Fees for Third Party Data Feeds are charged by the provider of such data feeds. Third Party Data Feed providers may charge redistribution fees. When IDS is charged a redistribution fee, IDS passes the charge through to the customer, without change to the fee. The fee is labeled as a pass-through of a redistribution fee on the customer's invoice. IDS does not charge third party markets or content providers for connectivity to their own feeds. IDS is not the exclusive method to connect to Third Party Data Feeds.

Connectivity to Third Party Data Testing and Certification Feeds: The

Exchange proposes to specify in the Fee Schedule that NCL Customers may obtain connectivity to third-party testing and certification feeds. Certification feeds are used to certify that an NCL Customer conforms to any of the relevant content service provider's requirements for accessing Third Party Systems or receiving Third Party Data Feeds, while testing feeds would provide NCL Customers an environment in which to conduct tests with non-live data. Such feeds, which are solely used for certification and testing and do not carry live production data, are available over the IDS Network.

Connectivity to third party testing and certification feeds would be subject to any technical provisioning requirements, authorization, and licensing from the provider of the data feed. Fees for such feeds are charged by the provider of the feed. The Exchange is not the exclusive method to connect to third-party testing and certification feeds.

The Exchange proposes to add the following fees and language to the Fee Schedule:

Connectivity to Third Party Testing and Certification Feeds ..... $100 monthly recurring charge per feed.

Connectivity to DTCC: The Exchange proposes to specify in the Fee Schedule services that IDS provides to connect NCL Customers to Depository Trust & Clearing Corporation (''DTCC'') for clearing, fund transfer, insurance, and settlement services.

In order to connect to DTCC, an NCL Customer enters into a contract with DTCC, pursuant to which DTCC charges the NCL Customer for the services provided. IDS receives the DTCC feed over its fiber optic network and, after DTCC and the NCL Customer entered into the services contract and IDS received authorization from DTCC, IDS provides connectivity to DTCC to the NCL Customer over the NCL Customer's IDS Network port. IDS charges the NCL Customer for the connectivity to DTCC.

Connectivity to DTCC does not provide access or order entry to the Exchange's execution system, and an NCL Customer's connection to DTCC is not through the Exchange's execution system.

Connectivity to DTCC is subject to any technical provisioning requirements, authorization, and licensing from DTCC. Fees for such feeds are charged by DTCC. IDS is not the exclusive provider to connect to DTCC feeds.

The Exchange proposes to add the following fees and language to the Fee Schedule:

Connectivity to DTCC

Description	Amount of charge
5 Mb connection to DTCC	$500 monthly recurring charge.
50 Mb connection to DTCC	2,500 monthly recurring charge.

3. NCL NMS Network Ports

The Exchange proposes to amend the Fee Schedule to add services that IDS currently offers enabling NCL Customers to connect to the NMS Network in the Mahwah Data Center.

The Exchange proposes to add the following fees and language to the Fee Schedule:

NCL NMS network ports (see note 4)

Type of service	Description	Amount of charge
NCL NMS Network Access—10 Gb	10 Gb NCL NMS Network port	$10,000 initial charge plus $11,000 monthly charge.
NCL NMS Network Access—40 Gb	40 Gb NCL NMS Network port	$10,000 initial charge plus $18,000 monthly charge.

The Exchange also proposes to add Note 4 to the section of the Fee Schedule titled ''D. Non-Colocation (''NCL'') Services,'' to establish that, when an NCL Customer purchases an NMS Network port, it has the option of receiving the NMS feeds over the NMS Network.

Proposed Note 4 would be titled ''Note 4: NMS Network'' and would provide:

When an NCL Customer purchases access to the NMS Network, upon its request, it will receive connectivity to any of the NMS feeds that it selects, subject to any necessary technical provisioning requirements, authorization, and licensing from the provider of such NMS feed. Fees for the NMS feeds are charged by the provider of such NMS feed. The NMS feeds are as follows:
NMS feeds
CTS
CQS
OPRA

4. NCL Cross Connect

The Exchange proposes to amend the Fee Schedule to specify fiber cross connect services that IDS offers NCL Customers for an initial and monthly charge.[10] A cross connect is used to connect a circuit to a port. NCL Customers use such cross connects to connect from the IDS Network or NMS Network to a circuit connecting outside the Mahwah Data Center. The Exchange proposes that the fees for this service would be identical to the fees for the corresponding service in colocation.

The Exchange proposes to add the following fees and language to the Fee Schedule:

Type of service	Description	Amount of charge
NCL Cross Connect	Furnish and install one cross-connect	$500 initial charge plus $600 monthly charge.

[10] Because NCL Customers do not co-locate any equipment in the Mahwah Data Center, they generally require fewer fiber cross connects than colocation Users. Accordingly, the Exchange does not propose amending the Fee Schedule to include bundles of 6, 12, 18, or 24 cross connects as are available to colocation Users.

5. NCL Expedite Fee

The Exchange proposes to amend the Fee Schedule to specify optional services that IDS offers NCL Customers to expedite the completion of services purchased or ordered by the NCL Customer, for which IDS charges an ''Expedite Fee.'' Similar to the ''Expedite Fee'' applicable to Users in colocation,[11] if an NCL Customer wishes to obtain NCL Services earlier than the expected completion date, the NCL Customer may pay the Expedite Fee. The time saved would vary depending on the type(s) of service(s) ordered, but the Expedite Fee would always be a flat $4,000, allowing the NCL Customer to determine if the expected time savings warrants payment of the fee.

The Exchange proposes to add the following fees and language to the Fee Schedule:

Type of service	Description	Amount of charge
NCL Expedite Fee	Expedited installation/completion of a customer's NCL service	$4,000 per request.

6. NCL Change Fee

The Exchange proposes to amend the Fee Schedule to specify the ''Change Fee'' that IDS charges an NCL Customer if the NCL Customer requests a change to one or more existing NCL Services that IDS has already established or completed for the NCL Customer.

In this regard, the Exchange notes that several of the proposed services that would be added to the Fee Schedule include an initial fee in addition to an ongoing monthly fee. These initial fees are related to IDS's initial cost of establishing or installing a particular service for the NCL Customer. Similar to the ''Change Fee'' applicable to Users in colocation,[12] IDS charges a fee of $950 per order if the NCL Customer requests a change to one or more existing NCL Services that IDS has already established or completed for the NCL Customer. For example, the initial installation of an IDS Network connection would include establishing and configuring market data services requested by the NCL Customer, which would be covered by the initial install fee. However, if the NCL Customer requests that IDS establish and configure additional market data services for its IDS Network connection, the NCL Customer would be charged a one-time Change Fee of $950 for that request. If an NCL Customer orders two or more services at one time (for example, through submitting an order form requesting multiple services), the NCL Customer would be charged a one-time Change Fee of $950, which would cover the multiple services.

The Exchange proposes to add the following fees and language to the Fee Schedule:

Type of service	Description	Amount of charge
NCL Change Fee	Change to an NCL service that has already been installed/completed for a customer.	$950 per request.

Fee Schedule Name

In addition, the Exchange proposes to change the name of the ''Wireless Connectivity Fee Schedule'' to ''Connectivity Fee Schedule.'' [sic] Because the Fee Schedule will no longer be limited to wireless services, the Exchange proposes to change the name of the Fee Schedule from ''Wireless Connectivity Fee Schedule'' [sic] to ''Mahwah Wireless, Circuits, and Non-Colocation Connectivity Fee Schedule.''

Application and Impact of the Proposed Changes

There are currently few NCL Customers. Accordingly, the Exchange expects that the impact of the proposed change would be minimal.

The proposed change is not targeted at, or expected to be limited in applicability to, a specific segment of market participant. The Mahwah Circuits are available for purchase for any potential customer requiring a circuit between the Mahwah Data Center and a remote location. The NCL Services are available for purchase by any customer. The proposed changes do not apply differently to distinct types or sizes of customers. Rather, they apply to all customers equally.

Use of the services proposed in this filing are completely voluntary and available to all market participants on a non-discriminatory basis.

Competitive Environment

IDS operates in a highly competitive market in which exchanges, third party telecommunications providers, Hosting Users,[13] and other third-party vendors offer connectivity services as a means to facilitate the trading and other market activities of market participants. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [14]

The proposed changes are not otherwise intended to address any other issues relating to services related to the Mahwah Data Center and/or related fees, and the Exchange is not aware of any problems that market participants would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change 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, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and

[11] *See* Securities Exchange Act Release No. 67665 (August 15, 2012), 77 FR 50734 (August 22, 2012) (SR–NYSE–MKT–2012–11).

[12] *See id.*

[13] ''Hosting'' is a service offered by a User to another entity In the User's space within the Mahwah Data Center. The Exchange allows Users to act as Hosting Users for a monthly fee. *See* Securities Exchange Act Release No. 76009 (September 29, 2015), 80 FR 60213 (October 5, 2015) (SR–NYSEMKT–2015–67).

[14] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[17] because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Proposed Change Is Reasonable

The Exchange believes that the proposed rule change is reasonable and would perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest, for the following reasons.

General: Only the market participants that voluntarily select to receive the IDS services described herein are charged for them, and those services are available to all market participants. Furthermore, the IDS services described in this filing are available to all market participants on an equal basis (*i.e.,* the same products and services are available to all market participants). All market participants that voluntarily select a specific proposed IDS service would be charged the same amount for that service as all other market participants purchasing that service.

In addition, the Exchange believes that the proposed rule change is reasonable because the IDS services described herein are offered as a convenience to market participants, but offering them requires the provision, maintenance, and operation of the Mahwah Data Center, including the installation, monitoring, support, and maintenance of the services.

Mahwah Circuits: The Exchange believes the fees proposed herein for IDS's Mahwah Circuits are reasonable. The market for circuits into and out of the Mahwah Data Center is competitive, and the proposed IDS offerings are merely one of several options from which market participants can choose. Each of the third-party telecommunications providers that has a presence in the Mahwah Data Center's ''Meet Me Rooms'' offers similar circuits to market participants, in competition with the IDS offerings proposed here. Each market participant considering whether to purchase a circuit directly can weigh that option against similar circuits offered by those third-party carriers, and can choose which circuit to purchase based on which combination of latency, bandwidth, price, and other factors best meets its business needs. Indeed, the Exchange understands that most of the third-party telecommunications providers that provide circuits do so at fees lower than those proposed herein, and that most NCL Customers and colocation Users use such third party telecommunication circuits into and out of the Mahwah Data Center.

IDS Network Ports: The Exchange believes that the IDS Network ports proposed herein are reasonable. The market for connecting with the Exchange's trading and execution systems is competitive, and the proposed IDS Network ports that IDS provides are merely one of several options that market participants may choose. As alternatives to the IDS Network ports, a market participant would be able to access or connect to Exchange Systems, Third Party Systems, Included Data Products, Third Party Data Feeds, third party testing and certification feeds, and DTCC through (a) a connection to an IDS access center outside of the Mahwah Data Center, (b) a third-party access center, (c) a third-party vendor, (d) a Hosting User, or (e) colocation.

Market participants consider various factors in determining which connectivity options to choose, including latency; bandwidth size; amount of network uptime; the equipment that the network uses; the cost of the connection; and the applicable contractual provisions. IDS's offering of connectivity services via IDS Network ports gives market participants another service to evaluate and consider, thereby broadening their options for connectivity to the Exchange Systems and allowing them to tailor their connectivity options to their specific needs.

The Exchange further believes that the proposed fees for IDS Network ports for NCL Customers are reasonable because such prices are constrained by competition with the numerous other providers that offer connectivity to the Exchange Systems. If IDS were to attempt to offer such ports at a supra-competitive price, potential customers would likely respond by seeking out less expensive substitutes from other providers.

NCL NMS Network Ports: The Exchange believes that the proposed fees for NMS Network ports for NCL Customers are reasonable to recoup the costs of building the NMS Network. Until 2019, SIAC was required to provide connectivity to the NMS feeds only via the IP network. Although the operating committees for the CTA/CQ Plans authorized SIAC to offer connectivity to the NMS feeds in the Mahwah Data Center via an alternate, dedicated, low-latency NMS Network, the operating committee did not assume the costs of creating such a network; instead, the Exchange and the Affiliate SROs funded the capital and operational expenses to build and operate the NMS Network. The implementation costs of approximately $3.8 million are applicable only to the NMS Network, which is used for the sole purpose of providing access to the NMS feeds. None of the implementation costs are applicable to any other Exchange services. As of the date of this filing, only one customer has contracted with IDS for an NCL NMS Network port, and the Exchange expects that demand for NMS Network ports outside of colocation will be very low. The service is nevertheless available, and so the Exchange proposes to add it to the Fee Schedule.

NCL Notes: With respect to proposed NCL Notes 1, 2, 3, and 4, the Exchange believes they are reasonable because they provide detailed descriptions of the access and connectivity that NCL Customers receive when they purchase IDS Network or NMS Network ports. Such detailed descriptions remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because they provide market participants with transparency and clarity as to what connectivity is included in the purchase of IDS Network or NMS Network ports by NCL Customers.[18] The notes would also make clear that all NCL Customers that voluntarily select to access the IDS Network or NMS Network receive the same access and connectivity, and are not subject to a charge above and beyond the fee paid for the relevant IDS Network or NMS Network ports. The notes further make clear that NCL Customers are not required to use any of their bandwidth to access Exchange

[17] 15 U.S.C. 78f(b)(4).

[18] *See* Securities Exchange Act Release Nos. 79730 (January 4, 2017), 82 FR 3045 (January 10, 2017) (SR–NYSE–2016–92); 79728 (January 4, 2017), 82 FR 3035 (January 10, 2017) (SR–NYSEMKT–2016–126); 79729 (January 4, 2017), 82 FR 3061 (January 10, 2017) (SR–NYSEArca–2016–172).

systems or connect to an Included Data Product unless they wish to do so; rather, an NCL Customer only receives the access and connectivity that it selects, and can change what access or connectivity it receives at any time, subject to authorization from the data provider or the relevant Exchange or Affiliate SRO.[19] Notes 1, 2, 3, and 4 are all based on similar provisions in the Exchange's Price List for colocation.

Other NCL Services: The Exchange believes it is reasonable to specify in the Fee Schedule NCL Services that IDS offers including NCL cross connects, the NCL Expedite Fee, the NCL Change Fee, and NCL connectivity to Third Party Systems, Third Party Data Feeds, third-party testing and certification feeds, and DTCC.

The Exchange believes that the specific fees it has proposed for NCL cross connects, the NCL Expedite Fee, and the NCL Change Fee are reasonable. As noted above, IDS faces competition in the market for connectivity from Hosting Users, IDS access centers outside of the Mahwah Data Center, third-party access centers, and third-party vendors. Market participants can consider IDS's proposed fees for the specific services listed above in the context of this competition, and choose the connectivity provider that offers the services the market participant needs at the optimal cost. As such, the proposed fees for these IDS services are constrained by competition.

The Exchange believes that charging distinct fees for different NCL Services is reasonable because not all market participants need or wish to utilize the same NCL Services. The proposed choice of services allows market participants to select which NCL Services to use, based on their business needs, and market participants are only charged for the services that they select. By charging only those market participants that utilize an NCL Service the related fee, those market participants that directly benefit from a service support its cost.

In addition, the Exchange believes that the proposed fees are reasonable because they allow the costs associated with offering different NCL Services to be defrayed or covered while providing market participants the benefit of such services. The Exchange believes that the proposed charges are reasonable because IDS offers NCL Services as conveniences to market participants, but in order to do so must provide, maintain, and operate the Mahwah Data Center facility hardware and technology infrastructure. IDS needs to provide network infrastructure that keeps pace with the number of services available to NCL Customers, including any increasing demand for bandwidth, and handle the installation, administration, monitoring, support, and maintenance of such services, including by responding to any production issues. In addition, in order to provide connectivity to Third Party Data Feeds, Third Party Systems, third party testing and certification feeds, and DTCC, IDS must establish and maintain multiple connections to each Third Party Data Feed, Third Party System, and DTCC, allowing IDS to provide resilient and redundant connections, adapt to any changes made by the relevant third party, and cover any applicable fees (other than redistribution fees) charged by the relevant third party, such as port fees.

The Exchange believes it is reasonable for redistribution fees charged by providers of Third Party Data Feeds to be passed through to NCL Customers, without change to the fee. If not passed through, the cost of the redistribution fees would be factored into the proposed fees for connectivity to Third Party Data Feeds. The Exchange believes that passing through the fees makes them more transparent to the NCL Customer, allowing the NCL Customer to better assess the cost of the connectivity to a Third Party Data Feed by seeing the individual components of the cost, *i.e.,* IDS's fee and redistribution fee.

The Exchange believes that it is reasonable to not charge third-party markets or content providers for connectivity to their own Third Party Data Feeds, as the Exchange understands that such parties generally receive their own feeds for purposes of diagnostics and testing. The Exchange believes that facilitating such diagnostics and testing removes impediments to, and perfects the mechanisms of, a free and open market and a national market system and, in general, protects investors and the public interest.

Finally, the Exchange believes it is reasonable to make available third party testing and certification feeds to enable customers to test and certify their connections to third party data feeds.

The Proposed Change Is Equitable

The Exchange believes that its proposal equitably allocates its fees among market participants.

The Exchange believes that the proposed change is equitable because it would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all NCL Customers equally.

In addition, the Exchange believes that the proposal is equitable because only the market participants that voluntarily select to receive the services described herein would be charged for them. The services described in this filing are available to all market participants on an equal basis (*i.e.,* the same products and services are available to all market participants), and all market participants that voluntarily select a specific proposed service are charged the same amount for that service as all other market participants purchasing that service.

IDS faces competition from numerous other providers that offer market participants choices for connectivity to the Mahwah Data Center, Exchange Systems, Third Party Systems, Included Data Products, Third Party Data Feeds, third party testing and certification feeds, and DTCC. Without this proposed rule change, market participants seeking such connectivity would have fewer options. With this proposal, market participants would have more choices with respect to the form and price of the services they use, allowing market participants to select the services and connectivity options that better suit their needs, thereby helping them tailor their connectivity operations to the requirements of their businesses.

The Exchange believes that the proposed NCL Notes 1 and 4 are equitable because they specify that NCL Customers that voluntarily select to access the IDS Network or NMS Network would not be subject to charges above and beyond the fee paid for the relevant IDS Network or NMS Network port. Further, Notes 1, 2, 3, and 4 specify that NCL Customers will not be charged for any access or connectivity that they had not selected.

The Proposed Change Is Not Unfairly Discriminatory

The Exchange believes its proposal is not unfairly discriminatory. The proposed change does not apply differently to distinct types or sizes of market participants. Rather, it applies to all market participants equally. The purchase of any proposed service is completely voluntarily and the Fee Schedule will be applied uniformly to all market participants.

IDS faces competition from numerous other providers that offer market participants choices for connectivity to the Mahwah Data Center, Exchange

[19] The General Note on page 1 of the Fee Schedule would also apply to all of the services proposed herein. A market participant that incurs fees for NCL connectivity or other NCL Services from the Exchange or one of the Affiliate SROs would not be subject to fees for the same service charged by the other Affiliate SROs.

Systems, Third Party Systems, Included Data Products, Third Party Data Feeds, third party testing and certification feeds, and DTCC. Without this proposed rule change, market participants seeking such connectivity would have fewer options. With this proposal, market participants would have more choices with respect to the form and price of the services they use, allowing market participants to select the services and connectivity options that better suit their needs, thereby helping them tailor their connectivity operations to the requirements of their businesses.

The Exchange believes that the proposed NCL Notes 1 and 4 are not be unfairly discriminatory because they specify that NCL Customers that voluntarily select to access the IDS Network or NMS Network are not be subject to charges above and beyond the fee paid for the relevant IDS Network or NMS Network port. Further, Notes 1, 2, 3, and 4 specify that NCL Customers will not be charged for any access or connectivity that they had not selected.[20]

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed change does not affect competition among national securities exchanges or among members of the Exchange, but rather between IDS and its commercial competitors.

As noted above, the Exchange is making the current proposal solely as a result of the Commission's recent interpretation of the definitions of ''exchange'' and ''facility'' in the Wireless Approval Order, which the Exchange is presently challenging on appeal to the Court of Appeals for the District of Columbia Circuit.[21] The Exchange has nevertheless proposed this rule change in order to preserve the ability of IDS to offer the services at issue herein. If IDS were compelled to stop offering such services, consumers would have fewer service providers to choose from for their connectivity needs, which would be a detriment to competition overall.

Notwithstanding the foregoing, the Exchange notes that there are numerous other third parties that provide circuits and connectivity at the Mahwah Data Center, and that IDS competes with those third parties for the provision of such services to customers. None of these third parties have been compelled to file their services or fees with the Commission, and requiring IDS to do so puts IDS at a competitive disadvantage vis-à-vis its competitors. Requiring the Exchange to file IDS services and fees herein is therefore a burden on competition.

The Exchange believes competition would be best served by allowing IDS to freely compete with the other providers of connectivity services, without the additional burden on IDS alone to file any proposed changes to services and fees with the Commission.

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

Within 45 days of the date of publication of this notice in the **Federal Register**, or such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMER–2021–10 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAMER–2021–10. 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–2021–10, and should be submitted on or before March 25, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–04425 Filed 3–3–21; 8:45 am]

BILLING CODE 8011–01–P

[20] In addition, the General Note on page 1 of the Fee Schedule would apply to all of the services proposed herein. *See supra* note 19.

[21] *Intercontinental Exchange, Inc.* v. *SEC,* No. 20–1470 (DC Cir. 2020).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91215; File No. SR–NYSENAT–2021–04]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing of Proposed Rule Change To Amend the Schedule of Wireless Connectivity Fees and Charges To Add Circuits for Connectivity Into and Out of the Data Center in Mahwah, New Jersey

February 26, 2021.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on February

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

12, 2021, NYSE National, Inc. (''NYSE National'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the schedule of Wireless Connectivity Fees and Charges (the ''Fee Schedule'') to (1) add circuits for connectivity into and out of the data center in Mahwah, New Jersey (the ''Mahwah Data Center''); (2) add services available to customers of the Mahwah Data Center that are not colocation Users; and (3) change the name of the Fee Schedule to ''Mahwah Wireless, Circuits, and Non-Colocation Connectivity Fee Schedule.'' The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to add services (''NCL Services'') and related fees available to customers of the Mahwah Data Center that are not colocation Users (''NCL Customers''),[4] as well as circuits into and out of the Mahwah Data Center that are available to both colocation Users and NCL Customers. In addition, in a conforming change, because the Fee Schedule would no longer be limited to wireless services, the Exchange proposes to change the name of the Fee Schedule from ''Wireless Connectivity Fee Schedule'' to ''Mahwah Wireless, Circuits, and Non-Colocation Connectivity Fee Schedule.'' [5]

The Exchange makes the current proposal solely as a result of its determination that the Commission's recent interpretations of the Act's definitions of the terms ''exchange'' and ''facility,'' as expressed in the Wireless Approval Order,[6] apply to connectivity services described herein that are offered by entities other than the Exchange. The Exchange disagrees with the Commission's interpretations, denies the services covered herein (and in the Wireless Approval Order) are offerings of an ''exchange'' or a ''facility'' thereof, and has sought review of the Commission's interpretations, as expressed in the Wireless Approval Order, in the Court of Appeals for the District of Columbia Circuit.[7] Pending resolution of such appeal, however, the Exchange is making this proposal in recognition that the Commission's current interpretation brings certain offerings of the Exchange's affiliates into the scope of the terms ''exchange'' or ''facility.''

The Exchange expects the proposed change to be operative 60 days after the present filing becomes effective.

Mahwah Circuits

Customers can connect into and out of the Mahwah Data Center using either wireless connections or wired fiber optic circuits. Both IDS and numerous third-party telecommunications service providers offer wired circuits into and out of the Mahwah Data Center. The circuits that IDS offers are described below. Such IDS circuits are available to all colocation Users and NCL Customers, but such customers are not obligated to use them; rather, both colocation Users and NCL Customers may instead choose to contract directly with third-party telecom carriers for circuits into and out of the Mahwah Data Center.

The Exchange proposes to add to the Fee Schedule the circuit options offered by IDS to both colocation Users and NCL Customers to connect into and out of the Mahwah Data Center. Specifically, the Exchange proposes to amend the Fee Schedule to add two different types of circuits, each available in three different sizes, under the new heading ''C. Mahwah Circuits.''

First, the Exchange proposes to amend the Fee Schedule to add ''Optic Access'' circuits, which are circuits that IDS operates and that customers can use to connect between the Mahwah Data Center and IDS access centers at the following six third-party owned data centers: (1) 111 Eighth Avenue, New York, NY; (2) 32 Avenue of the Americas, New York, NY; (3) 165 Halsey, Newark, NJ; (4) Secaucus, NJ (the ''Secaucus Access Center''); (5) Carteret, NJ (the ''Carteret Access Center''); and (6) Weehawken, NJ. Optic Access circuits are available in 1 Gb, 10 Gb, and 40 Gb sizes.

Second, the Exchange proposes to amend the Fee Schedule to add lower-latency Optic Low Latency circuits that IDS operates and that customers can use to connect between the Mahwah Data Center and IDS's Secaucus Access Center or Carteret Access Center. Optic Low Latency circuits are available in 1 Gb, 10 Gb, and 40 Gb sizes.

The Exchange proposes to add the following chart to the Fee Schedule to include these circuits, as follows:

Type of service	Amount of charge
Optic Access Circuit—1 Gb	$1,500 initial charge plus $1,500 monthly charge.
Optic Access Circuit—10 Gb	$5,000 initial charge plus $2,500 monthly charge.

[4] For purposes of the Exchange's colocation services, a ''User'' means any market participant that requests to receive colocation services directly from the Exchange. *See* Securities Exchange Act Release No. 83351 (May 31, 2018), 83 FR 26314 at n.9 (June 6, 2018) (SR–NYSENAT–2018–07) (''NYSE National Colocation Notice'').

[5] Each of the Exchange's affiliates (New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., and NYSE Chicago, Inc.) (the ''Affiliate SROs'') has submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2021–14, SR–NYSEAMER–2021–10, SR–NYSEArca–2021–13, and SR–NYSECHX–2021–03.

[6] *See* Securities Exchange Act Release No. 90209 (October 15, 2020), 85 FR 67044 (October 21, 2020) (SR–NYSE–2020–05, SR–NYSEAMER–2020–05, SR–NYSEArca–2020–08, SR–NYSECHX–2020–02, SR–NYSENAT–2020–03, SR–NYSE–2020–11, SR–NYSEAMER–2020–10, SR–NYSEArca–2020–15, SR–NYSECHX–2020–05, SR–NYSENAT–2020–08) (''Wireless Approval Order'').

[7] *Intercontinental Exchange, Inc.* v. *SEC,* No. 20–1470 (D.C. Cir. 2020).

Type of service	Amount of charge
Optic Access Circuit—40 Gb	$5,000 initial charge plus $6,000 monthly charge.
Optic Low Latency Circuit—1 Gb	$1,500 initial charge plus $2,750 monthly charge.
Optic Low Latency Circuit—10 Gb	$5,000 initial charge plus $3,950 monthly charge.
Optic Low Latency Circuit—40 Gb	$5,000 initial charge plus $8,250 monthly charge.

Non-Colocation Services

The Exchange proposes to amend the Fee Schedule to add several services available to NCL Customers as well as several notes, under the new heading ''D. Non-Colocation (''NCL'') Services.'' These are the services that IDS offers within the Mahwah Data Center that are not colocation services. The Exchange proposes to amend the Fee Schedule to add services that include ports to the IDS Network—a wide area network available in the Mahwah Data Center and other access centers—and ports to a dedicated network to access the NMS feeds for which the Securities Industry Automation Corporation is engaged as the securities information processor (the ''NMS Network'').[8] The Fee Schedule would also specify the data products and data feeds to which an NCL Customer could connect via these ports. The Exchange also proposes to amend the Fee Schedule to enable NCL Customers to purchase cross connects and to request services subject to an ''Expedite Fee'' or ''Change Fee.''

1. IDS Network Ports

The Exchange proposes to amend the Fee Schedule to add services that IDS offers enabling NCL Customers to connect to the IDS Network in the Mahwah Data Center.

The Exchange proposes to add the following fees and language to the Fee Schedule:

IDS NETWORK PORTS (SEE NOTE 1)

Type of service	Description	Amount of charge
NCL IDS Network Access—10 Gb	10 Gb IDS Network port	$10,000 initial charge plus $15,250 monthly charge.
NCL IDS Network Access—40 Gb	40 Gb IDS Network port	$10,000 initial charge plus $19,750 monthly charge.

The Exchange also proposes to add to the Fee Schedule several notes regarding these services that are based on General Notes 4, 5, and 6 of the Exchange's Price List regarding colocation.

Specifically, the Exchange proposes to add the heading ''NCL Notes'' after the tables in the proposed section of the Fee Schedule titled ''D. Non-Colocation (''NCL'') Services.'' Note 1 would establish that when an NCL Customer purchases access to the IDS Network, the NCL Customer would receive (a) the ability to access the trading and execution systems of the Exchange and Affiliate SROs (''Exchange Systems'') as well as of the Global OTC System (''Global OTC''), and (b) connectivity to any of the listed data products (''Included Data Products'') that it selects. References in the proposed Fee Schedule would refer customers to the applicable note.

Proposed Note 1 would be titled ''Note 1: IDS Network'' and would provide:

When an NCL Customer purchases access to the IDS Network, it receives the ability to access the trading and execution systems of the NYSE, NYSE American, NYSE Arca, NYSE Chicago, and NYSE National (together, the Exchange Systems) as well as of Global OTC (the Global OTC System), subject, in each case, to authorization by the NYSE, NYSE American, NYSE Arca, NYSE Chicago, NYSE National, or Global OTC, as applicable. Each Exchange listed above offers access to its Exchange Systems to its members and Global OTC offers access to the Global OTC System to its subscribers, such that an NCL Customer does not have to purchase a service that includes access to the IDS Network to obtain access to Exchange Systems or the Global OTC System.

When an NCL Customer purchases access to the IDS Network, it receives connectivity to any of the Included Data Products that it selects, subject to any necessary technical provisioning requirements, authorization, and licensing by the provider of the Included Data Feed. Fees for the Included Data Products are charged by the provider of such Included Data Products. An NCL Customer can change the Included Data Products to which it receives connectivity at any time, subject to authorization from the provider of such Included Data Product. Because access to the IDS Network is not the exclusive method to connect to the Included Data Products, an NCL Customer does not have to purchase a service that includes access to the IDS Network to connect to such Included Data Products. The Included Data Products are as follows:

NMS feeds—CTS, CQS, OPRA
NYSE
NYSE American
NYSE American Options
NYSE Arca
NYSE Arca Options
NYSE Best Quote and Trades (BQT)
NYSE Bonds
NYSE Chicago
NYSE National

2. NCL Connectivity to Third Party Systems, Data Feeds, Testing and Certification Feeds, and DTCC

The Exchange also proposes to amend the Fee Schedule to provide for the connectivity services that IDS offers for NCL Customers to Third Party Systems, Third Party Data Feeds, third party testing and certification feeds, and DTCC. The Exchange proposes to adopt substantially similar services and fees as set forth in the Exchange's Price List regarding colocation.[9]

Connectivity to Third Party Systems: The Exchange proposes to specify in the Fee Schedule services that IDS offers NCL Customers to access the trading and execution services of Third Party markets and other content service providers (''Third Party Systems'') for a fee. NCL Customers connect to Third Party Systems over the IDS Network.

In order to obtain access to a Third Party System, an NCL Customer enters into an agreement with the relevant third-party content service provider,

[8] *See* Securities Exchange Act Release Nos. 88837 (May 7, 2020), 85 FR 28671 (May 13, 2020) (SR–NYSE–2019–46, SR–NYSEAMER–2019–34, SR–NYSEArca–2019–61, SR–NYSENAT–2019–19) (''NMS Network Approval Order'') and 88972 (May 29, 2020), 85 FR 34472 (June 4, 2020) (''NYSE Chicago NMS Network Approval Order'').

[9] *See* NYSE National Colocation Notice, *supra* note 4 at 26322–24.

pursuant to which the third-party content service provider charges the NCL Customer for access to the Third Party System. When such services are requested, IDS establishes a connection between the NCL Customer and the relevant third party content service provider over the IDS Network. IDS charges the NCL Customer for the connectivity to the Third Party System. An NCL Customer only receives, and is only charged by IDS for, connectivity to each Third Party System for which the customer enters into an agreement with the third-party content service provider.

Neither the Exchange nor IDS has an affiliation with the providers of the Third Party Systems. Establishing an NCL Customer's access to a Third Party System does not give either IDS or the Exchange any right to use the Third Party Systems. Connectivity to a Third Party System does not provide access or order entry to the Exchange's execution system, and an NCL Customer's connection to a Third Party System is not through the Exchange's execution system.

IDS charges a monthly recurring fee for connectivity to a Third Party System, which the Exchange proposes to add to its Fee Schedule. Specifically, when an NCL Customer requests access to a Third Party System, IDS identifies the applicable third-party market or other content service provider and the bandwidth connection it requires.

The Exchange proposes to add the following fees and language to the Fee Schedule:

CONNECTIVITY TO THIRD PARTY SYSTEMS OVER IDS NETWORK (SEE NOTE 2)

Description	Amount of charge
1Mb	$200 per connection monthly charge.
3Mb	$400 per connection monthly charge.
5Mb	$500 per connection monthly charge.
10Mb	$800 per connection monthly charge.
25Mb	$1,200 per connection monthly charge.
50Mb	$1,800 per connection monthly charge.
100Mb	$2,500 per connection monthly charge.
200Mb	$3,000 per connection monthly charge.
1Gb	$3,500 per connection monthly charge.

The Exchange proposes to add Note 2 to the section of the Fee Schedule titled ''D. Non-Colocation (''NCL'') Services.'' Proposed Note 2 would be titled ''Note 2: Third Party Systems'' and would provide:

When an NCL Customer purchases a connection that includes access to Third Party Systems, it receives access to Third Party Systems it selects subject to any technical provisioning requirements, authorization, and licensing from such Third Party System. Fees for the Third Party Systems are charged by the provider of such Third Party System. The Exchange is not the exclusive method to connect to Third Party Systems. The Third Party Systems are as follows:

THIRD PARTY SYSTEMS

Americas Trading Group (ATG).
BM&F Bovespa.
Boston Options Exchange (BOX).
Canadian Securities Exchange (CSE).
Cboe BYX Exchange (CboeBYX), Cboe BZX Exchange (CboeBZX), Cboe EDGA Exchange (CboeEDGA), and Cboe EDGX Exchange (CboeEDGX).
Cboe Exchange (Cboe) and Cboe C2 Exchange (C2).
Chicago Mercantile Exchange (CME Group).
Credit Suisse.
Euronext Optiq Cash and Derivatives Unicast (EUA).
Euronext Optiq Cash and Derivatives Unicast (Production).
Investors Exchange (IEX).
ITG TriAct Matchnow.
Long Term Stock Exchange (LTSE).
Members Exchange (MEMX).
MIAX Options, MIAX PEARL Options, MIAX PEARL Equities, and MIAX Emerald.
Morgan Stanley.
Nasdaq.
NASDAQ Canada (CXC, CXD, CX2).
NASDAQ ISE.
Neo Aequitas.
NYFIX Marketplace.
Omega.
OneChicago.
OTC Markets Group.
TD Ameritrade.
TMX Group.

Connectivity to Third Party Data Feeds: The Exchange proposes to specify in the Fee Schedule connectivity services that IDS offers NCL Customers to connect to data feeds from third-party markets and other content service providers (''Third Party Data Feeds'') for a fee. IDS receives Third Party Data Feeds from multiple national securities

exchanges and other content service providers at the Mahwah Data Center. IDS provides connectivity to that data to NCL Customers for a fee. NCL Customers connect to Third Party Data Feeds over the IDS Network.

In order to connect to a Third Party Data Feed, an NCL Customer enters into a contract with the relevant third-party market or other content service provider, pursuant to which the content service provider charges the NCL Customer for the Third Party Data Feed. IDS receives the Third Party Data Feed over its fiber optic network and, after the data provider and NCL Customer enter into an agreement and IDS receives authorization from the data provider, IDS retransmits the data to the NCL Customer over the NCL Customer's IDS Network port. IDS charges the NCL Customer for the connectivity to the Third Party Data Feed. An NCL Customer only receives, and is only charged for, connectivity to the Third Party Data Feeds for which it entered into contracts.

With the exception of the ICE Data Services, ICE, and Global OTC feeds, neither the Exchange nor IDS has any affiliation with the sellers of the Third Party Data Feeds. The Exchange and IDS have no right to use the Third Party Data Feeds other than as a redistributor of the data. The Third Party Data Feeds do not provide access or order entry to the Exchange's execution system. With the exception of the ICE feed, the Third Party Data Feeds do not provide access or order entry to the execution systems of the third party generating the feed. IDS receives Third Party Data Feeds via arms-length agreements and has no inherent advantage over any other distributor of such data.

IDS charges a monthly recurring fee for connectivity to each Third Party Data Feed. The monthly recurring fee is per Third Party Data Feed, with the exception that the monthly recurring fee for the ICE Data Services Consolidated Feeds (including the ICE Data Services Consolidated Feed Shared Farm feeds), Vela—SuperFeeds, and MSCI feeds vary by the bandwidth of the connection. Depending on its needs and bandwidth, an NCL Customer may opt to receive all or some of the Third Party Data Feeds.

Third Party Data Feed providers may charge redistribution fees. The Exchange proposes that, when IDS is charged a redistribution fee by the Third Party Data Feed provider, IDS would pass through the charge to the NCL Customer, without change to the fee. The fee would be labeled as a pass-through of a redistribution fee on the NCL Customer's invoice.

The Exchange proposes that it would not charge NCL Customers that are third-party markets or content providers for connectivity to their own feeds, as it understands that such parties generally receive their own feeds for purposes of diagnostics and testing.

The Exchange proposes to add the following fees and language to the Fee Schedule:

CONNECTIVITY TO THIRD PARTY DATA FEEDS OVER THE IDS NETWORK (SEE NOTE 3)

Description	Monthly charge
BM&F Bovespa	$3,000
Boston Options Exchange (BOX)	1,000
Canadian Securities Exchange (CSE)	1,000
Cboe BZX Exchange (CboeBZX) and Cboe BYX Exchange (CboeBYX)	2,000
Cboe EDGX Exchange (CboeEDGX) and Cboe EDGA Exchange (CboeEDGA)	2,000
Cboe Exchange (Cboe) and Cboe C2 Exchange (C2)	2,000
CME Group	3,000
Euronext Optiq Compressed Cash	900
Euronext Optiq Compressed Derivatives	600
Euronext Optiq Shaped Cash	1,200
Euronext Optiq Shaped Derivatives	900
Financial Industry Regulatory Authority (FINRA)	500
Global OTC	100
ICE Data Services Consolidated Feed ≤100 Mb	200
ICE Data Services Consolidated Feed >100 Mb to ≤1 Gb	500
ICE Data Services Consolidated Feed >1 Gb	1,000
ICE Data Services Consolidated Feed Shared Farm ≤100Mb	200
ICE Data Services Consolidated Feed Shared Farm >100 Mb to ≤1 Gb	500
ICE Data Services Consolidated Feed Shared Farm >1 Gb	1,000
ICE Data Services—ICE TMC	200
ICE Data Services PRD	200
ICE Data Services PRD CEP	400
Intercontinental Exchange (ICE)	1,500
Investors Exchange (IEX)	1,000
ITG TriAct Matchnow	1,000
Members Exchange (MEMX)	3,000
MIAX Emerald	3,500
MIAX Options/MIAX PEARL Options	2,000
MIAX PEARL Equities	2,500
Montréal Exchange (MX)	1,000
MSCI 5 Mb	500
MSCI 25 Mb	1,200
NASDAQ Stock Market	2,000
NASDAQ OMX Global Index Data Service	100
NASDAQ UQDF & UTDF	500
NASDAQ Canada (CXC, CXD, CX2)	1,500
NASDAQ ISE	1,000
Neo Aequitas	1,200
Omega	1,000
OneChicago	1,000
OTC Markets Group	1,000
Vela—SuperFeed <500 Mb	250

CONNECTIVITY TO THIRD PARTY DATA FEEDS OVER THE IDS NETWORK (SEE NOTE 3)—Continued

Description	Monthly charge
Vela—SuperFeed >500 Mb to <1.25 Gb	800
Vela—SuperFeed >1.25 Gb	1,000
TMX Group	2,500

The Exchange proposes to add Note 3 to the section of the Fee Schedule titled ''D. Non-Colocation (''NCL'') Services.'' Proposed Note 3 would be titled ''Note 3: Third Party Systems'' and would provide:

Pricing for data feeds from third party markets and other service providers (Third Party Data Feeds) is for connectivity only. Connectivity to Third Party Data Feeds is subject to any technical provisioning requirements, authorization, and licensing from the provider of the data feed. Connectivity to Third Party Data Feeds is over the IDS Network. Fees for Third Party Data Feeds are charged by the provider of such data feeds. Third Party Data Feed providers may charge redistribution fees. When IDS is charged a redistribution fee, IDS passes the charge through to the customer, without change to the fee. The fee is labeled as a pass-through of a redistribution fee on the customer's invoice. IDS does not charge third party markets or content providers for connectivity to their own feeds. IDS is not the exclusive method to connect to Third Party Data Feeds.

Connectivity to Third Party Data Testing and Certification Feeds: The Exchange proposes to specify in the Fee Schedule that NCL Customers may obtain connectivity to third-party testing and certification feeds. Certification feeds are used to certify that an NCL Customer conforms to any of the relevant content service provider's requirements for accessing Third Party Systems or receiving Third Party Data Feeds, while testing feeds would provide NCL Customers an environment in which to conduct tests with non-live data. Such feeds, which are solely used for certification and testing and do not carry live production data, are available over the IDS Network.

Connectivity to third party testing and certification feeds would be subject to any technical provisioning requirements, authorization, and licensing from the provider of the data feed. Fees for such feeds are charged by the provider of the feed. The Exchange is not the exclusive method to connect to third-party testing and certification feeds.

The Exchange proposes to add the following fees and language to the Fee Schedule:

Connectivity to Third Party Testing and Certification Feeds—$100 monthly recurring charge per feed

Connectivity to DTCC: The Exchange proposes to specify in the Fee Schedule services that IDS provides to connect NCL Customers to Depository Trust & Clearing Corporation (''DTCC'') for clearing, fund transfer, insurance, and settlement services.

In order to connect to DTCC, an NCL Customer enters into a contract with DTCC, pursuant to which DTCC charges the NCL Customer for the services provided. IDS receives the DTCC feed over its fiber optic network and, after DTCC and the NCL Customer entered into the services contract and IDS received authorization from DTCC, IDS provides connectivity to DTCC to the NCL Customer over the NCL Customer's IDS Network port. IDS charges the NCL Customer for the connectivity to DTCC.

Connectivity to DTCC does not provide access or order entry to the Exchange's execution system, and an NCL Customer's connection to DTCC is not through the Exchange's execution system.

Connectivity to DTCC is subject to any technical provisioning requirements, authorization, and licensing from DTCC. Fees for such feeds are charged by DTCC. IDS is not the exclusive provider to connect to DTCC feeds.

The Exchange proposes to add the following fees and language to the Fee Schedule:

CONNECTIVITY TO DTCC

Description	Amount of charge
5 Mb connection to DTCC	$500 monthly recurring charge.
50 Mb connection to DTCC	$2,500 monthly recurring charge.

3. NCL NMS Network Ports

The Exchange proposes to amend the Fee Schedule to add services that IDS currently offers enabling NCL Customers to connect to the NMS Network in the Mahwah Data Center.

The Exchange proposes to add the following fees and language to the Fee Schedule:

NCL NMS NETWORK PORTS (SEE NOTE 4)

Type of service	Description	Amount of charge
NCL NMS Network Access—10 Gb	10 Gb NCL NMS Network port	$10,000 initial charge plus $11,000 monthly charge.
NCL NMS Network Access—40 Gb	40 Gb NCL NMS Network port	$10,000 initial charge plus $18,000 monthly charge.

The Exchange also proposes to add Note 4 to the section of the Fee Schedule titled ''D. Non-Colocation (''NCL'') Services,'' to establish that, when an NCL Customer purchases an NMS Network port, it has the option of receiving the NMS feeds over the NMS Network.

Proposed Note 4 would be titled ''Note 4: NMS Network'' and would provide:

When an NCL Customer purchases access to the NMS Network, upon its request, it will receive connectivity to any of the NMS feeds that it selects, subject to any necessary technical provisioning requirements, authorization, and licensing from the provider of such NMS feed. Fees for the NMS feeds are charged by the provider of such NMS feed. The NMS feeds are as follows:

NMS feeds—CTS, CQS, OPRA

4. NCL Cross Connect

The Exchange proposes to amend the Fee Schedule to specify fiber cross connect services that IDS offers NCL Customers for an initial and monthly charge.[10] A cross connect is used to connect a circuit to a port. NCL Customers use such cross connects to connect from the IDS Network or NMS Network to a circuit connecting outside the Mahwah Data Center. The Exchange proposes that the fees for this service would be identical to the fees for the corresponding service in colocation.

The Exchange proposes to add the following fees and language to the Fee Schedule:

Type of service	Description	Amount of charge
NCL Cross Connect	Furnish and install one cross-connect	$500 initial charge plus $600 monthly charge.

5. NCL Expedite Fee

The Exchange proposes to amend the Fee Schedule to specify optional services that IDS offers NCL Customers to expedite the completion of services purchased or ordered by the NCL Customer, for which IDS charges an ''Expedite Fee.'' Similar to the ''Expedite Fee'' applicable to Users in colocation,[11] if an NCL Customer wishes to obtain NCL Services earlier than the expected completion date, the NCL Customer may pay the Expedite Fee. The time saved would vary depending on the type(s) of service(s) ordered, but the Expedite Fee would always be a flat $4,000, allowing the NCL Customer to determine if the expected time savings warrants payment of the fee.

The Exchange proposes to add the following fees and language to the Fee Schedule:

Type of service	Description	Amount of charge
NCL Expedite Fee	Expedited installation/completion of a customer's NCL service	$4,000 per request.

6. NCL Change Fee

The Exchange proposes to amend the Fee Schedule to specify the ''Change Fee'' that IDS charges an NCL Customer if the NCL Customer requests a change to one or more existing NCL Services that IDS has already established or completed for the NCL Customer.

In this regard, the Exchange notes that several of the proposed services that would be added to the Fee Schedule include an initial fee in addition to an ongoing monthly fee. These initial fees are related to IDS's initial cost of establishing or installing a particular service for the NCL Customer. Similar to the ''Change Fee'' applicable to Users in colocation,[12] IDS charges a fee of $950 per order if the NCL Customer requests a change to one or more existing NCL Services that IDS has already established or completed for the NCL Customer. For example, the initial installation of an IDS Network connection would include establishing and configuring market data services requested by the NCL Customer, which would be covered by the initial install fee. However, if the NCL Customer requests that IDS establish and configure additional market data services for its IDS Network connection, the NCL Customer would be charged a one-time Change Fee of $950 for that request. If an NCL Customer orders two or more services at one time (for example, through submitting an order form requesting multiple services), the NCL Customer would be charged a one-time Change Fee of $950, which would cover the multiple services.

The Exchange proposes to add the following fees and language to the Fee Schedule:

Type of service	Description	Amount of charge
NCL Change Fee	Change to an NCL service that has already been installed/completed for a customer.	$950 per request.

Fee Schedule Name

In addition, the Exchange proposes to change the name of the ''Wireless Connectivity Fee Schedule'' to ''Connectivity Fee Schedule.'' [sic] Because the Fee Schedule will no longer be limited to wireless services, the Exchange proposes to change the name of the Fee Schedule from ''Wireless Connectivity Fee Schedule'' [sic] to ''Mahwah Wireless, Circuits, and Non-Colocation Connectivity Fee Schedule.''

Application and Impact of the Proposed Changes

There are currently few NCL Customers. Accordingly, the Exchange expects that the impact of the proposed change would be minimal.

The proposed change is not targeted at, or expected to be limited in applicability to, a specific segment of market participant. The Mahwah Circuits are available for purchase for any potential customer requiring a circuit between the Mahwah Data Center and a remote location. The NCL Services are available for purchase by any customer. The proposed changes do not apply differently to distinct types or sizes of customers. Rather, they apply to all customers equally.

Use of the services proposed in this filing are completely voluntary and available to all market participants on a non-discriminatory basis.

[10] Because NCL Customers do not co-locate any equipment in the Mahwah Data Center, they generally require fewer fiber cross connects than colocation Users. Accordingly, the Exchange does not propose amending the Fee Schedule to include bundles of 6, 12, 18, or 24 cross connects as are available to colocation Users.

[11] *See* NYSE National Colocation Notice, *supra* note 4, at 26318.

[12] *See id.*

Competitive Environment

IDS operates in a highly competitive market in which exchanges, third party telecommunications providers, Hosting Users,[13] and other third-party vendors offer connectivity services as a means to facilitate the trading and other market activities of market participants. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [14]

The proposed changes are not otherwise intended to address any other issues relating to services related to the Mahwah Data Center and/or related fees, and the Exchange is not aware of any problems that market participants would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change 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, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[17] because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Proposed Change Is Reasonable

The Exchange believes that the proposed rule change is reasonable and would perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest, for the following reasons.

General: Only the market participants that voluntarily select to receive the IDS services described herein are charged for them, and those services are available to all market participants. Furthermore, the IDS services described in this filing are available to all market participants on an equal basis (*i.e.,* the same products and services are available to all market participants). All market participants that voluntarily select a specific proposed IDS service would be charged the same amount for that service as all other market participants purchasing that service.

In addition, the Exchange believes that the proposed rule change is reasonable because the IDS services described herein are offered as a convenience to market participants, but offering them requires the provision, maintenance, and operation of the Mahwah Data Center, including the installation, monitoring, support, and maintenance of the services.

Mahwah Circuits: The Exchange believes the fees proposed herein for IDS's Mahwah Circuits are reasonable. The market for circuits into and out of the Mahwah Data Center is competitive, and the proposed IDS offerings are merely one of several options from which market participants can choose. Each of the third-party telecommunications providers that has a presence in the Mahwah Data Center's ''Meet Me Rooms'' offers similar circuits to market participants, in competition with the IDS offerings proposed here. Each market participant considering whether to purchase a circuit directly can weigh that option against similar circuits offered by those third-party carriers, and can choose which circuit to purchase based on which combination of latency, bandwidth, price, and other factors best meets its business needs. Indeed, the Exchange understands that most of the third-party telecommunications providers that provide circuits do so at fees lower than those proposed herein, and that most NCL Customers and colocation Users use such third party telecommunication circuits into and out of the Mahwah Data Center.

IDS Network Ports: The Exchange believes that the IDS Network ports proposed herein are reasonable. The market for connecting with the Exchange's trading and execution systems is competitive, and the proposed IDS Network ports that IDS provides are merely one of several options that market participants may choose. As alternatives to the IDS Network ports, a market participant would be able to access or connect to Exchange Systems, Third Party Systems, Included Data Products, Third Party Data Feeds, third party testing and certification feeds, and DTCC through (a) a connection to an IDS access center outside of the Mahwah Data Center, (b) a third-party access center, (c) a third-party vendor, (d) a Hosting User, or (e) colocation.

Market participants consider various factors in determining which connectivity options to choose, including latency; bandwidth size; amount of network uptime; the equipment that the network uses; the cost of the connection; and the applicable contractual provisions. IDS's offering of connectivity services via IDS Network ports gives market participants another service to evaluate and consider, thereby broadening their options for connectivity to the Exchange Systems and allowing them to tailor their connectivity options to their specific needs.

The Exchange further believes that the proposed fees for IDS Network ports for NCL Customers are reasonable because such prices are constrained by competition with the numerous other providers that offer connectivity to the Exchange Systems. If IDS were to attempt to offer such ports at a supra-competitive price, potential customers would likely respond by seeking out less expensive substitutes from other providers.

NCL NMS Network Ports: The Exchange believes that the proposed fees for NMS Network ports for NCL Customers are reasonable to recoup the costs of building the NMS Network. Until 2019, SIAC was required to provide connectivity to the NMS feeds only via the IP network. Although the operating committees for the CTA/CQ Plans authorized SIAC to offer connectivity to the NMS feeds in the Mahwah Data Center via an alternate, dedicated, low-latency NMS Network, the operating committee did not assume the costs of creating such a network; instead, the Exchange and the Affiliate SROs funded the capital and operational expenses to build and operate the NMS Network. The implementation costs of approximately $3.8 million are

[13] ''Hosting'' is a service offered by a User to another entity In the User's space within the Mahwah Data Center. The Exchange allows Users to act as Hosting Users for a monthly fee. *See* NYSE National Colocation Notice, *supra* note 4, at 26318.

[14] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78f(b)(4).

applicable only to the NMS Network, which is used for the sole purpose of providing access to the NMS feeds. None of the implementation costs are applicable to any other Exchange services. As of the date of this filing, only one customer has contracted with IDS for an NCL NMS Network port, and the Exchange expects that demand for NMS Network ports outside of colocation will be very low. The service is nevertheless available, and so the Exchange proposes to add it to the Fee Schedule.

NCL Notes: With respect to proposed NCL Notes 1, 2, 3, and 4, the Exchange believes they are reasonable because they provide detailed descriptions of the access and connectivity that NCL Customers receive when they purchase IDS Network or NMS Network ports. Such detailed descriptions remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because they provide market participants with transparency and clarity as to what connectivity is included in the purchase of IDS Network or NMS Network ports by NCL Customers.[18] The notes would also make clear that all NCL Customers that voluntarily select to access the IDS Network or NMS Network receive the same access and connectivity, and are not subject to a charge above and beyond the fee paid for the relevant IDS Network or NMS Network ports. The notes further make clear that NCL Customers are not required to use any of their bandwidth to access Exchange systems or connect to an Included Data Product unless they wish to do so; rather, an NCL Customer only receives the access and connectivity that it selects, and can change what access or connectivity it receives at any time, subject to authorization from the data provider or the relevant Exchange or Affiliate SRO.[19] Notes 1, 2, 3, and 4 are all based on similar provisions in the Exchange's Price List for colocation.

Other NCL Services: The Exchange believes it is reasonable to specify in the Fee Schedule NCL Services that IDS offers including NCL cross connects, the NCL Expedite Fee, the NCL Change Fee, and NCL connectivity to Third Party Systems, Third Party Data Feeds, third-party testing and certification feeds, and DTCC.

The Exchange believes that the specific fees it has proposed for NCL cross connects, the NCL Expedite Fee, and the NCL Change Fee are reasonable. As noted above, IDS faces competition in the market for connectivity from Hosting Users, IDS access centers outside of the Mahwah Data Center, third-party access centers, and third-party vendors. Market participants can consider IDS's proposed fees for the specific services listed above in the context of this competition, and choose the connectivity provider that offers the services the market participant needs at the optimal cost. As such, the proposed fees for these IDS services are constrained by competition.

The Exchange believes that charging distinct fees for different NCL Services is reasonable because not all market participants need or wish to utilize the same NCL Services. The proposed choice of services allows market participants to select which NCL Services to use, based on their business needs, and market participants are only charged for the services that they select. By charging only those market participants that utilize an NCL Service the related fee, those market participants that directly benefit from a service support its cost.

In addition, the Exchange believes that the proposed fees are reasonable because they allow the costs associated with offering different NCL Services to be defrayed or covered while providing market participants the benefit of such services. The Exchange believes that the proposed charges are reasonable because IDS offers NCL Services as conveniences to market participants, but in order to do so must provide, maintain, and operate the Mahwah Data Center facility hardware and technology infrastructure. IDS needs to provide network infrastructure that keeps pace with the number of services available to NCL Customers, including any increasing demand for bandwidth, and handle the installation, administration, monitoring, support, and maintenance of such services, including by responding to any production issues. In addition, in order to provide connectivity to Third Party Data Feeds, Third Party Systems, third party testing and certification feeds, and DTCC, IDS must establish and maintain multiple connections to each Third Party Data Feed, Third Party System, and DTCC, allowing IDS to provide resilient and redundant connections, adapt to any changes made by the relevant third party, and cover any applicable fees (other than redistribution fees) charged by the relevant third party, such as port fees.

The Exchange believes it is reasonable for redistribution fees charged by providers of Third Party Data Feeds to be passed through to NCL Customers, without change to the fee. If not passed through, the cost of the redistribution fees would be factored into the proposed fees for connectivity to Third Party Data Feeds. The Exchange believes that passing through the fees makes them more transparent to the NCL Customer, allowing the NCL Customer to better assess the cost of the connectivity to a Third Party Data Feed by seeing the individual components of the cost, *i.e.,* IDS's fee and redistribution fee.

The Exchange believes that it is reasonable to not charge third-party markets or content providers for connectivity to their own Third Party Data Feeds, as the Exchange understands that such parties generally receive their own feeds for purposes of diagnostics and testing. The Exchange believes that facilitating such diagnostics and testing removes impediments to, and perfects the mechanisms of, a free and open market and a national market system and, in general, protects investors and the public interest.

Finally, the Exchange believes it is reasonable to make available third party testing and certification feeds to enable customers to test and certify their connections to third party data feeds.

The Proposed Change Is Equitable

The Exchange believes that its proposal equitably allocates its fees among market participants.

The Exchange believes that the proposed change is equitable because it would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all NCL Customers equally.

In addition, the Exchange believes that the proposal is equitable because only the market participants that voluntarily select to receive the services described herein would be charged for them. The services described in this filing are available to all market participants on an equal basis (*i.e.,* the same products and services are available to all market participants), and all market participants that voluntarily select a specific proposed service are charged the same amount for that service as all other market participants purchasing that service.

[18] *See* Securities Exchange Act Release Nos. 79730 (January 4, 2017), 82 FR 3045 (January 10, 2017) (SR–NYSE–2016–92); 79728 (January 4, 2017), 82 FR 3035 (January 10, 2017) (SR–NYSEMKT–2016–126); 79729 (January 4, 2017), 82 FR 3061 (January 10, 2017) (SR–NYSEArca–2016–172).

[19] The General Note on page 1 of the Fee Schedule would also apply to all of the services proposed herein. A market participant that incurs fees for NCL connectivity or other NCL Services from the Exchange or one of the Affiliate SROs would not be subject to fees for the same service charged by the other Affiliate SROs.

IDS faces competition from numerous other providers that offer market participants choices for connectivity to the Mahwah Data Center, Exchange Systems, Third Party Systems, Included Data Products, Third Party Data Feeds, third party testing and certification feeds, and DTCC. Without this proposed rule change, market participants seeking such connectivity would have fewer options. With this proposal, market participants would have more choices with respect to the form and price of the services they use, allowing market participants to select the services and connectivity options that better suit their needs, thereby helping them tailor their connectivity operations to the requirements of their businesses.

The Exchange believes that the proposed NCL Notes 1 and 4 are equitable because they specify that NCL Customers that voluntarily select to access the IDS Network or NMS Network would not be subject to charges above and beyond the fee paid for the relevant IDS Network or NMS Network port. Further, Notes 1, 2, 3, and 4 specify that NCL Customers will not be charged for any access or connectivity that they had not selected.

The Proposed Change Is Not Unfairly Discriminatory

The Exchange believes its proposal is not unfairly discriminatory. The proposed change does not apply differently to distinct types or sizes of market participants. Rather, it applies to all market participants equally. The purchase of any proposed service is completely voluntarily and the Fee Schedule will be applied uniformly to all market participants.

IDS faces competition from numerous other providers that offer market participants choices for connectivity to the Mahwah Data Center, Exchange Systems, Third Party Systems, Included Data Products, Third Party Data Feeds, third party testing and certification feeds, and DTCC. Without this proposed rule change, market participants seeking such connectivity would have fewer options. With this proposal, market participants would have more choices with respect to the form and price of the services they use, allowing market participants to select the services and connectivity options that better suit their needs, thereby helping them tailor their connectivity operations to the requirements of their businesses.

The Exchange believes that the proposed NCL Notes 1 and 4 are not be unfairly discriminatory because they specify that NCL Customers that voluntarily select to access the IDS Network or NMS Network are not be subject to charges above and beyond the fee paid for the relevant IDS Network or NMS Network port. Further, Notes 1, 2, 3, and 4 specify that NCL Customers will not be charged for any access or connectivity that they had not selected.[20]

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed change does not affect competition among national securities exchanges or among members of the Exchange, but rather between IDS and its commercial competitors.

As noted above, the Exchange is making the current proposal solely as a result of the Commission's recent interpretation of the definitions of ''exchange'' and ''facility'' in the Wireless Approval Order, which the Exchange is presently challenging on appeal to the Court of Appeals for the District of Columbia Circuit.[21] The Exchange has nevertheless proposed this rule change in order to preserve the ability of IDS to offer the services at issue herein. If IDS were compelled to stop offering such services, consumers would have fewer service providers to choose from for their connectivity needs, which would be a detriment to competition overall.

Notwithstanding the foregoing, the Exchange notes that there are numerous other third parties that provide circuits and connectivity at the Mahwah Data Center, and that IDS competes with those third parties for the provision of such services to customers. None of these third parties have been compelled to file their services or fees with the Commission, and requiring IDS to do so puts IDS at a competitive disadvantage vis-à-vis its competitors. Requiring the Exchange to file IDS services and fees herein is therefore a burden on competition.

The Exchange believes competition would be best served by allowing IDS to freely compete with the other providers of connectivity services, without the additional burden on IDS alone to file any proposed changes to services and fees with the Commission.

[20] In addition, the General Note on page 1 of the Fee Schedule would apply to all of the services proposed herein. *See supra* note 19.

[21] *Intercontinental Exchange, Inc.* v. *SEC,* No. 20–1470 (D.C. Cir. 2020).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register**, or such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSENAT–2021–04 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–2021–04. 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–2021–04, and should be submitted on or before March 25, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–04422 Filed 3–3–21; 8:45 am]

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[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91223; File No. SR–ISE–2021–01]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Various Rules in Options 3 and Options 5

February 26, 2021.

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 February 18, 2021, Nasdaq ISE, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend various rules in Options 3 and Options 5.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/ise/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend various rules in Options 3 and Options 5. The proposed changes consist of conforming existing rules to current System technology, amending rule text to add greater detail on how certain Exchange functionality operate today, and conforming language within the Exchange's rules to the rules of other exchanges. As such, no System changes to existing functionality are being made pursuant to this proposal. Rather, this proposal is designed to reduce any potential investor confusion as to the features and applicability of certain functionality presently available on the Exchange. These changes are described in detail below, and include amending Exchange rules governing: (1) The Block Order Mechanism (''Block''),[3] (2) the Facilitation Mechanism (''Facilitation''),[4] (3) the Solicited Order Mechanism (''Solicitation''),[5] (4) the Price Improvement Mechanism (''PIM''),[6] (5) Trade Value Allowance (''TVA''),[7] (6) Anti-Internalization,[8] and (7) the exposure mechanism (''Exposure'').[9]

Universal Changes

In September 2019, the Exchange amended its regular allocation rule in Options 7, Section 10 (Priority of Quotes and Orders) to make non-substantive changes, among other changes, to replace references to Professional interest with non-Priority Customer interest.[10] The Exchange now proposes to make similar changes to replace all instances of ''Professional'' interest with ''non-Priority Customer'' interest throughout its auction allocation rules in Options 3, Section 11 and Section 13 to align with the changes made in SR–ISE–2019–21.[11] While the term ''Professional Orders'' is defined within Options 1, Section 1(a)(39) as an order that is for the account of a person or entity that is not a Priority Customer, the Exchange believes that using the term ''non-Priority Customer'' is more clear in describing the types of market participant to which the allocation applies, and also reduces confusion regarding any reference to Professional Orders or Professional Customer orders.

In addition, the Exchange proposes to make universal changes in its Facilitation and Solicitation rules [12] to clearly delineate between orders and Responses [13] of the same capacity. For example, where the existing rule text currently states ''Priority Customer bids (offers),'' the Exchange proposes instead to state ''Priority Customer Orders and Priority Customer Responses to buy (sell).'' The Exchange notes that this is merely a non-substantive change as auction orders and Responses of the same capacity do not get treated differently for allocation purposes today. The rules for complex Facilitation and Solicitation already distinguish between orders and Responses, so the Exchange is simply amending those complex rules to clearly state how, for example, Priority Customer Complex Orders and *Priority Customer* Responses get allocated today [14] With the proposed changes, the Exchange seeks to include a similar level of detail within its simple and complex Facilitation and Solicitation rules in order to bring transparency

[3] *See* Options 3, Section 11(a).

[4] *See* Options 3, Section 11(b).

[5] *See* Options 3, Section 11(d).

[6] *See* Options 3, Section 13.

[7] *See* Supplementary Material .03 to Options 3, Section 14.

[8] *See* Options 3, Section 15(a)(3)(A).

[9] *See* Supplementary Material .02 to Options 5, Section 2.

[10] *See* Securities Exchange Act Release No. 86947 (September 12, 2019), 84 FR 49165 (September 18, 2019) (SR–ISE–2019–21).

[11] Specifically in Options 3, Section 11, the Exchange will amend current subsections (a)(2)(B), (b)(3)(A)–(C) (renumbered to (b)(4)(A)–(C) under this proposal), (c)(7)(A)–(C), (d)(2)(C) (renumbered to (d)(3)(C) under this proposal), and (e)(4)(D). In Options 3, Section 13, the Exchange will amend current subsections (d)(1)–(3) and (e)(5)(i)–(iii).

[12] Specifically in Options 3, Section 11, subsections (b)(3)(A)–(C) (renumbered to (b)(4)(A)–(C)), and (d)(2)(A) and (C) (renumbered to (d)(3)(A) and (C)) will be updated.

[13] A ''Response'' is an electronic message that is sent by Members in response to a broadcast message. *See* Options 3, Section 11.

[14] *See* Options 3, Section 11(c)(7) and (e)(4).

around how allocation takes place in those auction mechanisms today.

Block Order Mechanism

The Exchange proposes minor changes to the current descriptions of the Block execution and allocation process in Options 3, Section 11(a). As discussed below, the proposed Block changes are non-substantive in nature, and are intended to harmonize with the Block rule on its affiliated market, BX Options (''BX'') in order to ensure rule consistency between the Exchange and its affiliate offering identical functionality.

First, the Exchange proposes to add ''up to the size of the block order'' at the end of subsection (a)(2)(A). As amended, the rule will provide that bids (offers) on the Exchange at the time the block order is time the block order is executed that are priced higher (lower) than the block execution price, as well as Responses that are priced higher (lower) than the block execution price, will be executed in full at the block execution price *up to the size of the block order.* The Exchange is making this non-substantive change to align with BX's Block rule,[15] which will ensure rule consistency for identical functionality across affiliated markets. The language states that better priced interest gets executed in full only if there is sufficient size to execute against such interest, which is how block orders are executed and priced on the Exchange and BX today.

Second, the Exchange proposes a non-substantive change in the first sentence of subsection (a)(2)(B) to replace ''first and in time priority'' with ''first in price time priority.'' As amended, the rule will provide that at the block execution price, Priority Customer Orders and Priority Customer Responses will be executed *first in price time priority.* This is not a change to the current Block allocation methodology, but rather a non-substantive change for better readability, and to align with BX's Block rule [16] in order to ensure rule consistency for identical functionality across affiliated markets. Block orders will continue to trade at a single execution price that allows the maximum number of contracts of the block order to be executed against both the Responses entered to trade against the order and unrelated interest on the Exchange's order book.

Example 1

Block order is entered to buy 50 contracts @ 1.50

The following Responses are received:

Priority Customer Response 1 to sell 40 contracts @1.40
Priority Customer Response 2 to sell 10 contracts @1.40
Priority Customer Response 3 to sell 10 contracts @1.39

The block execution price would be $1.40 (*i.e.,* the price at which the maximum number of contracts could be executed) and would be executed as follows:

Block order trades 10 with Priority Customer Response 3 @1.40
Block order trades 40 with Priority Customer Response 1 @1.40

As shown above, Priority Customer Response 3 would be executed in full since it is priced better than the block execution price and there is sufficient size to execute Response 3 against the block order, while Priority Customer Responses 1 and 2, which are priced at the block execution price, would participate in price time priority—*i.e.,* the remaining 40 contracts would go to Response 1, which was received before Response 2.

Facilitation Mechanism

The Exchange proposes a number of changes to its Facilitation rule, none of which will change the current operation of this technology offering. Many of the proposed changes are intended to align the simple Facilitation rule in Options 3, Section 11(b) with the complex Facilitation rule in Options 3, Section 11(c) where relevant. In October 2018, the Exchange amended its complex order rules to provide greater clarity and additional detail regarding the operation and applicability of complex order functionality, including complex auction mechanisms like complex Facilitation.[17] Accordingly, the Exchange seeks to make aligning changes and update its simple auction mechanism rules to similarly provide the level of detail that now exists in its complex auction mechanism rules. The proposed changes are also intended to align with the simple Facilitation rules of the Exchange's affiliated markets, Nasdaq GEMX (''GEMX'') and Nasdaq MRX (''MRX''). The Exchange also proposes to more accurately describe how orders will be allocated in Facilitation's ''auto-match'' functionality.

In Options 3, Section 11(b), the Exchange proposes to add new subsection (b)(1),[18] which will provide that Orders must be entered into the Facilitation Mechanism at a price that is (A) equal to or better than the NBBO on the same side of the market as the agency order unless there is a Priority Customer order on the same side Exchange best bid or offer, in which case the order must be entered at an improved price; and (B) equal to or better than the ABBO [19] on the opposite side. Orders that do not meet these requirements are not eligible for the Facilitation Mechanism and will be rejected. The Exchange is not proposing any other changes to the current entry requirements for Facilitation. The new subsection (b)(1) would simply provide additional detail about simple Facilitation's existing entry checks, and align to the level of detail currently within the complex Facilitation rule regarding entry checks.[20]

Example 2

Assume the following market:

ISE BBO: 1 × 2 (also NBBO)
CBOE: 0.75. *times; 2.25 (next best exchange quote)
Facilitation order is entered to buy 50 contracts @2.05

No Responses are received.

The Facilitation order executes with resting 50 lot quote @2. In this instance, the Facilitation order is able to begin crossed with the contra side ISE BBO because in execution, the resting 50 lot quote @2 is able to provide price improvement to the facilitation order.

In renumbered subsection (b)(2), the Exchange proposes to add language to describe the content of the broadcast message sent to Members upon entry of an order into simple Facilitation. In particular, the Exchange proposes to specify that the broadcast message includes the series, price and size of the Agency Order, and whether it is to buy or sell. Although this change reflects current functionality, the existing rule is silent in this regard and only indicates that a broadcast message is sent upon the order's entry into the mechanism.

[15] *See* BX Options 3, Section 11(a)(2)(A).

[16] *See* BX Options 3, Section 11(a)(2)(B).

[17] *See* Securities Exchange Act Release No. 84373 (October 5, 2018), 83 FR 51730 (October 12, 2018) (SR–ISE–2018–56) (''Complex Order Filing''). As discussed later in this filing, the Complex Order Filing also clarified the Exchange's complex Solicitation and PIM rules, and the Exchange is proposing to align the simple Solicitation and PIM rules with the complex rules where possible.

[18] As a result, current subsections (b)(1)—(3) will be renumbered as (b)(2)—(4). The Exchange will also renumber current subsection (b)(3)(D) as subsection (b)(5).

[19] The term ''Away Best Bid or Offer'' or ''ABBO'' means the displayed National Best Bid or Offer not including the Exchange's Best Bid or Offer. *See* Options 1, Section 1(a)(4).

[20] *See* Options 3, Section 11(c)(1) and (c)(2). Complex Facilitation refers to the Exchange's best bid or offer instead of the NBBO or ABBO. There is no NBBO for complex orders as complex orders may be executed without consideration of any prices that might be available on other exchanges trading the same options contracts. *See* Options 3, Section 14(d). Additionally, executions of legs of complex orders are exceptions to the prohibition on trade-throughs. *See* Options 5, Section 2(b)(7).

Identical language currently exists in the rules governing simple Facilitation on GEMX and MRX, which operate in the same way as ISE's simple Facilitation.[21]

In renumbered subsection (b)(3), the Exchange proposes to replace the words ''must not exceed'' with ''will only be considered up to'' in order to align with identical language in the complex Facilitation rule.[22] This change more accurately describes that the System will cap Responses to the size of the auction for purposes of allocation methodology.

In renumbered subsection (b)(4)(A), the Exchange proposes to provide that the facilitation order will be cancelled at the end of the exposure period if an execution would take place at a price that is inferior to the best bid (offer) on the Exchange. This is a non-substantive change that makes clear that any executions in Facilitation will comply with the general prohibition on trade-throughs in Options 5, Section 2(a). Identical language is included in the rules governing simple Facilitation on GEMX and MRX.[23]

In renumbered subsections (b)(4)(B) and (b)(4)(C), the Exchange proposes to amend the rule to provide that the facilitating Member will be allocated up to forty percent (40%) (or such lower percentage requested by the Member) of the original size of the facilitation order. If the Member requests a lower allocation percentage, the contra-side order would receive an allocation consistent with the percentage requested by the Member. Regardless of the Member's request, the contra-side order would still be responsible for executing up to the full size of the agency order if there is not enough interest to execute the agency order at a particular price. Similar language indicating that the Member may request a lower allocation percentage than 40% is currently included in the complex Facilitation rule, which operate in the same way as the simple Facilitation in this manner.[24] For greater consistency between its simple and complex Facilitation rules, the Exchange also proposes to make aligning, non-substantive changes in the complex Facilitation rule to provide that the Member will ''be allocated up to'' forty percent. The current complex Facilitation language provides that the Member will ''execute at least forty percent'' or that the Member will ''be allocated at least forty percent.''[25] The non-substantive language proposed for complex Facilitation will therefore serve to harmonize the complex rule with the amended simple rule.

The Exchange also proposes to more accurately describe Facilitation's auto-match functionality, which provides an enhanced price improvement opportunity for the agency order by permitting the contra-side order to further participate in the cross by auto-matching the price and size of competing interest providing price improvement from other market participants.[26] The rule currently provides that upon entry of an order into the Facilitation Mechanism, the facilitating Electronic Access Member can elect to automatically match the price and size of orders, quotes and responses received during the exposure period up to a specified limit price or without specifying a limit price. In this case, the facilitating Electronic Access Member will be allocated its full size at each price point, or at each price point within its limit price is a limit is specified, until a price point is reached where the balance of the order can be fully executed.[27] The Exchange proposes to state that if a Member elects to auto-match, the facilitating Electronic Access Member will be allocated *the aggregate size of all competing quotes, orders, and Responses* (instead of ''its full size'') at each price point, or at each price point *up to the specified limit price* (instead of ''within its limit price'') if a limit is specified, until a price point is reached where the balance of the order can be fully executed. The Exchange believes that the modified language more accurately explains how the functionality works today, and better aligns with how this feature is described in the Auto-Match Filing.[28] For greater consistency within its Rulebook, the Exchange will also make the same changes in the complex Facilitation auto-match rule in Options 3, Section 11(c)(7)(C).

Lastly, the Exchange proposes to add at the end of Supplementary Material .01 to Options 3, Section 11 that any solicited contra orders entered by Members into the Facilitation Mechanism to trade against Agency Orders may not be for the account of a Nasdaq ISE Market Maker that is assigned to the options class.[29] This language was included in the approval order to SR–ISE–2006–78 to allow solicited transactions in ISE's Facilitation Mechanism, so the proposed change will import that prohibition into the rule text for greater transparency.

Solicited Order Mechanism

The Exchange proposes a number of changes to its Solicitation rule, none of which will change the current operation of this technology offering.

In Options 3, Section 11(d), the Exchange proposes to add new subsection (d)(1),[30] which will provide that orders must be must be entered into the Solicited Order Mechanism at a price that is equal to or better than the NBBO on both sides of the market; provided that, if there is a Priority Customer order on the Exchange best bid or offer, the order must be entered at an improved price. Orders that do not meet these requirements are not eligible for the Solicited Order Mechanism and will be rejected. The Exchange is not proposing any other changes to the current entry requirements for Solicitation. The new subsection (d)(1) would simply provide additional detail about simple Solicitation's existing entry checks, and align to the level of detail currently within the complex Solicitation rule regarding entry checks.[31]

Example 3

Assume the following market:

ISE BBO: 1 × 2 (also NBBO)

[21] *See* GEMX and MRX Options 3, Section 11(b)(1).

[22] *See* Options 3, Section 11(c)(6).

[23] *See* GEMX and MRX Options 3, Section 11(b)(3).

[24] *See* Options 3, Section 11(c)(7)(B) and (C). Other options exchanges such as BX provide similar functionality that allows members using an auction mechanism to configure allocation priority. *See, e.g.,* BX Options 3, Section 13, which provides a similar feature for the BX Options Price Improvement Auction (''PRISM'') called ''Surrender.''

[25] *Id.*

[26] *See* Securities Exchange Act Release No. 62644 (August 4, 2010), 75 FR 48395 (August 10, 2010) (SR–ISE–2010–61) (''Auto-Match Filing''). As discussed later in this filing, the Auto-Match Filing also introduced the auto-match feature on PIM. As such, the Exchange is proposing to make similar changes in PIM's auto-match rule as proposed for Facilitation's auto-match rule.

[27] *See* Options 3, Section 11(b)(3)(C) (renumbered to Section 11(b)(4)(C) under this proposal).

[28] The Auto-Match Filing describes the auto-match feature as allowing the initiating member to submit a contra-side order that will automatically match the price and size set forth by the competing interest from other market participants (*i.e.,* auction responses, quotes, and orders) at any price level during the auction or up to a specified limit price if a limit is specified.

[29] *See* Securities Exchange Act Release No. 55557 (March 29, 2007), 72 FR 16838 (April 5, 2007) (SR–ISE–2006–78) (Order Granting Approval of Proposed Rule Change Relating to Facilitation Mechanism).

[30] As a result, current paragraphs (d)(1)–(3) will be renumbered accordingly. The Exchange will also renumber current paragraph (d)(2)(D) as paragraph (d)(4).

[31] *See* Options 3, Section 11(e)(1). Complex Solicitation refers to the Exchange's best bid or offer instead of the NBBO. As noted above, there is no NBBO for complex orders, and executions of legs of complex orders are exceptions to the prohibition of trade-throughs. *See supra* note 20.

CBOE: 0.75. × 2.25 (next best exchange quote)
Solicitation order is entered to buy 500 contracts @ 2.05

The Solicitation order is rejected upon entry for being crossed with the NBBO on the contra side. In contrast to Example 2 above for Facilitation, the Solicitation order in this instance is not able to begin crossed with the contra side ISE BBO because of the all-or-none contingency of the Solicitation order.[32]

In renumbered subsection (d)(2), the Exchange proposes to add language to describe the content of the broadcast message sent to Members upon entry of an order into simple Solicitation. In particular, the Exchange proposes to specify that the broadcast message includes the series, price and size of the Agency Order, and whether it is to buy or sell. While this change reflects current functionality, the existing rule is silent in this regard and only indicates that a broadcast message is sent upon the order's entry into the mechanism. Identical language already exists in the rules governing simple Solicitation on GEMX and MRX, which operate in the same way as the ISE's simple Solicitation.[33]

Lastly, the Exchange also proposes technical changes in renumbered subsection (d)(3) to correct the internal lettering and cross-cites within paragraphs (A) through (C).

Price Improvement Mechanism

The Exchange proposes a number of changes to the PIM rule, none of which will change the current operation of this technology offering. As noted above, many of these modifications are similar to the changes proposed for Facilitation.

The Exchange proposes in Options 3, Section 13(b)(2) to delete ''national best bid or offer'' as NBBO is already defined in subsection (b)(1) above. The Exchange proposes in subsection (c)(2) to provide that responses in the PIM (*i.e.,* ''Improvement Orders'') *will only be considered* up to the size of the Agency Order. The proposed amendment will specifythat the System will cap the size of the Improvement Orders to the auction size for purposes of the allocation methodology. This is similar to the change proposed above for simple Facilitation, and also aligns to identical language in the complex PIM rule.[34] The Exchange also proposes in subsection (c)(3) to amend the internal numbering from (1) and (2) to (i) and (ii) for greater numbering consistency within the PIM rule.

In subsection (d)(3), which describes how allocation and execution takes place in simple PIM, the Exchange proposes that the Counter-Side Order will be allocated the greater of one contract or 40% *(or such lower percentage requested by the Member)* of the initial size of the Agency Order. Similar to Facilitation as discussed above, the System currently permits Members entering orders into PIM to elect to receive a percentage allocation that is less than 40%, although the current rule is silent in this regard. If the Member requests a lower allocation percentage, the Counter-Side Order would receive an allocation consistent with the percentage requested by the Member. Regardless of the Member's request, the Counter-Side Order would still be responsible for executing up to the full size of the agency order if there is not enough interest to execute the agency order at a particular price. Complex PIM, which shares the same allocation feature as simple PIM, already has this concept within the rule, so the proposed changes will align the simple PIM rule with the complex PIM rule.[35]

The Exchange also proposes to more accurately describe PIM's auto-match functionality in a similar manner as Facilitation's auto-match functionality, as discussed above. In this instance, the Exchange proposes to amend the third sentence of subsection (d)(3) to provide: ''If a Member elects to auto-match, the Counter-Side Order will be allocated the aggregate size of all competing quotes, orders, and Responses at each price point up to the specified limit price if a limit is specified, until a price point is reached where the balance of the order can be fully executed.'' Similar to the proposed amendments to simple Facilitation's auto-match, the Exchange believes that the proposed language for simple PIM's auto-match more clearly explains how the functionality works today, and better aligns with how this feature is described in the Auto-Match Filing. For greater consistency within its Rulebook, the Exchange will also make the same changes in the complex PIM auto-match rule in Options 3, Section 13(e)(5)(iii).

The Exchange further proposes technical amendments in subsection (d)(3) to replace all instances of ''Counter-Side order'' as ''Counter-Side Order'' to use the correct terminology. Lastly, the Exchange proposes to provide in Supplementary Material .04 to Options 3, Section 13 that PIMs will not queue or overlap in any manner, *except as described in Options 3, Section 11(f) and (g).* Sections 11(f) and (g) set forth the governing provisions for concurrent complex auctions and concurrent complex and simple auctions. The proposed changes to add in the cross-cites to Sections 11(f) and (g) will make clear that two simple or two complex PIM auctions are not permitted to run concurrently, but that a simple PIM auction may run concurrently with a complex PIM auction.

Trade Value Allowance

The Exchange proposes a non-substantive change to amend the TVA rule in Supplementary Material .03 to Options 3, Section 14 to add a cross-cite to the complex PIM rule in Options 3, Section 13, which was inadvertently omitted when the Exchange relocated the complex auctions rules in a prior filing.[36] In SR–ISE–2019–05, the original cross-cite within the TVA rule was updated from Supplementary Material .08 to Rule 722 to Rule 716 (now Options 3, Section 11). Supplementary Material .08 to Rule 722 set forth the complex auction mechanism rules, namely complex Facilitation, Solicitation, and PIM. SR–ISE–2019–05 relocated complex Facilitation and Solicitation to Rule 716 (now Options 3, Section 11), but moved complex PIM to Rule 723 (now Options 3, Section 13). As such, the original cross-cite in the TVA rule should have been updated to include complex PIM in Rule 723 but was inadvertently omitted.

TVA is a functionality that allows complex orders to trade outside of their expected notional trade amount by a specified amount. The amount of TVA permitted may be determined by the Member, or a default value determined by the Exchange and announced to Members.[37] The TVA rule currently provides, however, that any amount of TVA is permitted in auction mechanisms pursuant to Options 3, Section 11 when auction orders do not trade solely with their contra-side order. The Exchange now proposes to add a cross-cite to Options 3, Section 13 to specify that TVA also applies to complex PIM auctions in this manner. The Exchange will also provide that TVA applies to ''complex'' mechanisms in the cited rules. These changes will

[32] *See* Options 3, Section 11(d) (requiring that each Solicitation order be designated as all-or-none).

[33] *See* GEMX and MRX Options 3, Section 11(d)(1).

[34] *See* Options 3, Section 13(e)(4)(i).

[35] *See* Options 3, Section 13(e)(5)(iii). As noted above, BX has a similar feature called Surrender for its PRISM auction. *See supra* note 24.

[36] *See* Securities Exchange Release No. 85308 (March 13, 2019), 84 FR 10136 (March 19, 2019) (SR–ISE–2019–05).

[37] *See* Supplementary Material .03 to Options 3, Section 14.

align the rule text to how TVA is presently implemented in the System. The Exchange notes that its complex auction mechanisms provide an opportunity for market participants to respond with better-priced interest that could execute against an Agency Order. As such, the Exchange believes that it is appropriate to ensure that paired orders entered into complex Facilitation, Solicitation and PIM that are broken up due to better-priced interest are actually executed against such better-priced interest, and are not restricted from trading due to TVA settings of one or more Members.

Anti-Internalization

The Exchange proposes to amend its anti-internalization (''AIQ'') rule in Options 3, Section 15(a)(3)(A). Specifically, the Exchange proposes to add that AIQ does not apply during the opening process or reopening process following a trading halt pursuant to Options 3, Section 8 to provide more specificity on how this functionality currently operates. The Exchange notes that the same procedures used during the opening process are used to reopen an option series after a trading halt, and therefore proposes to specify that AIQ will not apply during *an Opening Process* (*i.e.,* the opening and halt reopening process) in addition to an auction, as currently within the Rule. AIQ is unnecessary during an Opening Process due to the high level of control that Market Makers exercise over their quotes during this process. The proposed changes will align the Exchange's AIQ rule with BX's AIQ rule, which sets forth materially identical functionality.[38]

Exposure Mechanism

Under the linkage rules, the Exchange cannot execute orders at a price that is inferior to the NBBO, nor can the Exchange place an order on its book that would cause the Exchange best bid or offer to lock or cross another exchange's quote.[39] In these circumstances, Supplementary Material .02 to Options 5, Section 2 sets forth an Exposure mechanism for automated order handling where eligible incoming orders are exposed at the NBBO to all Members to give them an opportunity to execute the order at the NBBO price or better. The Exchange proposes to make clear within Supplementary Material .02 that an incoming order will be eligible for Exposure if the order is priced at or through the ABBO, when the ABBO is better than the Exchange BBO.

Supplementary Material .02 to Options 5, Section 2 currently provides that when the automatic execution of an incoming order would result in an impermissible Trade-Through, such order would be exposed at the current NBBO to all Exchange Members for a time period established by the Exchange not to exceed one (1) second. Supplementary Material .01 to Options 5, Section 3, however, currently provides that when the price of an incoming limit order that is not executable upon entry would lock or cross a Protected Quotation, such order would be handled in accordance with the Exposure process in Supplementary Material .02 to Options 5, Section 2.[40] The Exchange proposes to modify Supplementary Material .02 by removing the portion related to the automatic execution of an incoming order that would result in an impermissible Trade-Through, and instead providing within this Rule that Exposure will initiate when an incoming order is priced *at or* through the ABBO, when the ABBO is better than the Exchange BBO. The current language in Supplementary Material .02 only specifies that Exposure is initiated when the price of the incoming order is crossed with the ABBO (*i.e.,* would result in an impermissible Trade-Through), but does not specify the scenario in Supplementary Material .01 to Options 5, Section 3 when the price is locked. As such, the proposed changes seek to enhance the accuracy of the rules by codifying both scenarios within the Exposure rule in Supplementary Material .02.

Technical Amendments

The Exchange proposes technical changes in the Supplementary Material to Options 3, Section 11. First, the Exchange proposes in Supplementary Material .03 to update an incorrect cross-cite from Options 3, Section 22(d) to Section 22(b), which limits principal transactions. Second, the Exchange will make corrective changes to renumber Supplementary Material .07 to .05, and to update the cross-cite to paragraph (a)(2)(i) therein to paragraph (a)(2)(A). Third, the Exchange proposes in renumbered Supplementary Material .07 to update the reference to ''Block Mechanism'' to ''Block Order Mechanism'' to use the correct terminology.

Lastly, the Exchange proposes some harmonizing changes throughout its Rulebook to align with the rule numbering and titles with that of its affiliates. Specifically, the Exchange proposes to add a new Options 4B and reserve it in the Rulebook in order to harmonize its Options Rule numbering with that of its affiliates, GEMX and Nasdaq PHLX LLC (''Phlx''). The Exchange also proposes to retitle General 4 (currently titled ''Regulation'') to ''Registration Requirements'' to harmonize its General Rule titles with that of its affiliates The Nasdaq Stock Market LLC and Nasdaq BX, Inc.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[41] in general, and furthers the objectives of Section 6(b)(5) of the Act,[42] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange believes that its proposal is consistent with the protection of investors and public interest as all of the proposed changes will increase transparency around how various existing Exchange mechanisms work today. As such, no System changes to existing functionality are being made pursuant to this proposal. Rather, this proposal is designed to reduce any potential investor confusion as to the features and applicability of certain functionality presently available on the Exchange.

Furthermore, many of the proposed changes seek to provide greater harmonization between the rules of the Exchange and its affiliates (notably rules related to Block, Facilitation, Solicitation, and AIQ), or between the Exchange's own simple and complex auction rules (notably for simple and complex Facilitation, Solicitation, and PIM).[43] The Exchange believes that these harmonizing changes would result in greater uniformity, and ultimately less burdensome and more efficient regulatory compliance by market participants. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and

[38] *See* BX Options 3, Section 15(c)(1).

[39] *See* Options 5, Sections 2 and 3. *See also* Options 3, Section 5(d).

[40] Such order would also be handled in accordance with Supplementary Material .04 (Non-Customer Orders that opt out of the Exposure mechanism) or .05 (Sweep Orders) to Options 5, Section 2, as applicable. *See* Supplementary Material .01 to Options 5, Section 3.

[41] 15 U.S.C. 78f(b).

[42] 15 U.S.C. 78f(b)(5).

[43] As noted above, the Exchange seeks to add granularity to its simple auction rules to align with the level of detail that currently exists within its complex auction rules. *See supra* note 17.

would remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange also believes that more consistent rules will increase the understanding of the Exchange's operations for Members that are also members on the Exchange's affiliates, thereby contributing to the protection of investors and the public interest.

Specifically, the Exchange believes that the proposed universal changes to replace all instances of Professional interest with non-Priority Customer interest throughout the Exchange's auction allocation rules will add greater consistency within the Exchange's rules. As discussed above, the Exchange previously made the same modifications within its standard allocation rule in Options 7, Section 10, so the proposed changes will promote more consistent terminology in the rules and make them easier for market participants to navigate and comprehend. The Exchange also believes that using the term ''non-Priority Customer'' reduces any potential confusion regarding any reference to Professional Orders or Professional Customer orders. In addition, the Exchange believes that clearly delineating between orders and Reponses of the same capacity in the Facilitation and Solicitation rules will bring clarity and transparency around how allocation takes place in those auction mechanisms. The complex Facilitation and Solicitation rules currently differentiate between orders and Responses,[44] so the Exchange is aligning the simple rule to the level of granularity already found in the complex rule while also specifying the capacity of such order or Response within the simple and complex rules. As noted above, the Exchange is not changing the current allocation methodology, and auction orders and Responses of the same capacity do not get treated differently for allocation purposes today.

The Exchange believes that the proposed changes to the Block rule are consistent with the protection of investors and the public interest as the modifications will more accurately reflect the handling of auctions in Block, specifically as it relates to execution and allocation. The proposed changes will specify that better priced interest entered into Block gets executed in full only if there is sufficient size to execute against such interest, and that Priority Customer interest gets executed first in price time priority. This specificity will be helpful to market participants utilizing Block and provide greater certainty as to how their Block orders will be executed and allocated. The Exchange also believes that the proposed changes will continue to ensure a fair and orderly market by maintaining and protecting the priority of Priority Customer orders, while still affording the opportunity for all market participants to seek liquidity and potential price improvement during each Block auction commenced on the Exchange. As noted above, the Exchange is not proposing any changes to the current execution or allocation methodology but believes that the changes will promote consistency with the rulebook of its affiliated exchange BX, which offers identical functionality.[45]

Similarly, the Exchange believes that specifying the entry checks for simple Facilitation and Solicitation is consistent with the protection of investors and the public interest by providing greater consistency to the level of granularity currently within the complex Facilitation and Solicitation entry checks.[46] The Exchange also believes it is appropriate to require that the Facilitation order be entered at an improved price if there is a Priority Customer order on the same side Exchange best bid or offer as the agency order. The Exchange believes this will ensure a fair and orderly market by maintaining priority of orders and quotes and protecting Priority Customer orders, while still affording the opportunity to seek liquidity and for potential price improvement during each Facilitation auction commenced on the Exchange. For the same reasons, the Exchange believes that it is appropriate to require that the Solicitation order be entered at an improved price if there is a Priority Customer order on the Exchange best bid or offer.

The Exchange further believes that it is consistent with the Act to specify the contents of the broadcast message sent to Members upon entry of an order into simple Facilitation and Solicitation as the changes will remove any potential confusion about what type of auction information is disseminated. Currently, the broadcast message in simple Facilitation and Solicitation includes the series, price, and size of the Agency Order, and whether it is to buy or sell. As this information is helpful to auction participants, the Exchange believes that codifying this information into the simple Facilitation and Solicitation rules may encourage greater participation within these mechanisms, thereby increasing the opportunity for options orders to receive executions on the Exchange. The Exchange is not proposing any changes to the current content of the broadcast message but wants to make this clear in its rules, which, with this change, would be consistent with the rules of its affiliated exchanges that offer identical functionality.[47] Likewise, the proposed change to add that a facilitation order would be cancelled at the end of the exposure period if an execution would take place at a price that is inferior to the best bid (offer) on the Exchange is intended to ensure compliance with the general prohibition on trade-throughs in Options 5, Section 2(a), and to ensure consistency across the rules of the Exchange and its affiliates that offer identical functionality.[48]

The proposed changes to replace ''must not exceed'' with ''will only be considered up to'' in the simple Facilitation and PIM rules are intended to more accurately describe that the System will cap the size of Responses to the size of the agency order for purposes of allocation. The Exchange is not amending current System behavior; rather, the modifications will more clearly articulate the handling of Responses by the System. In addition, the proposed changes will serve to harmonize the simple and complex auction rules, thereby resulting in greater uniformity and ultimately less burdensome and more efficient regulatory compliance by market participants.[49]

The Exchange believes that its proposal to specify in the simple Facilitation and PIM rules that an initiating Member may elect to receive a percentage allocation lower than 40% is consistent with the Act. This feature provides an initiating Member that submits an order into Facilitation or PIM with the flexibility to configure its allocation percentage up to the full 40% entitlement. The Exchange notes that regardless of the Member's instruction, the contra-side order would still be responsible for executing up to the full size of the agency order if there is not enough interest to execute the agency order at a particular price. The Exchange continues to believe that the 40% allocation entitlement is consistent with the statutory standards for competition and free and open markets by promoting price competition within Facilitation and PIM as Members would still have a reasonable opportunity to compete for a significant percentage of

[44] *See supra* note 14.

[45] *See supra* notes 15–16, and accompanying text.

[46] *See supra* notes 20 and 31, and accompanying text.

[47] *See supra* notes 21 and 33.

[48] *See supra* note 23.

[49] *See supra* notes 22 and 34.

the incoming order. The Exchange also notes that the configurable 40% allocation entitlement for simple Facilitation and PIM is consistent with the configurable allocation entitlements in place on complex Facilitation and PIM as well as on its affiliated exchange, BX.[50] Accordingly, the Exchange believes that the proposed changes will promote consistency across the rulebooks of exchanges offering identical functionality and within its own Rulebook as well.

With respect to the proposed changes to the Facilitation and PIM auto-match feature, the Exchange is amending the current rule text so that it more accurately explains how the Exchange will allocate an order designated for auto-match today. As discussed above, the Exchange is not making any substantive changes to the allocation procedure itself; rather the proposed changes are intended to better align how this feature is described in the Auto-Match Filing.[51] Similarly, the Exchange believes that the proposed change in Supplementary Material .01 to Options 3, Section 11 to add the provision that any solicited contra orders entered by Members into the Facilitation Mechanism to trade against Agency Orders may not be for the account of a Nasdaq ISE Market Maker that is assigned to the options class will better align the rule text with related filing. As discussed above, this restriction was included in the approval order to the rule filing that allowed solicited transactions in the Facilitation Mechanism, so the Exchange will import that language into the rule text for greater transparency.[52]

The proposed change in Supplementary Material .04 to Options 3, Section 13 to provide that PIMs will not queue or overlap in any manner, except as described in Options 3, Section 11(f) and (g) will make clear that two simple or complex PIM auctions are not permitted to run concurrently, but that a simple PIM auction may run concurrently with a complex PIM auction. The Exchange believes that this change will reduce any potential confusion around how simultaneous PIM auctions are processed by the System.

The Exchange believes that the proposed change to the TVA rule is a non-substantive change to say that any amount of TVA is permitted in complex PIM (in addition to all of the other complex auction mechanisms in Options 3, Section 11). This is a corrective change as the cross-cite to complex PIM within the TVA rule was inadvertently dropped in a prior filing that relocated the complex auction rules.[53] As noted above, the Exchange's complex auction mechanisms provide an opportunity for market participants to respond with better-priced interest that could execute against an Agency Order. Accordingly, the Exchange believes that it is appropriate to ensure that paired orders entered into complex Facilitation, Solicitation and PIM that are broken up due to better-priced interest are actually executed against such better-priced interest, and are not restricted from trading due to TVA settings of one or more Members.

The Exchange believes its proposal to provide that AIQ will not apply during an Opening Process (*i.e.,* the opening process or halt reopening process) will more accurately state how this functionality currently operates. AIQ prevents Market Makers from trading against their own quotes and orders. While the Exchange believes that this protection is useful for Market Makers to manage their trading during regular market hours, applying AIQ is unnecessary during an Opening Process due to the high level of control that Market Makers already exercise over their quotes during this process. Furthermore, the proposed AIQ changes will promote consistency with the rulebook of its affiliated exchange BX, which offers identical functionality.[54]

The Exchange believes that its proposal to provide that Exposure will initiate when an incoming order is priced at or through the ABBO, when the ABBO is better than the Exchange BBO, is consistent with the Act. As discussed above, the current language in Supplementary Material .02 only specifies that Exposure is initiated when the price of the incoming order is crossed with the ABBO (*i.e.,* would result in an impermissible Trade-Through), but does not specify the scenario in Supplementary Material .01 to Options 5, Section 3 when the price is locked. Supplementary Material .01 to Options 5, Section 3, however, also currently provides that when the price of an incoming limit order that is not executable upon entry would lock or cross a Protected Quotation, such order would be handled in accordance with the Exposure process in Supplementary Material .02 to Options 5, Section 2. As such, the proposed changes will enhance the accuracy of the rules by codifying both scenarios within the Exposure rule in Supplementary Material .02, and will continue to ensure that such order complies with the general prohibition on trade-throughs in Options 5, Section 2(a).

The Exchange further believes that the technical changes it is proposing throughout Options 3 are non-substantive changes intended to enhance the accuracy of the Exchange's Rulebook, which will alleviate potential confusion as to the applicability of its rules. As discussed above, these changes consist of updating internal rule lettering and cross-cites, and using correct terminology. Lastly, the Exchange believes that the harmonizing changes to add a new Options 4B in its Rulebook and to retitle General 4, each as discussed above, will serve to further harmonize its Rule numbering and titling with that of its affiliates, thereby promoting efficiency and conformity of its processes with those of its affiliated exchanges.

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. As indicated above, no System changes to existing functionality are being made pursuant to this proposal; rather, this proposal is designed to reduce any potential investor confusion as to the features and applicability of certain functionality presently available on the Exchange. Therefore, the proposed changes are designed to enhance clarity and consistency in the Exchange's Rulebook.

Furthermore, many of the proposed changes seek to provide greater harmonization between the rules of the Exchange and its affiliates, and therefore promotes fair competition among the options exchanges. In particular, the proposed changes discussed above for Block and AIQ are based on BX rules governing identical functionality,[55] and the Facilitation and Solicitation changes around broadcast message content and trade-through prohibition compliance (Facilitation only) are based on GEMX and MRX rules governing identical functionality.[56] The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues who offer similar functionality. The Exchange believes that the

[50] *See supra* notes 24 and 35.

[51] *See supra* note 28.

[52] *See supra* note 29.

[53] *See supra* note 36.

[54] *See supra* note 38.

[55] *See* BX Options 3, Section 11(a) (Block) and Section 15(c)(1) (AIQ).

[56] *See* GEMX and MRX Options 3, Section 11(b)(1) (Facilitation broadcast message), Options 3, Section 11(d)(1) (Solicitation broadcast message), and Options 3, Section 11(b)(3) (Facilitation executions trade-through compliance).

proposed rule change will enhance competition among the various markets for auction execution, potentially resulting in more active trading in auction mechanisms across all options exchanges.

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 [57] and paragraph (f)(6) of Rule 19b–4 thereunder.[58]

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–ISE–2021–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2021–01. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549–1090 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2021–01, and should be submitted on or before March 25, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[59]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–04428 Filed 3–3–21; 8:45 am]

BILLING CODE 8011–01–P

[57] 15 U.S.C. 78s(b)(3)(A)(iii).

[58] 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.

[59] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

NextGen Advisory Committee; Notice of Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: This notice announces a meeting of the NextGen Advisory Committee (NAC).

DATES: The meeting will be held virtually only, on March 18, 2021, from 10:00 a.m.–1:00 p.m. EDT. Requests to attend the meeting virtually and request for accommodations for a disability must be received by March 5, 2021. If you wish to make a public statement during the meeting, you must submit a written copy of your remarks by March 5, 2021. Requests to submit written materials, to be reviewed by NAC Members before the meeting, must be received no later than March 5, 2021.

ADDRESSES: The meeting will be a virtual meeting only. Virtual meeting information will be provided upon registration. Information on the NAC, including copies of previous meeting minutes is available on the NAC internet website at *https://www.faa.gov/about/office_org/headquarters_offices/ang/nac/.* Members of the public interested in attending must send the required information listed in the **SUPPLEMENTARY INFORMATION** to *9-AWA-ANG-NACRegistration@faa.gov.*

FOR FURTHER INFORMATION CONTACT: Greg Schwab, NAC Coordinator, U.S. Department of Transportation, at *gregory.schwab@faa.gov* or 202–267–1201. Any requests or questions not regarding attendance registration should be sent to the person listed in this section.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of Transportation established the NAC under agency authority in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, Public Law 92–463, 5 U.S.C. App. 2, to provide independent advice and recommendations to FAA, and to respond to specific taskings received directly from FAA. The NAC recommends consensus-driven advice for FAA consideration relating to Air Traffic Management System modernization.

II. Agenda

At the meeting, the agenda will cover the following topics:

- NAC Chairman's Report
- FAA Report
- NAC Subcommittee Chairman's Report
  - Risk and Mitigations update for the following focus areas: Multiple Runway Operations, Data Communications, Performance Based Navigation, Surface and Data Sharing, and Northeast Corridor

- NAC Chairman Closing Comments

The detailed agenda will be posted on the NAC internet website at least one week in advance of the meeting.

III. Public Participation

This virtual meeting will be open to the public on a first-come, first served basis. Members of the public who wish to attend are asked to register via email by submitting full legal name, country of citizenship, contact information (telephone number and email address), and name of your industry association, or applicable affiliation, to the email listed in the **ADDRESSES** section. When registration is confirmed, registrants will be provided the virtual meeting information/teleconference call-in number and passcode. Callers are responsible for paying associated long-distance charges.

Note: Only NAC Members, members of the public who have registered to make a public statement, and briefers will have the ability to speak. All other attendees will be listen only.

The U.S. Department of Transportation is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Five minutes will be allotted for oral comments from members of the public joining the meeting. To accommodate as many speakers as possible, the time for each commenter may be limited. Individuals wishing to reserve speaking time during the meeting must submit a request at the time of registration, as well as the name, address, and organizational affiliation of the proposed speaker. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, FAA may conduct a lottery to determine the speakers. Speakers are required to submit a copy of their prepared remarks for inclusion in the meeting records and for circulation to NAC members to the person listed under the heading **FOR FURTHER INFORMATION CONTACT**. All prepared remarks submitted on time will be accepted and considered as part of the meeting's record.

Members of the public may submit written statements for inclusion in the meeting records and circulation to the NAC members. Written statements need to be submitted to the person listed under the heading **FOR FURTHER INFORMATION CONTACT**. Comments received after the due date listed in the **DATES** section, will be distributed to the members but may not be reviewed prior to the meeting. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, this 26th day of February 2021.

Tiffany Ottilia McCoy,

General Engineer, NextGen Office of Collaboration and Messaging, ANG–M, Office of the Assistant Administrator for NextGen, Federal Aviation Administration.

[FR Doc. 2021–04430 Filed 3–3–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2025–0005]

Agency Information Collection Activities: Notice of Request for Approval of a New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Request for Approval of a New Information Collection.

SUMMARY: The FHWA has forwarded the information collection request described in this notice to the Office of Management and Budget (OMB) for approval of a new (periodic) information collection. We published a **Federal Register** Notice with a 60-day public comment period on this information collection on November 18, 2019. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by April 5, 2021.

ADDRESSES: You may submit comments identified by DOT Docket ID Number (FHWA–2125–0005) by any of the following methods:

Website: For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Fax: 1–202–493–2251

Mail: Docket Management Facility; U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Daniel Jenkins, 202–366–1067, *daniel.jenkins@dot.gov,* National Travel Behavior Data Program Manager, Federal Highway Administration, Office of Policy, 1200 New Jersey Avenue SE, Room E83–414, Washington, DC 20590, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Next Generation National Household Travel Survey (Next Gen NHTS)

Type of Request: New request for periodic information collection requirement

Background: Title 23, United States Code, Section 502 authorizes the USDOT to carry out advanced research and transportation research to measure the performance of the surface transportation systems in the US, including the efficiency, energy use, air quality, congestion, and safety of the highway and intermodal transportation systems. The USDOT is charged with the overall responsibility to obtain current information on national patterns of travel, which establishes a data base to better understand travel behavior, evaluate the use of transportation facilities, and gauge the impact of the USDOT's policies and programs.

The NHTS is the USDOT's authoritative nationally representative data source for daily passenger travel. This inventory of travel behavior reflects travel mode (*e.g.,* private vehicles, public transportation, walk and bike) and trip purpose (*e.g.,* travel to work, school, recreation, personal/family trips) by U.S. household residents. Survey results are used by federal and state agencies to monitor the performance and adequacy of current facilities and infrastructure, and to plan for future needs.

The collection and analysis of national transportation data has been of critical importance for half a century. Previous surveys were conducted in 1969, 1977, 1983, 1990, 1995, 2001, 2009, and 2017. The current survey will be the ninth in this series, and allow researchers, planners, and officials at the state and federal levels to monitor travel trends.

Data from the NHTS are widely used to support research needs within the USDOT, and State and local agencies, in addition to responding to queries from Congress, the research community and the media on important issues. Current and recent topics of interest include:

- Travel to work patterns by transportation mode for infrastructure improvements and congestion reduction,

- Access to public transit, paratransit, and rail services by various demographic groups,
- Measures of travel by mode to establish exposure rates for risk analyses,
- Support for Federal, State, and local planning activities and policy evaluation,
- Active transportation by walk and bike to establish the relationship to public health issues,
- Vehicle usage for energy consumption analysis,
- Traffic behavior of specific demographic groups such as Millennials and the aging population.

Within the USDOT, the Federal Highway Administration (FHWA) holds responsibility for technical and funding coordination. The National Highway Traffic Safety Administration (NHTSA), Federal Transit Administration (FTA), and the Bureau of Transportation Statistics (BTS) are also primary data users and have historically participated in project planning and financial support.

Proposed Data Acquisition Methodology

NHTS data are collected from a probability-based sample comprised of a representative mixture of households with respect to various geodemographic characteristics. For this purpose, FHWA will field two independent survey designs using two independent samples: (a) An address-based sample (ABS) of 7,500 households and (b) a panel frame sample (PFS) of 7,500 households drawn from a previously recruited national probability-based online panel. The ABS sample will deliver a set of national data that will be used for official purposes and will be available for public use. The PFS sample will offer FHWA an opportunity to conduct an independent assessment of the viability of an alternative data collection methodology for future NHTS data collection efforts.

Randomly sampled ABS households will be surveyed using a combined mail/online survey mode in that they will receive a mailing that directs them to an online survey system to capture household information and core travel data. Non-internet ABS households will be offered paper versions of the questionnaire and trip diary. For the PFS sample, an online panel survey approach will be used, where email invitations will be sent to selected panel members inviting them to participate in the survey. Follow-ups with nonresponding households from the ABS and PFS samples will utilize mail, telephone, and email communications where contact information is available, and the contact method is appropriate.

Monetary incentives will be provided for all ABS households that complete the survey. As the burden is higher for those in households with more people, larger households will receive a larger incentive amount. Households will receive $5 per household member when all household members complete the travel survey.

Both the ABS and PFS survey modes will collect data during an entire 12-month period so that all 365 days of the year, including weekends and holidays, are accounted for. To maximize the accuracy of the recall information and to provide coverage for every day of the year, all surveys will collect information about the travel during the previous 24 hours. A total of 7,500 completed households will comprise the ABS sample and 7,500 completed households will comprise the PFS probability-based panel sample.

Issues Related to Sampling. The sampling design reflects the U.S. household trends of decreasing landline telephone ownership and increasing access to the internet. Both the ABS and PFS samples will originate from the USPS Delivery Sequence File (DSF), which includes all points of delivery in the US. The requisite address samples are obtained from a third party vendor that enhances the residential address by appending various auxiliary variables to the DSF prior to sample selection including block-, block group-, and tract-level characteristics from the Decennial Census, the American Community Survey (ACS), and commercial databases.

Sample Size. In total, completed surveys will be secured for a nationally representative sample of 7,500 households using the ABS sample and an additional 7,500 households will be completed from the PFS sample.

Stratification. The sample for this survey will be designed to produce the most efficient estimates at the national level, as well as those needed for urban and rural areas. While different sample allocation options for the national sample are being considered in order to arrive at a final allocation for the NHTS sample, the 7,500 households will be selected from each sampling frame in a manner that ensures estimates can be generated for urban, rural, and national geographic levels.

It should be noted that assignments for recording travel data by households in each sample (ABS and PFS) will be equally distributed across all days to ensure an approximately balanced day of week distribution. To this end, the sample will be released periodically through a process that will control the balance of travel days by month.

Data Collection Methods

The questionnaire for this survey will be designed to be relevant, aesthetically pleasing, and elicit participation by including topics of importance to the respondents.

Information Proposed for Collection

For the ABS sample, households will receive an invitation to complete the survey through the US mail. The online panel survey households will receive an emailed invitation. In both survey modes, the primary household respondent will complete a short roster to collect key household information (*e.g.,* enumeration of household members and household vehicles). Then, all travel information about a specific day from every household member 5 years of age and older will be collected using the online travel diary or equivalent paper form.

For households choosing to complete the survey online, the primary respondent will complete the household roster, then complete his or her diary as well as serve as a proxy responder for all children 5–15 years old in the household. Household members 16 and older will be invited to complete their own online diaries. If they fail to do so in a reasonable amount of time after multiple reminders, the primary household member may be asked to serve as a proxy for non-responding teens and adults in the household. Households electing to complete the survey by mail will be provided equivalent paper forms, with similar proxy-reporting instructions.

The online household travel diary program will allow for sophisticated branching and skip patterns to enhance data retrieval by asking only those questions that are necessary and appropriate for the individual participant. Look-up tables will be included to assist with information such as vehicle makes and models. A Google Maps API will be used to assist in identifying specific place names and locations. The location data for the participant's home, workplace, or school will be stored and automatically inserted in the dataset for trips after the first report. Household rostering will include a list of all persons in the household and trips reported from one household member can be referenced for ease in reporting that trip by other household members who travelled together. This automatic insert of information reduces the burden of the subsequent respondents to be queried

about a trip already reported by the initial respondent.

Data range, consistency and edit checks will be automatically programmed to reduce reporting error, survey length, and maintain the flow of information processing. Data cross checks also help reduce the burden by ensuring that the reporting is consistent within each trip. Surveys completed by mail will be entered into the same online survey program to ensure consistency in quality control efforts.

Estimated Burden Hours for Information Collection

Frequency: This collection will be conducted every 2–4 years in the future.

Respondents. As mentioned earlier, two nationally representative random samples of 7,500 households from the ABS and PFS samples representing the 50 states and the District of Columbia will be surveyed. Given that each household will include an average of 2.5 members 5-years of age or older, travel data for a total of 18,750 individual respondents will be collected for the ABS survey and an additional 18,750 individual respondents will complete the PFS survey.

Estimated Average Burden per Response. It will take approximately 5 minutes to complete the roster data form, and 15 minutes to complete the travel diary. This results in a total of 20 minutes for the first household member and 15 minutes per additional household member (these estimates are the same for both ABS and PFS respondents).

Estimated Total Annual Burden Hours. It is estimated that a total of 18,750 persons will be included in the survey from each sampling frame (ABS and PFS). This would result in approximately 10,625 hours of support for this data collection effort, assuming an average of 17 minutes per person across the roster data form and retrieval survey.

Post–Collection Independent Analysis

The two proposed survey approaches will provide FHWA the opportunity to assess validity and reliability of the panel frame sample approach for use in future NHTS data collection cycles. At the conclusion of this data collection effort, FHWA will conduct an independent assessment of the results from both survey designs, with a focus on identifying similarities and differences with respect to survey administration metrics, including response rates, unit and item non-response, etc. In addition, the differences in travel patterns will also be assessed. This includes assessing the differences in trip rates, miles traveled, distance traveled, trip purpose, travel mode, and time of day of trip-making by specific demographic and geographic subpopulation groupings. The results from both survey modes will also be vetted against external data sources such as the Census, the American Community Survey, the National Transit Database, and FHWA data on vehicle miles traveled.

Public Comments Invited

You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection of information is necessary for the USDOT's performance, including whether the information will have practical utility; (2) the data acquisition methods; (3) the accuracy of the USDOT's estimate of the burden of the proposed information collection; (4) the types of data being acquired; (5) ways to enhance the quality, usefulness, and clarity of the collected information; and (6) 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.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: March 1, 2021.

Michael Howell,

Information Collection Officer, Federal Highway Administration.

[FR Doc. 2021–04456 Filed 3–3–21; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Bond Guarantee Program, FY 2021; Notice of Guarantee Availability

Funding Opportunity Title: Notice of Guarantee Availability (NOGA) inviting Qualified Issuer Applications and Guarantee Applications for the Community Development Financial Institutions (CDFI) Bond Guarantee Program.

Announcement Type: Announcement of opportunity to submit Qualified Issuer Applications and Guarantee Applications.

Catalog of Federal Domestic Assistance (CFDA) Number: 21.011.

Key Dates: Qualified Issuer Applications and Guarantee Applications may be submitted to the CDFI Fund starting on the date of publication of this NOGA. In order to be considered for the issuance of a Guarantee in fiscal year (FY) 2021, Qualified Issuer Applications must be submitted by 11:59 p.m. Eastern Time (ET) on April 26, 2021 and Guarantee Applications must be submitted by 11:59 p.m. ET on May 3, 2021. If applicable, CDFI Certification Applications must be received by the CDFI Fund by 11:59 p.m. ET on April 2, 2021. Under FY 2021 authority Bond Documents and Bond Loan documents must be executed, and Guarantees will be provided, in the order in which Guarantee Applications are approved or by such other criteria that the CDFI Fund may establish, in its sole discretion, and in any event by September 30, 2021.

Executive Summary: This NOGA is published in connection with the CDFI Bond Guarantee Program, administered by the Community Development Financial Institutions Fund (CDFI Fund), the U.S. Department of the Treasury (Treasury). Through this NOGA, the CDFI Fund announces the availability of up to $500 million of Guarantee Authority in FY 2021. This NOGA explains application submission and evaluation requirements and processes, and provides agency contacts and information on CDFI Bond Guarantee Program outreach. Parties interested in being approved for a Guarantee under the CDFI Bond Guarantee Program must submit Qualified Issuer Applications and Guarantee Applications for consideration in accordance with this NOGA. The required minimum over-collateralization rates established in FY 2020 have been removed for the FY 2021 round. In the FY 2021 round, over-collateralization rates will be determined during the underwriting process for each applicant. Capitalized terms used in this NOGA and not defined elsewhere are defined in the CDFI Bond Guarantee Program regulations (12 CFR 1808.102) and the CDFI Program regulations (12 CFR 1805.104).

I. Guarantee Opportunity Description

A. Authority. The CDFI Bond Guarantee Program was authorized by the Small Business Jobs Act of 2010 (Pub. L. 111–240; 12 U.S.C. 4713a) (the Act). Section 1134 of the Act amended the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4701, *et seq.*) to provide authority to the Secretary of the Treasury (Secretary) to establish and administer the CDFI Bond Guarantee Program.

B. Bond Issue size; Amount of Guarantee authority. In FY 2021, the Secretary may guarantee Bond Issues

having a minimum Guarantee of $100 million each, and up to an aggregate total of $500 million.

C. Program summary. The purpose of the CDFI Bond Guarantee Program is to support CDFI lending by providing Guarantees for Bonds issued for Eligible Community or Economic Development Purposes, as authorized by section 1134 and 1703 of the Act. The Secretary, as the Guarantor of the Bonds, will provide a 100% Guarantee for the repayment of the Verifiable Losses of Principal, Interest, and Call Premium of Bonds issued by Qualified Issuers. Qualified Issuers, approved by the CDFI Fund, will issue Bonds that will be purchased by the Federal Financing Bank. The Qualified Issuer will use 100% of Bond Proceeds to provide Bond Loans to Eligible CDFIs, which will use Bond Loan proceeds for Eligible Community and Economic Development Purposes, including providing Secondary Loans to Secondary Borrowers in accordance with the Secondary Loan Requirements. Secondary Loans may support lending in the following asset classes: CDFI-to-CDFI, CDFI to Financing Entity, Charter Schools, Commercial real estate, Daycare centers, Healthcare facilities, Rental housing, Rural infrastructure, Owner-occupied homes, Licensed senior living and long-term care facilities, Small business, and Not-for-Profit organizations, as these terms are defined in the Secondary Loan Requirements, which can be found on the CDFI Fund's website at *www.cdfifund.gov/bond.*

D. Review Guarantee Applications, in general.

1. Qualified Issuer Applications submitted with Guarantee Applications will have priority for review over Qualified Issuer Applications submitted without Guarantee Applications. With the exception of the aforementioned prioritized review, all Qualified Issuer Applications and Guarantee Applications will be reviewed by the CDFI Fund on an ongoing basis, in the order in which they are received, or by such other criteria that the CDFI Fund may establish in its sole discretion.

2. Guarantee Applications that are incomplete or require the CDFI Fund to request additional or clarifying information may delay the ability of the CDFI Fund to move the Guarantee Application to the next phase of review. Submitting an incomplete Guarantee Application earlier than other applicants does not ensure first approval.

3. Qualified Issuer Applications and Guarantee Applications that were received in FY 2020 and that were neither withdrawn nor declined in FY 2020 will be considered under FY 2021 authority.

4. Pursuant to the Regulations at 12 CFR 1808.504(c), the Guarantor may limit the number of Guarantees issued per year or the number of Guarantee Applications accepted to ensure that a sufficient examination of Guarantee Applications is conducted.

E. Additional reference documents. In addition to this NOGA, the CDFI Fund encourages interested parties to review the following documents, which have been posted on the CDFI Bond Guarantee Program page of the CDFI Fund's website at *http://www.cdfifund.gov/bond.*

1. Guarantee Program Regulations. The regulations that govern the CDFI Bond Guarantee Program were published on February 5, 2013 (78 FR 8296; 12 CFR part 1808) (the Regulations), and provide the regulatory requirements and parameters for CDFI Bond Guarantee Program implementation and administration including general provisions, eligibility, eligible activities, applications for Guarantee and Qualified Issuer, evaluation and selection, terms and conditions of the Guarantee, Bonds, Bond Loans, and Secondary Loans.

2. Application materials. Details regarding Qualified Issuer Application and Guarantee Application content requirements are found in this NOGA and the respective application materials. Interested parties should review the template Bond Documents and Bond Loan documents that will be used in connection with each Guarantee. The template documents are posted on the CDFI Fund's website for review. Such documents include, among others:

a. The Secondary Loan Requirements, which contain the minimum required criteria (in addition to the Eligible CDFI's underwriting criteria) for a loan to be accepted as a Secondary Loan or Other Pledged Loan. The Secondary Loan Requirements include the General Requirements and the Underwriting Review Checklist;

b. The Agreement to Guarantee, which describes the roles and responsibilities of the Qualified Issuer, will be signed by the Qualified Issuer and the Guarantor, and will include term sheets as exhibits that will be signed by each individual Eligible CDFI;

c. The Term Sheet(s), which describe the material terms and conditions of the Bond Loan from the Qualified Issuer to the Eligible CDFI. The CDFI Fund website includes template term sheets for the general recourse structure (GRS), the Alternative Financial Structure (AFS), and for the CDFI to Financing Entity Asset Class utilizing pooled tertiary loans;

d. The Bond Trust Indenture, which describes the responsibilities of the Master Servicer/Trustee in overseeing the Trust Estate and the servicing of the Bonds, which will be entered into by the Qualified Issuer and the Master Servicer/Trustee;

e. The Bond Loan Agreement, which describes the terms and conditions of Bond Loans, and will be entered into by the Qualified Issuer and each Eligible CDFI that receives a Bond Loan;

f. The Bond Purchase Agreement, which describes the terms and conditions under which the Bond Purchaser will purchase the Bonds issued by the Qualified Issuer, and will be signed by the Bond Purchaser, the Qualified Issuer, the Guarantor and the CDFI Fund; and

g. The Future Advance Promissory Bond, which will be signed by the Qualified Issuer as its promise to repay the Bond Purchaser. The template documents may be updated periodically, as needed, and will be tailored, as appropriate, to the terms and conditions of a particular Bond, Bond Loan, and Guarantee. Additionally, the CDFI Fund may impose terms and conditions that address risks unique to the Eligible CDFI's business model and target market, which may include items such as concentration risk of a specific Eligible CDFI, geography or Secondary Borrower. The Bond Documents and the Bond Loan documents reflect the terms and conditions of the CDFI Bond Guarantee Program and will not be substantially revised or negotiated prior to execution.

F. Frequently Asked Questions. The CDFI Fund may periodically post on its website responses to questions that are asked by parties interested in applying to the CDFI Bond Guarantee Program.

G. Designated Bonding Authority. The CDFI Fund has determined that, for purposes of this NOGA, it will not solicit applications from entities seeking to serve as a Qualified Issuer in the role of the Designated Bonding Authority, pursuant to 12 CFR 1808.201, in FY 2021.

H. Noncompetitive process. The CDFI Bond Guarantee Program is a non-competitive program through which Qualified Issuer Applications and Guarantee Applications will undergo a merit-based evaluation (meaning, applications will not be scored against each other in a competitive manner in which higher ranked applicants are favored over lower ranked applicants).

I. Relationship to other CDFI Fund programs.

1. Award funds received under any other CDFI Fund Program cannot be used by any participant, including Qualified Issuers, Eligible CDFIs, and Secondary Borrowers, to pay principal, interest, fees, administrative costs, or issuance costs (including Bond Issuance Fees) related to the CDFI Bond Guarantee Program, or to fund the Risk-Share Pool for a Bond Issue.

2. Bond Proceeds may not be used to refinance any projects financed and/or supported with proceeds from the Capital Magnet Fund (CMF).

3. Bond Proceeds may not be used to refinance a leveraged loan during the seven-year NMTC compliance period. However, Bond Proceeds may be used to refinance a QLICI after the seven-year NMTC compliance period has ended, so long as all other programmatic requirements are met.

4. The terms Qualified Equity Investment, Community Development Entity, and QLICI are defined in the NMTC Program's authorizing statute, 26 U.S.C. 45D.

J. Relationship and interplay with other Federal programs and Federal funding. Eligible CDFIs may not use Bond Loans to refinance existing Federal debt or to service debt from other Federal credit programs.

1. The CDFI Bond Guarantee Program underwriting process will include a comprehensive review of the Eligible CDFI's concentration of sources of funds available for debt service, including the concentration of sources from other Federal programs and level of reliance on said sources, to determine the Eligible CDFI's ability to service the additional debt.

2. In the event that the Eligible CDFI proposes to use other Federal funds to service Bond Loan debt or as a Credit Enhancement for Secondary Loans, the CDFI Fund may require, in its sole discretion, that the Eligible CDFI provide written assurance from such other Federal program in a form that is acceptable to the CDFI Fund and that the CDFI Fund may rely upon, that said use is permissible.

K. Contemporaneous application submission. Qualified Issuer Applications may be submitted contemporaneously with Guarantee Applications; however, the CDFI Fund will review an entity's Qualified Issuer Application and make its Qualified Issuer determination prior to approving a Guarantee Application. As noted above in D (1), review priority will be given to any Qualified Issuer Application that is accompanied by a Guarantee Application.

L. Other restrictions on use of funds. Bond Proceeds may not be used to finance or refinance any trade or business consisting of the operation of any private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off-premises. Bond Proceeds may not be used to finance or refinance tax-exempt obligations or to finance or refinance projects that are also financed by tax-exempt obligations if: (a) Such financing or refinancing results in the direct or indirect subordination of the Bond Loan or Bond Issue to the tax-exempt obligations, or (b) such financing or refinancing results in a corresponding guarantee of the tax-exempt obligation. Qualified Issuers and Eligible CDFIs must ensure that any financing made in conjunction with tax-exempt obligations complies with CDFI Bond Guarantee Program Regulations.

II. General Application Information

The following requirements apply to all Qualified Issuer Applications and Guarantee Applications submitted under this NOGA, as well as any Qualified Issuer Applications and Guarantee Applications submitted under the FY 2020 NOGA that were neither withdrawn nor declined in FY 2020.

A. CDFI Certification Requirements.

1. In general. By statute and regulation, the Qualified Issuer applicant must be either a Certified CDFI (an entity that has been certified by the CDFI Fund as meeting the CDFI certification requirements set forth in 12 CFR 1805.201) or an entity designated by a Certified CDFI to issue Bonds on its behalf. An Eligible CDFI must be a Certified CDFI as of the Bond Issue Date and must maintain its CDFI certification throughout the term of the corresponding Bond.

2. CDFI Certification requirements. Pursuant to the regulations that govern CDFI certification (12 CFR 1805.201), an entity may be certified if it is a legal entity (meaning, that it has properly filed articles of incorporation or other organizing documents with the State or other appropriate body in the jurisdiction in which it was legally established, as of the date the CDFI Certification Application is submitted) and meets the following requirements:

a. *Primary Mission requirement (12 CFR 1805.201(b)(1)):* To be a Certified CDFI, an entity must have a primary mission of promoting community development, which mission must be consistent with its Target Market. In general, the entity will be found to meet the primary mission requirement if its incorporating documents or board-approved narrative statement (*i.e.,* mission statement or resolution) clearly indicate that it has a mission of purposefully addressing the social and/or economic needs of Low-Income individuals, individuals who lack adequate access to capital and/or financial services, distressed communities, and other underserved markets. An Affiliate of a Controlling CDFI, seeking to be certified as a CDFI (and therefore, approved to be an Eligible CDFI to participate in the CDFI Bond Guarantee Program), must demonstrate that it meets the primary mission requirement on its own merit, pursuant to the regulations and the CDFI Certification Application and related guidance materials posted on the CDFI Fund's website.

b. *Financing Entity requirement (12 CFR 1805.201(b)(2)):* To be a Certified CDFI, an entity must demonstrate that its predominant business activity is the provision of Financial Products and Financial Services, Development Services, and/or other similar financing.

On April 10, 2015, the CDFI Fund published a revision of 12 CFR 1805.201(b)(2), the section of the CDFI certification regulation that governs the ''financing entity'' requirement. The regulatory change creates a means for the CDFI Fund, in its discretion, to deem an Affiliate (meaning, in this case, an entity that is Controlled by a CDFI; see 12 CFR 1805.104(b)) to have met the financing entity requirement based on the financing activity or track record of the Controlling CDFI (Control is defined in 12 CFR 1805.104(q)), solely for the purpose of participating in the CDFI Bond Guarantee Program as an Eligible CDFI. This change is key to the creation of an AFS for the Bond Guarantee Program (see Section II(B)(2) of this NOGA for more information on the AFS). In order for the Affiliate to rely on the Controlling CDFI's financing track record, (A) the Controlling CDFI must be a Certified CDFI; (B) there must be an operating agreement that includes management and ownership provisions in effect between the two entities (prior to the submission of a CDFI Certification Application and in form and substance that is acceptable to the CDFI Fund); and (C) the Affiliate must submit a complete CDFI Certification Application to the CDFI Fund no later than 11:59 p.m. ET on April 2, 2021 in order it to be considered for CDFI certification and participation in the FY 2021 application round of the CDFI Bond Guarantee Program. This regulatory revision affects only the Affiliate's ability to meet the financing entity requirement for purposes of CDFI certification: Said

Affiliate must meet the other certification criteria in accordance with the existing regulations governing CDFI certification.

i. The revised regulation also states that, solely for the purpose of participating in the CDFI Bond Guarantee Program, the Affiliate's provision of Financial Products and Financial Services, Development Services, and/or other similar financing transactions need not be arms-length in nature if such transaction is by and between the Affiliate and Controlling CDFI, pursuant to an operating agreement that (a) includes management and ownership provisions, (b) is effective prior to the submission of a CDFI Certification Application, and (c) is in form and substance that is acceptable to the CDFI Fund.

ii. An Affiliate whose CDFI certification is based on the financing activity or track record of a Controlling CDFI is not eligible to receive financial or technical assistance awards or tax credit allocations under any other CDFI Fund program until such time that the Affiliate meets the financing entity requirement based on its own activity or track record.

iii. If an Affiliate elects to satisfy the financing entity requirement based on the financing activity or track record of a Controlling CDFI, and if the CDFI Fund approves such Affiliate as an Eligible CDFI for the sole purpose of participation in the CDFI Bond Guarantee Program, said Affiliate's CDFI certification will terminate if: (A) It does not enter into Bond Loan documents with its Qualified Issuer within one (1) year of the date that it signs the term sheet (which is an exhibit to the Agreement to Guarantee); (B) it ceases to be an Affiliate of the Controlling CDFI; or (C) it ceases to adhere to CDFI certification requirements.

iv. An Affiliate electing to satisfy the financing entity requirement based on the financing activity or track record of a Controlling CDFI need not have completed any financing activities prior to the date the CDFI Certification Application is submitted or approved. However, the Affiliate and the Controlling CDFI must have entered into the operating agreement described in (b)(i)(B) above, prior to such date, in form and substance that is acceptable to the CDFI Fund.

c. *Target Market requirement (12 CFR 1805.201(b)(3)):* To be a Certified CDFI, an entity must serve at least one eligible Target Market (either an Investment Area or a Targeted Population) by directing at least 60% of all of its Financial Product activities to one or more eligible Target Market.

i. Solely for the purpose of participation as an Eligible CDFI in the FY 2021 application round of the CDFI Bond Guarantee Program, an Affiliate of a Controlling CDFI may be deemed to meet the Target Market requirement by virtue of serving either:

(A) An Investment Area through ''borrowers or investees'' that serve the Investment Area or provide significant benefits to its residents (pursuant to 12 CFR 1805.201(b)(3)(ii)(F)). For purposes of this NOGA, the term ''borrower'' or ''investee'' includes a borrower of a loan originated by the Controlling CDFI that has been transferred to the Affiliate as lender (which loan must meet Secondary Loan Requirements), pursuant to an operating agreement with the Affiliate that includes ownership/investment and management provisions, which agreement must be in effect prior to the submission of a CDFI Certification Application and in form and substance that is acceptable to the CDFI Fund. Loans originated by the Controlling CDFI do not need to be transferred prior to application submission; however, such loans must be transferred before certification of the Affiliate is effective. If an Affiliate has more than one Controlling CDFI, it may meet this Investment Area requirement through one or more of such Controlling CDFIs' Investment Areas; or

(B) a Targeted Population ''indirectly or through borrowers or investees that directly serve or provide significant benefits to such members'' (pursuant to 12 CFR 1805.201(b)(3)(iii)(B)) if a loan originated by the Controlling CDFI has been transferred to the Affiliate as lender (which loan must meet Secondary Loan Requirements) and the Controlling CDFI's financing entity activities serve the Affiliate's Targeted Population pursuant to an operating agreement that includes ownership/investment and management provisions by and between the Affiliate and the Controlling CDFI, which agreement must be in effect prior to the submission of a CDFI Certification Application and in form and substance that is acceptable to the CDFI Fund. Loans originated by the Controlling CDFI do not need to be transferred prior to application submission; however, such loans must be transferred before certification of the Affiliate is effective. If an Affiliate has more than one Controlling CDFI, it may meet this Targeted Population requirement through one or more of such Controlling CDFIs' Targeted Populations.

An Affiliate that meets the Target Market requirement through paragraphs (ii)(A) or (B) above, is not eligible to receive financial or technical assistance awards or tax credit allocations under any other CDFI Fund program until such time that the Affiliate meets the Target Market requirements based on its own activity or track record.

ii. If an Affiliate elects to satisfy the target market requirement based on paragraphs (c)(ii)(A) or (B) above, the Affiliate and the Controlling CDFI must have entered into the operating agreement as described above, prior to the date that the CDFI Certification Application is submitted, in form and substance that is acceptable to the CDFI Fund.

d. *Development Services requirement (12 CFR 1805.201(b)(4)):* To be a Certified CDFI, an entity must provide Development Services in conjunction with its Financial Products. Solely for the purpose of participation as an Eligible CDFI in the FY 2021 application round of the CDFI Bond Guarantee Program, an Affiliate of a Controlling CDFI may be deemed to meet this requirement if: (i) Its Development Services are provided by the Controlling CDFI pursuant to an operating agreement that includes management and ownership provisions with the Controlling CDFI that is effective prior to the submission of a CDFI Certification Application and in form and substance that is acceptable to the CDFI Fund and (ii) the Controlling CDFI must have provided Development Services in conjunction with the transactions that the Affiliate is likely to purchase, prior to the date of submission of the CDFI Certification Application.

e. *Accountability requirement (12 CFR 1805.201(b)(5)):* To be a Certified CDFI, an entity must maintain accountability to residents of its Investment Area or Targeted Population through representation on its governing board and/or advisory board(s), or through focus groups, community meetings, and/or customer surveys. Solely for the purpose of participation as an Eligible CDFI in the FY 2021 application round of the CDFI Bond Guarantee Program, an Affiliate of a Controlling CDFI may be deemed to meet this requirement only if it has a governing board and/or advisory board that has the same composition as the Controlling CDFI and such governing board or advisory board has convened and/or conducted Affiliate business prior to the date of submission of the CDFI Certification Application. If an Affiliate has multiple Controlling CDFIs, the governing board and/or advisory board may have a mixture of representatives from each Controlling CDFI so long as there is at least one representative from each Controlling CDFI.

f. Non-government Entity requirement (12 CFR 1805.201(b)(6)): To be a Certified CDFI, an entity can neither be a government entity nor be Controlled by one or more governmental entities.

g. for the FY 2021 application round of the CDFI Bond Guarantee Program, only one Affiliate per Controlling CDFI may participate as an Eligible CDFI. However, there may be more than one Affiliate participating as an Eligible CDFI in any given Bond Issue.

3. *Operating agreement:* An operating agreement between an Affiliate and its Controlling CDFI, as described above, must provide, in addition to the elements set forth above, among other items: (i) Conclusory evidence that the Controlling CDFI Controls the Affiliate, through investment and/or ownership; (ii) explanation of all roles, responsibilities and activities to be performed by the Controlling CDFI including, but not limited to, governance, financial management, loan underwriting and origination, record-keeping, insurance, treasury services, human resources and staffing, legal counsel, dispositions, marketing, general administration, and financial reporting; (iii) compensation arrangements; (iv) the term and termination provisions; (v) indemnification provisions, if applicable; (vi) management and ownership provisions; and (vii) default and recourse provisions.

4. For more detailed information on CDFI certification requirements, please review the CDFI certification regulation (12 CFR 1805.201, as revised on April 10, 2015) and CDFI Certification Application materials/guidance posted on the CDFI Fund's website. Interested parties should note that there are specific regulations and requirements that apply to Depository Institution Holding Companies, Insured Depository Institutions, Insured Credit Unions, and State-Insured Credit Unions.

5. Uncertified entities, including an Affiliate of a Controlling CDFI, that wish to apply to be certified and designated as an Eligible CDFI in the FY 2021 application round of the CDFI Bond Guarantee Program must submit a CDFI Certification Application to the CDFI Fund by 11:59 p.m. ET on April 2, 2021. Any CDFI Certification Application received after such date and time, as well as incomplete applications, will not be considered for the FY 2021 application round of the CDFI Bond Guarantee Program.

6. In no event will the Secretary approve a Guarantee for a Bond from which a Bond Loan will be made to an entity that is not an Eligible CDFI. The Secretary must make FY 2021 Guarantee Application decisions, and the CDFI Fund must close the corresponding Bonds and Bond Loans, prior to the end of FY 2021 (September 30, 2021). Accordingly, it is essential that CDFI Certification Applications are submitted timely and in complete form, with all materials and information needed for the CDFI Fund to make a certification decision. Information on CDFI certification, the CDFI Certification Application, and application submission instructions may be found on the CDFI Fund's website at *www.cdfifund.gov.*

B. Recourse and Collateral Requirements.

1. General Recourse Structure. Under the GRS, the Bond is a nonrecourse obligation to the Qualified Issuer, and the Bond Loan is a full general recourse obligation to the Eligible CDFI.

2. Alternative Financial Structure. An AFS can be used as a limited recourse option to a Controlling CDFI or group of Controlling CDFIs. The AFS is an Affiliate of a Controlling CDFI(s) that is created for the sole purpose of participation as an Eligible CDFI in the CDFI Bond Guarantee Program. The AFS must be an Affiliate of a Controlling CDFI(s) and must be certified as a CDFI in accordance with the requirements set forth in Section II(A) of this NOGA. The AFS, as the Eligible CDFI, provides a general full recourse obligation to repay the Bond Loan, and the Bond Loan is on the balance sheet of the AFS. The requirements for the AFS are delineated in the template term sheet located on the CDFI Fund website at *https://www.cdfifund.gov/programs-training/Programs/cdfi-bond/Pages/apply-step.aspx#step2.*

C. Application Submission.

1. Electronic submission. All Qualified Issuer Applications and Guarantee Applications must be submitted through the CDFI Fund's Awards Management Information System (AMIS). Applications sent by mail, fax, or other form will not be permitted, except in circumstances that the CDFI Fund, in its sole discretion, deems acceptable. Please note that Applications will not be accepted through *Grants.gov*. For more information on AMIS, please visit the AMIS Landing Page at *https://amis.cdfifund.gov.*

2. Applicant identifier numbers. Please note that, pursuant to Office of Management and Budget (OMB) guidance (68 FR 38402), each Qualified Issuer applicant and Guarantee applicant must provide, as part of its Application, its Dun and Bradstreet Data Universal Numbering System (DUNS) number, as well as DUNS numbers for its proposed Program Administrator, its proposed Servicer, and each Certified CDFI that is included in the Qualified Issuer Application and Guarantee Application. In addition, each Application must include a valid and current Employer Identification Number (EIN), with a letter or other documentation from the IRS confirming the Qualified Issuer applicant's EIN, as well as EINs for its proposed Program Administrator, its proposed Servicer, and each Certified CDFI that is included in any Application. An Application that does not include such DUNS numbers, EINs, and documentation is incomplete and will be rejected by the CDFI Fund. Applicants should allow sufficient time for the IRS and/or Dun and Bradstreet to respond to inquiries and/or requests for the required identification numbers.

3. System for Award Management (SAM). Registration with SAM is required for each Qualified Issuer applicant, its proposed Program Administrator, its proposed Servicer, and each Certified CDFI that is included in any Application. The CDFI Fund will not consider any Applications that do not meet the requirement that each entity must be properly registered before the date of Application submission. The SAM registration process may take one month or longer to complete. A signed notarized letter identifying the SAM authorized entity administrator for the entity associated with the DUNS number is required. This requirement is applicable to new entities registering in SAM, as well as to existing entities with registrations being updated or renewed in SAM. Applicants without DUNS and/or EIN numbers should allow for additional time as an applicant cannot register in SAM without those required numbers. Applicants that have previously completed the SAM registration process must verify that their SAM accounts are current and active. Each applicant must continue to maintain an active SAM registration with current information at all times during which it has an active Federal award or an Application under consideration by a Federal awarding agency. The CDFI Fund will not consider any applicant that fails to properly register or activate its SAM account and these restrictions also apply to organizations that have not yet received a DUNS or EIN number. Applicants must contact SAM directly with questions related to registration or SAM account changes as the CDFI Fund does not maintain this system and has no ability to make changes or correct

errors of any kind. For more information about SAM, visit *https://www.sam.gov.*

4. AMIS accounts. Each Qualified Issuer applicant, its proposed Program Administrator, its proposed Servicer, and each Certified CDFI that is included in the Qualified Issuer Application or Guarantee Application must register User and Organization accounts in AMIS. Each such entity must be registered as an Organization and register at least one User Account in AMIS. As AMIS is the CDFI Fund's primary means of communication with applicants with regard to its programs, each such entity must make sure that it updates the contact information in its AMIS account before any Application is submitted. For more information on AMIS, please visit the AMIS Landing Page at *https://amis.cdfifund.gov.*

D. Form of Application.

1. As of the date of this NOGA, the Qualified Issuer Application, the Guarantee Application, and related application instructions for this round may be found on the CDFI Bond Guarantee Program's page on the CDFI Fund's website at *http://www.cdfifund.gov/bond.*

2. Paperwork Reduction Act. Under the Paperwork Reduction Act (44 U.S.C. chapter 35), an agency may not conduct or sponsor a collection of information, and an individual is not required to respond to a collection of information, unless it displays a valid OMB control number. Pursuant to the Paperwork Reduction Act, the Qualified Issuer Application, the Guarantee Application, and the Secondary Loan Requirements have been assigned the following control number: 1559–0044.

3. Application deadlines. In order to be considered for the issuance of a Guarantee under FY 2021 program authority, Qualified Issuer Applications must be submitted by 11:59 p.m. ET on April 26, 2021, and Guarantee Applications must be submitted by 11:59 p.m. ET on May 3, 2021. Qualified Issuer Applications and Guarantee Applications received in FY 2020 that were neither withdrawn nor declined will be considered under FY 2021 authority. If applicable, CDFI Certification Applications must be received by the CDFI Fund by 11:59 p.m. ET on April 2, 2021.

4. Format. Detailed Qualified Issuer Application and Guarantee Application content requirements are found in the Applications and application guidance. The CDFI Fund will read only information requested in the Application and reserves the right not to read attachments or supplemental materials that have not been specifically requested in this NOGA, the Qualified Issuer, or the Guarantee Application. Supplemental materials or attachments such as letters of public support or other statements that are meant to bias or influence the Application review process will not be read.

5. Application revisions. After submitting a Qualified Issuer Application or a Guarantee Application, the applicant will not be permitted to revise or modify the Application in any way unless authorized or requested by the CDFI Fund.

6. Material changes.

a. In the event that there are material changes after the submission of a Qualified Issuer Application prior to the designation as a Qualified Issuer, the applicant must notify the CDFI Fund of such material changes information in a timely and complete manner. The CDFI Fund will evaluate such material changes, along with the Qualified Issuer Application, to approve or deny the designation of the Qualified Issuer.

b. In the event that there are material changes after the submission of a Guarantee Application (including, but not limited to, a revision of the Capital Distribution Plan or a change in the Eligible CDFIs that are included in the Application) prior to or after the designation as a Qualified Issuer or approval of a Guarantee Application or Guarantee, the applicant must notify the CDFI Fund of such material changes information in a timely and complete manner. The Guarantor will evaluate such material changes, along with the Guarantee Application, to approve or deny the Guarantee Application and/or determine whether to modify the terms and conditions of the Agreement to Guarantee. This evaluation may result in a delay of the approval or denial of a Guarantee Application.

E. Eligibility and completeness review. The CDFI Fund will review each Qualified Issuer and Guarantee Application to determine whether it is complete and the applicant meets eligibility requirements described in the Regulations, this NOGA, and the Applications. An incomplete Qualified Issuer Application or Guarantee Application, or one that does not meet eligibility requirements, will be rejected. If the CDFI Fund determines that additional information is needed to assess the Qualified Issuer's and/or the Certified CDFIs' ability to participate in and comply with the requirements of the CDFI Bond Guarantee Program, the CDFI Fund may require that the Qualified Issuer furnish additional, clarifying, confirming or supplemental information. If the CDFI Fund requests such additional, clarifying, confirming or supplemental information, the Qualified Issuer must provide it within the timeframes requested by the CDFI Fund. Until such information is provided to the CDFI Fund, the Qualified Issuer Application and/or Guarantee Application will not be moved forward for the substantive review process. The Guarantor shall approve or deny a Guarantee Application no later than 90 days after the date the Guarantee Application has been advanced for substantive review.

F. Regulated entities. In the case of Qualified Issuer applicants, proposed Program Administrators, proposed Servicers, and Certified CDFIs that are included in the Qualified Issuer Application or Guarantee Application that are Insured Depository Institutions and Insured Credit Unions, the CDFI Fund will consider information provided by, and views of, the Appropriate Federal and State Banking Agencies. If any such entity is a CDFI bank holding company, the CDFI Fund will consider information provided by the Appropriate Federal Banking Agencies of the CDFI bank holding company and its CDFI bank(s). Throughout the Application review process, the CDFI Fund will consider financial safety and soundness information from the Appropriate Federal Banking Agency. Each regulated applicant must have a composite CAMELS/CAMEL rating of at least ''3'' and/or no material concerns from its regulator. The CDFI Fund also reserves the right to require a regulated applicant to improve safety and soundness conditions prior to being approved as a Qualified Issuer or Eligible CDFI. In addition, the CDFI Fund will take into consideration Community Reinvestment Act assessments of Insured Depository Institutions and/or their Affiliates.

G. Prior CDFI Fund recipients. All applicants must be aware that success under any of the CDFI Fund's other programs is not indicative of success under this NOGA. Prior CDFI Fund recipients should note the following:

1. Pending resolution of noncompliance. If a Qualified Issuer applicant, its proposed Program Administrator, its proposed Servicer, or any of the Certified CDFIs included in the Qualified Issuer Application or Guarantee Application is a prior recipient or allocatee under any CDFI Fund program and (i) it has submitted reports to the CDFI Fund that demonstrate noncompliance with a previously executed agreement with the CDFI Fund, and (ii) the CDFI Fund has yet to make a final determination as to whether the entity is noncompliant with its previously executed agreement, the CDFI Fund will consider the Qualified

Issuer Application or Guarantee Application pending full resolution, in the sole determination of the CDFI Fund, of the noncompliance.

2. Previous findings of noncompliance. If a Qualified Issuer applicant, its proposed Program Administrator, its proposed Servicer, or any of the Certified CDFIs included in the Qualified Issuer Application or Guarantee Application is a prior recipient or allocatee under any CDFI Fund program and the CDFI Fund has made a final determination that the entity is noncompliant with a previously executed agreement with the CDFI Fund, but has not notified the entity that it is ineligible to apply for future CDFI Fund program awards or allocations, the CDFI Fund will consider the Qualified Issuer Application or Guarantee Application. However, it is strongly advised that the entity take action to address such noncompliance finding, as repeat findings of noncompliance may result in the CDFI Fund determining the entity ineligible to participate in future CDFI Fund program rounds, which could result in any pending applications being deemed ineligible for further review. The CDFI Bond Guarantee Program staff cannot resolve compliance matters; instead, please contact the CDFI Fund's Office of Certification, Compliance Monitoring and Evaluation Unit (CCME) if your organization has questions about its current compliance status or has been found not in compliance with a previously executed agreement with the CDFI Fund.

3. Ineligibility due to noncompliance. The CDFI Fund will not consider a Qualified Issuer Application or Guarantee Application if the applicant, its proposed Program Administrator, its proposed Servicer, or any of the Certified CDFIs included in the Qualified Issuer Application or Guarantee Application, is a prior recipient or allocatee under any CDFI Fund program and if, as of the date of Qualified Issuer Application or Guarantee Application submission, (i) the CDFI Fund has made a determination that such entity is noncompliant with a previously executed agreement and (ii) the CDFI Fund has provided written notification that such entity is ineligible to apply for any future CDFI Fund program awards or allocations. Such entities will be ineligible to submit a Qualified Issuer or Guarantee Application, or be included in such submission, as the case may be, for such time period as specified by the CDFI Fund in writing.

H. Review of Bond and Bond Loan documents. Each Qualified Issuer and proposed Eligible CDFI will be required to certify that its appropriate senior management, and its respective legal counsel, has read the Regulations (set forth at 12 CFR part 1808, as well as the CDFI certification regulations set forth at 12 CFR 1805.201, as amended, and the environmental quality regulations set forth at 12 CFR part 1815) and the template Bond Documents and Bond Loan documents posted on the CDFI Fund's website including, but not limited to, the following: Bond Trust Indenture, Supplemental Indenture, Bond Loan Agreement, Promissory Note, Bond Purchase Agreement, Designation Notice, Secretary's Guarantee, Collateral Assignment, Reimbursement Note, Opinion of Bond Counsel, Opinion of Counsel to the Borrower, Escrow Agreement, and Closing Checklist.

I. Contact the CDFI Fund. A Qualified Issuer applicant, its proposed Program Administrator, its proposed Servicer, or any Certified CDFIs included in the Qualified Issuer Application or Guarantee Application that are prior CDFI Fund recipients are advised to: (i) Comply with requirements specified in CDFI Fund assistance, allocation, and/or award agreement(s), and (ii) contact the CDFI Fund to ensure that all necessary actions are underway for the disbursement or deobligation of any outstanding balance of said prior award(s). Any such parties that are unsure about the disbursement status of any prior award should submit a Service Request through that organization's AMIS Account.

All outstanding reporting and compliance questions should be directed to the Office of Certification, Compliance Monitoring and Evaluation help desk by AMIS Service Requests. The CDFI Fund will respond to applicants' reporting, compliance, or disbursement questions between the hours of 9:00 a.m. and 5:00 p.m. ET, starting on the date of the publication of this NOGA.

J. Evaluating prior award performance. In the case of a Qualified Issuer, a proposed Program Administrator, a proposed Servicer, or Certified CDFI that has received awards from other Federal programs, the CDFI Fund reserves the right to contact officials from the appropriate Federal agency or agencies to determine whether the entity is in compliance with current or prior award agreements, and to take such information into consideration before issuing a Guarantee. In the case of such an entity that has previously received funding through any CDFI Fund program, the CDFI Fund will review the entity's compliance history with the CDFI Fund, including any history of providing late reports, and consider such history in the context of organizational capacity and the ability to meet future reporting requirements.

The CDFI Fund may also bar from consideration any such entity that has, in any proceeding instituted against it in, by, or before any court, governmental, or administrative body or agency, received a final determination within the three years prior to the date of publication of this NOGA indicating that the entity has discriminated on the basis of race, color, national origin, disability, age, marital status, receipt of income from public assistance, religion, or sex, including, but not limited, to discrimination under (i) Title VI of the Civil Rights Act of 1964 (Pub. L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (ii) Title IX of the Education Amendments of 1972, as amended (20 U.S.C.1681–1683, 1685–1686), which prohibits discrimination on the basis of sex; (iii) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C.794), which prohibits discrimination on the basis of handicaps; (iv) the Age Discrimination Act of 1975, as amended (42 U.S.C.6101–6107), which prohibits discrimination on the basis of age; (v) the Drug Abuse Office and Treatment Act of 1972 (Pub. L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (vi) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (Pub. L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (vii) Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd–3 and 290 ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (viii) Title VIII of the Civil Rights Act of 1968 (42 U.S.C.3601 *et seq.*), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (ix) any other nondiscrimination provisions in the specific statute(s) under which Federal assistance is being made; and (x) the requirements of any other nondiscrimination statutes which may apply to the CDFI Bond Guarantee Program.

K. Civil Rights and Diversity. Any person who is eligible to receive benefits or services from the CDFI Fund or Recipients under any of its programs is entitled to those benefits or services without being subject to prohibited discrimination. The Department of the Treasury's Office of Civil Rights and

Diversity enforces various Federal statutes and regulations that prohibit discrimination in financially assisted and conducted programs and activities of the CDFI Fund. If a person believes that s/he has been subjected to discrimination and/or reprisal because of membership in a protected group, s/he may file a complaint with: Associate Chief Human Capital Officer, Office of Civil Rights, and Diversity, 1500 Pennsylvania Ave. NW, Washington, DC 20220 or (202) 622– 1160 (not a toll-free number).

L. Statutory and national policy requirements. The CDFI Fund will manage and administer the Federal award in a manner so as to ensure that Federal funding is expended and associated programs are implemented in full accordance with the U.S. Constitution, Federal Law, statutory, and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.

M. Changes to review procedures. The CDFI Fund reserves the right to change its completeness, eligibility and evaluation criteria, and procedures if the CDFI Fund deems it appropriate. If such changes materially affect the CDFI Fund's decision to approve or deny a Qualified Issuer Application, the CDFI Fund will provide information regarding the changes through the CDFI Fund's website.

N. Decisions are final. The CDFI Fund's Qualified Issuer Application decisions are final. The Guarantor's Guarantee Application decisions are final. There is no right to appeal the decisions. Any applicant that is not approved by the CDFI Fund or the Guarantor may submit a new Application and will be considered based on the newly submitted Application. Such newly submitted Applications will be reviewed along with all other pending Applications in the order in which they are received, or by such other criteria that the CDFI Fund may establish, in its sole discretion.

III. Qualified Issuer Application

A. General. This NOGA invites interested parties to submit a Qualified Issuer Application to be approved as a Qualified Issuer under the CDFI Bond Guarantee Program.

1. Qualified Issuer. The Qualified Issuer is a Certified CDFI, or an entity designated by a Certified CDFI to issue Bonds on its behalf, that meets the requirements of the Regulations and this NOGA, and that has been approved by the CDFI Fund pursuant to review and evaluation of its Qualified Issuer Application. The Qualified Issuer will, among other duties: (i) Organize the Eligible CDFIs that have designated it to serve as their Qualified Issuer; (ii) prepare and submit a complete and timely Qualified Issuer and Guarantee Application to the CDFI Fund; (iii) if the Qualified Issuer Application is approved by the CDFI Fund and the Guarantee Application is approved by the Guarantor, prepare the Bond Issue; (iv) manage all Bond Issue servicing, administration, and reporting functions; (v) make Bond Loans; (vi) oversee the financing or refinancing of Secondary Loans; (vii) ensure compliance throughout the duration of the Bond with all provisions of the Regulations, and Bond Documents and Bond Loan Documents entered into between the Guarantor, the Qualified Issuer, and the Eligible CDFI; and (viii) ensure that the Master Servicer/Trustee complies with the Bond Trust Indenture and all other applicable regulations. Further, the role of the Qualified Issuer also is to ensure that its proposed Eligible CDFI applicants possess adequate and well performing assets to support the debt service of the proposed Bond Loan.

2. Qualified Issuer Application. The Qualified Issuer Application is the document that an entity seeking to serve as a Qualified Issuer submits to the CDFI Fund to apply to be approved as a Qualified Issuer prior to consideration of a Guarantee Application.

3. Qualified Issuer Application evaluation, general. Each Qualified Issuer Application will be evaluated by the CDFI Fund and, if acceptable, the applicant will be approved as a Qualified Issuer, in the sole discretion of the CDFI Fund. The CDFI Fund's Qualified Issuer Application review and evaluation process is based on established procedures, which may include interviews of applicants and/or site visits to applicants conducted by the CDFI Fund. Through the Application review process, the CDFI Fund will evaluate Qualified Issuer applicants on a merit basis and in a fair and consistent manner. Each Qualified Issuer applicant will be reviewed on its ability to successfully carry out the responsibilities of a Qualified Issuer throughout the life of the Bond. The Applicant must currently meet the criteria established in the Regulations to be deemed a Qualified Issuer. Qualified Issuer Applications that are forward-looking or speculate as to the eventual acquisition of the required capabilities and criteria are unlikely to be approved. Qualified Issuer Application processing will be initiated in chronological order by date of receipt; however, Qualified Issuer Applications that are incomplete or require the CDFI Fund to request additional or clarifying information may delay the ability of the CDFI Fund to deem the Qualified Issuer Application complete and move it to the next phase of review. Submitting a substantially incomplete application earlier than other applicants does not ensure first approval.

B. Qualified Issuer Application: Eligibility.

1. CDFI certification requirements. The Qualified Issuer applicant must be a Certified CDFI or an entity designated by a Certified CDFI to issue Bonds on its behalf.

2. Designation and attestation by Certified CDFIs. An entity seeking to be approved by the CDFI Fund as a Qualified Issuer must be designated as a Qualified Issuer by at least one Certified CDFI. A Qualified Issuer may not designate itself. The Qualified Issuer applicant will prepare and submit a complete and timely Qualified Issuer Application to the CDFI Fund in accordance with the requirements of the Regulations, this NOGA, and the Application. A Certified CDFI must attest in the Qualified Issuer Application that it has designated the Qualified Issuer to act on its behalf and that the information in the Qualified Issuer Application regarding it is true, accurate, and complete.

C. Substantive review and approval process.

1. Substantive review.

a. If the CDFI Fund determines that the Qualified Issuer Application is complete and eligible, the CDFI Fund will undertake a substantive review in accordance with the criteria and procedures described in the Regulations, this NOGA, the Qualified Issuer Application, and CDFI Bond Guarantee Program policies.

b. As part of the substantive evaluation process, the CDFI Fund reserves the right to contact the Qualified Issuer applicant (as well as its proposed Program Administrator, its proposed Servicer, and each designating Certified CDFI in the Qualified Issuer Application) by telephone, email, mail, or through on-site visits for the purpose of obtaining additional, clarifying, confirming, or supplemental application information. The CDFI Fund reserves the right to collect such additional, clarifying, confirming, or supplemental information from said entities as it deems appropriate. If contacted for additional, clarifying, confirming, or supplemental information, said entities must respond within the time parameters set by the CDFI Fund or the

Qualified Issuer Application will be rejected.

2. Qualified Issuer criteria. In total, there are more than 60 individual criteria or sub-criteria used to evaluate a Qualified Issuer applicant and all materials provided in the Qualified Issuer Application will be used to evaluate the applicant. Qualified Issuer determinations will be made based on Qualified Issuer applicants' experience and expertise, in accordance with the following criteria:

a. Organizational capability.

i. The Qualified Issuer applicant must demonstrate that it has the appropriate expertise, capacity, experience, and qualifications to issue Bonds for Eligible Purposes, or is otherwise qualified to serve as Qualified Issuer, as well as manage the Bond Issue on the terms and conditions set forth in the Regulations, this NOGA, and the Bond Documents, satisfactory to the CDFI Fund.

ii. The Qualified Issuer applicant must demonstrate that it has the appropriate expertise, capacity, experience, and qualifications to originate, underwrite, service and monitor Bond Loans for Eligible Purposes, targeted to Low-Income Areas and Underserved Rural Areas.

iii. The Qualified Issuer applicant must demonstrate that it has the appropriate expertise, capacity, experience, and qualifications to manage the disbursement process set forth in the Regulations at 12 CFR 1808.302 and 1808.307.

b. Servicer. The Qualified Issuer applicant must demonstrate that it has (either directly or contractually through another designated entity) the appropriate expertise, capacity, experience, and qualifications, or is otherwise qualified to serve as Servicer. The Qualified Issuer Application must provide information that demonstrates that the Qualified Issuer's Servicer has the expertise, capacity, experience, and qualifications necessary to perform certain required administrative duties (including, but not limited to, Bond Loan servicing functions).

c. Program Administrator. The Qualified Issuer applicant must demonstrate that it has (either directly or contractually through another designated entity) the appropriate expertise, capacity, experience, and qualifications, or is otherwise qualified to serve as Program Administrator. The Qualified Issuer Application must provide information that demonstrates that the Qualified Issuer's Program Administrator has the expertise, capacity, experience, and qualifications necessary to perform certain required administrative duties (including, but not limited to, compliance monitoring and reporting functions).

d. Strategic alignment. The Qualified Issuer applicant will be evaluated on its strategic alignment with the CDFI Bond Guarantee Program on factors that include, but are not limited to: (i) Its mission's strategic alignment with community and economic development objectives set forth in the Riegle Act at 12 U.S.C. 4701; (ii) its strategy for deploying the entirety of funds that may become available to the Qualified Issuer through the proposed Bond Issue; (iii) its experience providing up to 30-year capital to CDFIs or other borrowers in Low-Income Areas or Underserved Rural Areas as such terms are defined in the Regulations at 12 CFR 1808.102; (iv) its track record of activities relevant to its stated strategy; and (v) other factors relevant to the Qualified Issuer's strategic alignment with the program.

e. Experience. The Qualified Issuer applicant will be evaluated on factors that demonstrate that it has previous experience: (i) Performing the duties of a Qualified Issuer including issuing bonds, loan servicing, program administration, underwriting, financial reporting, and loan administration; (ii) lending in Low-Income Areas and Underserved Rural Areas; and (iii) indicating that the Qualified Issuer's current principals and team members have successfully performed the required duties, and that previous experience is applicable to the current principals and team members.

f. Management and staffing. The Qualified Issuer applicant must demonstrate that it has sufficiently strong management and staffing capacity to undertake the duties of Qualified Issuer. The applicant must also demonstrate that its proposed Program Administrator and its proposed Servicer have sufficiently strong management and staffing capacity to undertake their respective requirements under the CDFI Bond Guarantee Program. Strong management and staffing capacity is evidenced by factors that include, but are not limited to: (i) A sound track record of delivering on past performance; (ii) a documented succession plan; (iii) organizational stability including staff retention; and (iv) a clearly articulated, reasonable, and well-documented staffing plan.

g. Financial strength. The Qualified Issuer applicant must demonstrate the strength of its financial capacity and activities including, among other items, financially sound business practices relative to the industry norm for bond issuers, as evidenced by reports of Appropriate Federal Banking Agencies, Appropriate State Agencies, or auditors. Such financially sound business practices will demonstrate: (i) The financial wherewithal to perform activities related to the Bond Issue such as administration and servicing; (ii) the ability to originate, underwrite, close, and disburse loans in a prudent manner; (iii) whether the applicant is depending on external funding sources and the reliability of long-term access to such funding; (iv) whether there are foreseeable counterparty issues or credit concerns that are likely to affect the applicant's financial stability; and (v) a budget that reflects reasonable assumptions about upfront costs as well as ongoing expenses and revenues.

h. Systems and information technology. The Qualified Issuer applicant must demonstrate that it (as well as its proposed Program Administrator and its proposed Servicer) has, among other things: (i) A strong information technology capacity and the ability to manage loan servicing, administration, management, and document retention; (ii) appropriate office infrastructure and related technology to carry out the CDFI Bond Guarantee Program activities; and (iii) sufficient backup and disaster recovery systems to maintain uninterrupted business operations.

i. Pricing structure. The Qualified Issuer applicant must provide its proposed pricing structure for performing the duties of Qualified Issuer, including the pricing for the roles of Program Administrator and Servicer. Although the pricing structure and fees shall be decided by negotiation between market participants without interference or approval by the CDFI Fund, the CDFI Fund will evaluate whether the Qualified Issuer applicant's proposed pricing structure is feasible to carry out the responsibilities of a Qualified Issuer over the life of the Bond to help ensure sound implementation of the program.

j. Other criteria. The Qualified Issuer applicant must meet such other criteria as may be required by the CDFI Fund, as set forth in the Qualified Issuer Application or required by the CDFI Fund in its sole discretion, for the purposes of evaluating the merits of a Qualified Issuer Application. The CDFI Fund may request an on-site review of Qualified Issuer applicant to confirm materials provided in the written application, as well as to gather additional due diligence information. The on-site reviews are a critical component of the application review process and will generally be conducted for all applicants not regulated by an Appropriate Federal Banking Agency or Appropriate State Agency. The CDFI

Fund reserves the right to conduct a site visit of regulated entities, in its sole discretion.

k. Third-party data sources. The CDFI Fund, in its sole discretion, may consider information from third-party sources including, but not limited to, periodicals or publications, publicly available data sources, or subscriptions services for additional information about the Qualified Issuer applicant, the proposed Program Administrator, the proposed Servicer, and each Certified CDFI that is included in the Qualified Issuer Application. Any additional information received from such third-party sources will be reviewed and evaluated through a systematic and formalized process.

D. Notification of Qualified Issuer determination. Each Qualified Issuer applicant will be informed of the CDFI Fund's decision in writing, by email using the addresses maintained in the entity's AMIS account. The CDFI Fund will not notify the proposed Program Administrator, the proposed Servicer, or the Certified CDFIs included in the Qualified Issuer Application of its decision regarding the Qualified Issuer Application; such contacts are the responsibility of the Qualified Issuer applicant.

E. Qualified Issuer Application rejection. In addition to substantive reasons based on the merits of its review, the CDFI Fund reserves the right to reject a Qualified Issuer Application if information (including administrative errors) comes to the attention of the CDFI Fund that adversely affects an applicant's eligibility, adversely affects the CDFI Fund's evaluation of a Qualified Issuer Application, or indicates fraud or mismanagement on the part of a Qualified Issuer applicant or its proposed Program Administrator, its proposed Servicer, and any Certified CDFI included in the Qualified Issuer Application. If the CDFI Fund determines that any portion of the Qualified Issuer Application is incorrect in any material respect, the CDFI Fund reserves the right, in its sole discretion, to reject the Application.

IV. Guarantee Applications

A. This NOGA invites Qualified Issuers to submit a Guarantee Application to be approved for a Guarantee under the CDFI Bond Guarantee Program.

1. Guarantee Application.

a. The Guarantee Application is the application document that a Qualified Issuer (in collaboration with the Eligible CDFI(s) that seek to be included in the proposed Bond Issue) must submit to the CDFI Fund in order to apply for a Guarantee. The Qualified Issuer shall provide all required information in its Guarantee Application to establish that it meets all criteria set forth in the Regulations at 12 CFR 1808.501 and this NOGA and can carry out all CDFI Bond Guarantee Program requirements including, but not limited to, information that demonstrates that the Qualified Issuer has the appropriate expertise, capacity, and experience and is qualified to make, administer and service Bond Loans for Eligible Purposes. An Eligible CDFI may be an existing certified or certifiable CDFI (the GRS), or the Eligible CDFI may be an Affiliate of a Controlling CDFI(s) that is created for the sole purpose of participation as an Eligible CDFI in the CDFI Fund Bond Guarantee Program (the AFS; see Section II(B) of this NOGA for Recourse and Collateral Requirements and Section II(A) of this NOGA for certification requirements for certifiable CDFIs and Affiliates of Controlling CDFIs).

b. The Guarantee Application comprises a Capital Distribution Plan and at least one Secondary Capital Distribution Plan, as well as all other requirements set forth in this NOGA or as may be required by the Guarantor and the CDFI Fund in their sole discretion, for the evaluation and selection of Guarantee applicants.

2. Guarantee Application evaluation, general. The Guarantee Application review and evaluation process will be based on established standard procedures, which may include interviews of applicants and/or site visits to applicants conducted by the CDFI Fund. Through the Application review process, the CDFI Fund will evaluate Guarantee applicants on a merit basis and in a fair and consistent manner. Each Guarantee applicant will be reviewed on its ability to successfully implement and carry out the activities proposed in its Guarantee Application throughout the life of the Bond. Eligible CDFIs must currently meet the criteria established in the Regulations to participate in the CDFI Bond Guarantee Program. Guarantee Applications that are forward-looking or speculate as to the eventual acquisition of the required capabilities and criteria by the Eligible CDFI(s) are unlikely to be approved. Guarantee Application processing will be initiated in chronological order by date of receipt; however, Guarantee Applications that are incomplete or require the CDFI Fund to request additional or clarifying information may delay the ability of the CDFI Fund to deem the Guarantee Application complete and move it to the next phase of review. Submitting a substantially incomplete application earlier than other applicants does not ensure first approval.

B. Guarantee Application: Eligibility.

1. Eligibility; CDFI certification requirements. If approved for a Guarantee, each Eligible CDFI must be a Certified CDFI as of the Bond Issue Date and must maintain its respective CDFI certification throughout the term of the corresponding Bond. For more information on CDFI Certification and the certification of affiliated entities, including the deadlines for submission of certification applications, see part II of this NOGA.

2. Qualified Issuer as Eligible CDFI. A Qualified Issuer may not participate as an Eligible CDFI within its own Bond Issue, but may participate as an Eligible CDFI in a Bond Issue managed by another Qualified Issuer.

3. Attestation by proposed Eligible CDFIs. Each proposed Eligible CDFI must attest in the Guarantee Application that it has designated the Qualified Issuer to act on its behalf and that the information pertaining to the Eligible CDFI in the Guarantee Application is true, accurate and complete. Each proposed Eligible CDFI must also attest in the Guarantee Application that it will use Bond Loan proceeds for Eligible Purposes and that Secondary Loans will be financed or refinanced in accordance with the applicable Secondary Loan Requirements.

C. Guarantee Application: Preparation. When preparing the Guarantee Application, the Eligible CDFIs and Qualified Issuer must collaborate to determine the composition and characteristics of the Bond Issue, ensuring compliance with the Act, the Regulations, and this NOGA. The Qualified Issuer is responsible for the collection, preparation, verification, and submission of the Eligible CDFI information that is presented in the Guarantee Application. The Qualified Issuer will submit the Guarantee Application for the proposed Bond Issue, including any information provided by the proposed Eligible CDFIs. In addition, the Qualified Issuer will serve as the primary point of contact with the CDFI Fund during the Guarantee Application review and evaluation process.

D. Review and approval process.

1. Substantive review.

a. If the CDFI Fund determines that the Guarantee Application is complete and eligible, the CDFI Fund will undertake a substantive review in accordance with the criteria and procedures described in the Regulations at 12 CFR 1808.501, this NOGA, and the

Guarantee Application. The substantive review of the Guarantee Application will include due diligence, underwriting, credit risk review, and Federal credit subsidy calculation, in order to determine the feasibility and risk of the proposed Bond Issue, as well as the strength and capacity of the Qualified Issuer and each proposed Eligible CDFI. Each proposed Eligible CDFI will be evaluated independently of the other proposed Eligible CDFIs within the proposed Bond Issue; however, the Bond Issue must then cumulatively meet all requirements for Guarantee approval. In general, applicants are advised that proposed Bond Issues that include a large number of proposed Eligible CDFIs are likely to substantially increase the review period.

b. As part of the substantive review process, the CDFI Fund may contact the Qualified Issuer (as well as the proposed Eligible CDFIs included in the Guarantee Application) by telephone, email, mail, or through an on-site visit for the sole purpose of obtaining additional, clarifying, confirming, or supplemental application information. The CDFI Fund reserves the right to collect such additional, clarifying, confirming or supplemental information as it deems appropriate. If contacted for additional, clarifying, confirming, or supplemental information, said entities must respond within the time parameters set by the CDFI Fund or the Guarantee Application will be rejected.

2. Guarantee Application criteria.

a. In general, a Guarantee Application will be evaluated based on the strength and feasibility of the proposed Bond Issue, as well as the creditworthiness and performance of the Qualified Issuer and the proposed Eligible CDFIs. Guarantee Applications must demonstrate that each proposed Eligible CDFI has the capacity for its respective Bond Loan to be a secured, general recourse obligation of the proposed Eligible CDFI and to deploy the Bond Loan proceeds within the required disbursement timeframe as described in the Regulations. Unless receiving significant support from a Controlling CDFI, or Credit Enhancements, Eligible CDFIs should not request Bond Loans greater than their current total asset size or which would otherwise significantly impair their net asset or net equity position. In general, an applicant requesting a Bond Loan more than 50% of its total asset size should be prepared to clearly demonstrate that it has a reasonable plan to scale its operations prudently and in a manner that does not impair its net asset or net equity position. Further, an entity with a limited operating history or a history of operating losses is unlikely to meet the strength and feasibility requirements of the CDFI Bond Guarantee Program, unless it receives significant support from a Controlling CDFI, or Credit Enhancements.

b. The Capital Distribution Plan must demonstrate the Qualified Issuer's comprehensive plan for lending, disbursing, servicing and monitoring each Bond Loan in the Bond Issue. It includes, among other information, the following components:

i. Statement of Proposed Sources and Uses of Funds: Pursuant to the requirements set forth in the Regulations at 12 CFR1808.102(bb) and 1808.301, the Qualified Issuer must provide: (A) A description of the overall plan for the Bond Issue; (B) a description of the proposed uses of Bond Proceeds and proposed sources of funds to repay principal and interest on the proposed Bond and Bond Loans; (C) a certification that 100% of the principal amount of the proposed Bond will be used to make Bond Loans for Eligible Purposes on the Bond Issue Date; and (D) description of the extent to which the proposed Bond Loans will serve Low-Income Areas or Underserved Rural Areas;

ii. Bond Issue Qualified Issuer cash flow model: The Qualified Issuer must provide a cash flow model displaying the orderly repayment of the Bond and the Bond Loans according to their respective terms. The cash flow model shall include disbursement and repayment of Bonds, Bond Loans, and Secondary Loans. The cash flow model shall match the aggregated cash flows from the Secondary Capital Distribution Plans of each of the underlying Eligible CDFIs in the Bond Issue pool. Such information must describe the expected distribution of asset classes to which each Eligible CDFI expects to disburse funds, the proposed disbursement schedule, quarterly or semi-annual amortization schedules, interest-only periods, maturity date of each advance of funds, and assumed net interest margin on Secondary Loans above the assumed Bond Loan rate;

iii. Organizational capacity: If not submitted concurrently, the Qualified Issuer must attest that no material changes have occurred since the time that it submitted the Qualified Issuer Application;

iv. Credit Enhancement (if applicable): The Qualified Issuer must provide information about the adequacy of proposed risk mitigation provisions designed to protect the financial interests of the Federal Government, either directly or indirectly through supporting the financial strength of the Bond Issue. This includes, but is not limited to, the amount and quality of any Credit Enhancements, terms and specific conditions such as renewal options, and any limiting conditions or revocability by the provider of the Credit Enhancement. For any third-party providing a Credit Enhancement, the Qualified Issuer must provide the following information on the third-party: Most recent three years of audited financial statements, a brief analysis of the such entity's creditworthiness, and an executed letter of intent from such entity that indicates the terms and conditions of the Credit Enhancement. Any Credit Enhancement must be pledged, as part of the Trust Estate, to the Master Servicer/Trustee for the benefit of the Federal Financing Bank;

v. Proposed Term Sheets: The CDFI Fund website includes template term sheets for the GRS, the AFS, and the asset class CDFI to Financing Entity utilizing pooled tertiary loans. For each Eligible CDFI that is part of the proposed Bond Issue, the Qualified Issuer must submit a proposed Term Sheet using the applicable template provided on the CDFI Fund's website. The proposed Term Sheet must clearly state all relevant and critical terms of the proposed Bond Loan including, but not limited to: The Bond Loan Collateral Requirements described in Section II(B) of this NOGA, any requested prepayment provisions, unique conditions precedent, proposed covenants and exact amounts/percentages for determining the Eligible CDFI's ability to meet program requirements, and terms and exact language describing any Credit Enhancements. Terms may be either altered and/or negotiated by the CDFI Fund in its sole discretion, based on the proposed structure in the application, to ensure that adequate protection is in place for the Guarantor;

vi. Secondary Capital Distribution Plan(s): Each proposed Eligible CDFI must provide a comprehensive plan for financing, disbursing, servicing and monitoring Secondary Loans, address how each proposed Secondary Loan will meet Eligible Purposes, and address such other requirements listed below that may be required by the Guarantor and the CDFI Fund. For each proposed Eligible CDFI relying, for CDFI certification purposes, on the financing entity activity of a Controlling CDFI, the Controlling CDFI must describe how the Eligible CDFI and the Controlling CDFI, together, will meet the requirements listed below:

(A) *Narrative and Statement of Proposed Sources and Uses of Funds:* Each Eligible CDFI will: (1) Provide a

description of proposed uses of funds, including the extent to which Bond Loans will serve Low-Income Areas or Underserved Rural Areas, and the extent to which Bond Loan proceeds will be used (i) to make the first monthly installment of a Bond Loan payment, (ii) pay Issuance Fees up to 1% of the Bond Loan, and (iii) finance Loan Loss Reserves related to Secondary Loans; (2) attest that 100% of Bond Loan proceeds designated for Secondary Loans will be used to finance or refinance Secondary Loans that meet Secondary Loan Requirements; (3) describe a plan for financing, disbursing, servicing, and monitoring Secondary Loans; (4) indicate the expected asset classes to which it will lend under the Secondary Loan Requirements; (5) indicate examples of previous lending and years of experience lending to a specific asset class, especially with regards to the number and dollar volume of loans made in the five years prior to application submission to the specific asset classes to which an Eligible CDFI is proposing to lend Bond Loan proceeds; (6) provide a table detailing specific uses and timing of disbursements, including terms and relending plans if applicable; and (7) a community impact analysis, including how the proposed Secondary Loans will address financing needs that the private market is not adequately serving and specific community benefit metrics;

(B) *Eligible CDFI cash flow model:* Each Eligible CDFI must provide a cash flow model of the proposed Bond Loan which: (1) Matches each Eligible CDFI's portion of the Qualified Issuer's cash flow model; and (2) tracks the flow of funds through the term of the Bond Issue and demonstrates disbursement and repayment of the Bond Loan, Secondary Loans, and any utilization of the Relending Fund, if applicable. Such information must describe: the expected distribution of asset classes to which each Eligible CDFI expects to disburse funds, the proposed disbursement schedule, quarterly or semi-annual amortization schedules, interest-only periods, maturity date of each advance of funds, and the assumed net interest margin on Secondary Loans above the assumed Bond Loan rate;

(C) *Organizational capacity:* Each Eligible CDFI must provide documentation indicating the ability of the Eligible CDFI to manage its Bond Loan including, but not limited to: (1) Organizational ownership and a chart of affiliates; (2) organizational documents, including policies and procedures related to loan underwriting and asset management; (3) management or operating agreement, if applicable; (4) an analysis by management of its ability to manage the funding, monitoring, and collection of loans being contemplated with the proceeds of the Bond Loan; (5) information about its board of directors; (6) a governance narrative; (7) description of senior management and employee base; (8) independent reports, if available; (9) strategic plan or related progress reports; and (10) a discussion of the management and information systems used by the Eligible CDFI;

(D) *Policies and procedures:* Each Eligible CDFI must provide relevant policies and procedures including, but not limited to: A copy of the asset-liability matching policy, if applicable; and loan policies and procedures which address topics including, but not limited to: Origination, underwriting, credit approval, interest rates, closing, documentation, asset management, and portfolio monitoring, risk-rating definitions, charge-offs, and loan loss reserve methodology;

(E) *Financial statements:* Each Eligible CDFI must provide information about the Eligible CDFI's current and future financial position, including but not limited to: (1) Audited financial statements for the prior three (3) most recent Fiscal Years; (2) current year-to-date or interim financial statement for the immediately prior quarter end of the Fiscal Year; (3) a copy of the current year's approved budget or projected budget if the entity's Board has not yet approved such budget; and (4) a three (3) year pro forma projection of the statement of financial position or balance sheet, statement of activities or income statement, and statement of cash flows in the standardized template provided by the CDFI Fund;

(F) *Loan portfolio information:* Each Eligible CDFI must provide information including, but not limited to: (1) Loan portfolio quality report; (2) pipeline report; (3) portfolio listing; (4) a description of other loan assets under management; (5) loan products; (6) independent loan review report; (7) impact report case studies; and (8) a loan portfolio by risk rating and loan loss reserves; and

(G) *Funding sources and financial activity information*: Each Eligible CDFI must provide information including, but not limited to: (1) Current grant information; (2) funding projections; (3) credit enhancements; (4) historical investor renewal rates; (5) covenant compliance; (6) off-balance sheet contingencies; (7) earned revenues; and (8) debt capital statistics.

vii. Assurances and certifications that not less than 100% of the principal amount of Bonds will be used to make Bond Loans for Eligible Purposes beginning on the Bond Issue Date, and that Secondary Loans shall be made as set forth in subsection 1808.307(b); and

viii. Such other information that the Guarantor, the CDFI Fund and/or the Bond Purchaser may deem necessary and appropriate.

c. The CDFI Fund will use the information described in the Capital Distribution Plan and Secondary Capital Distribution Plan(s) to evaluate the feasibility of the proposed Bond Issue, with specific attention paid to each Eligible CDFI's financial strength and organizational capacity. For each proposed Eligible CDFI relying, for CDFI certification purposes, on the financing entity activity of a Controlling CDFI, the CDFI Fund will pay specific attention to the Controlling CDFI's financial strength and organizational capacity as well as the operating agreement between the proposed Eligible CDFI and the Controlling CDFI. All materials provided in the Guarantee Application will be used to evaluate the proposed Bond Issue. In total, there are more than 100 individual criteria or sub-criteria used to evaluate each Eligible CDFI. Specific criteria used to evaluate each Eligible CDFI shall include, but not be limited to, the following criteria below. For each proposed Eligible CDFI relying, for CDFI certification purposes, on the financing entity activity of a Controlling CDFI, the following specific criteria will also be used to evaluate both the proposed Eligible CDFI and the Controlling CDFI:

i. Historical financial ratios: Ratios which together have been shown to be predictive of possible future default will be used as an initial screening tool, including total asset size, net asset or Tier 1 Core Capital ratio, self-sufficiency ratio, non-performing asset ratio, liquidity ratio, reserve over nonperforming assets, and yield cost spread;

ii. Quantitative and qualitative attributes under the ''CAMELS'' framework: After initial screening, the CDFI Fund will utilize a more detailed analysis under the ''CAMELS'' framework, including but not limited to:

(A) *Capital Adequacy:* Attributes such as the debt-to-equity ratio, status, and significance of off-balance sheet liabilities or contingencies, magnitude, and consistency of cash flow performance, exposure to affiliates for financial and operating support, trends in changes to capitalization, and other relevant attributes;

(B) *Asset Quality:* Attributes such as the charge-off ratio, adequacy of loan loss reserves, sector concentration, borrower concentration, asset composition, security and

collateralization of the loan portfolio, trends in changes to asset quality, and other relevant attributes;

(C) *Management:* Attributes such as documented best practices in governance, strategic planning and board involvement, robust policies and procedures, tenured and experienced management team, organizational stability, infrastructure and information technology systems, and other relevant attributes;

(D) *Earnings and Performance:* Attributes such as net operating margins, deployment of funds, self-sufficiency, trends in earnings, and other relevant attributes;

(E) *Liquidity:* Attributes such as unrestricted cash and cash equivalents, ability to access credit facilities, access to grant funding, covenant compliance, affiliate relationships, concentration of funding sources, trends in liquidity, and other relevant attributes;

(F) *Sensitivity:* The CDFI Fund will stress test each Eligible CDFI's projected financial performance under scenarios that are specific to the unique circumstance and attributes of the organization. Additionally, the CDFI Fund will consider other relevant criteria that have not been adequately captured in the preceding steps as part of the due diligence process. Such criteria may include, but not be limited to, the size and quality of any third-party Credit Enhancements or other forms of credit support.

(G) *Overcollateralization:* The commitment by an Eligible CDFI to over- collateralize a proposed Bond Loan with excess Secondary Loans is a criterion that may affect the viability of a Guarantee Application by decreasing the estimated net present value of the long-term cost of the Guarantee to the Federal Government, by decreasing the probability of default, and/or increasing the recovery rate in the event of default. An Eligible CDFI committing to overcollateralization may not be required to deposit funds in the Relending Account, subject to the maintenance of certain unique requirements that are detailed in the template Agreement to Guarantee and Bond Loan Agreement.

(H) *Credit Enhancements:* The provision of third-party Credit Enhancements, including any Credit Enhancement from a Controlling CDFI or any other affiliated entity, is a criterion that may affect the viability of a Guarantee Application by decreasing the estimated net present value of the long-term cost of the Guarantee to the Federal Government. Credit Enhancements are considered in the context of the structure and circumstances of each Guarantee Application.

(I) *On-Site Review:* The CDFI Fund may request an on-site review of an Eligible CDFI to confirm materials provided in the written application, as well as to gather additional due diligence information. The on-site reviews are a critical component of the application review process and will generally be conducted for all applicants not regulated by an Appropriate Federal Banking Agency or Appropriate State Agency. The CDFI Fund reserves the right to conduct a site visit of regulated entities, in its sole discretion.

(J) *Secondary Loan Asset Classes:* Eligible CDFIs that propose to use funds for new products or lines of business must demonstrate that they have the organizational capacity to manage such activities in a prudent manner. Failure to demonstrate such organizational capacity may be factored into the consideration of Asset Quality or Management criteria as listed above in this section.

3. Credit subsidy cost. The credit subsidy cost is the net present value of the estimated long-term cost of the Guarantee to the Federal Government as determined under the applicable provisions of the Federal Credit Reform Act of 1990, as amended (FCRA). Treasury has not received appropriated amounts from Congress to cover the credit subsidy costs associated with Guarantees issued pursuant to this NOGA. In accordance with FCRA, Treasury must consult with, and obtain the approval of, OMB for Treasury's calculation of the credit subsidy cost of each Guarantee prior to entering into any Agreement to Guarantee.

E. *Guarantee approval; Execution of documents.*

1. The Guarantor, in the Guarantor's sole discretion, may approve a Guarantee, after consideration of the recommendation from the CDFI Bond Guarantee Program's Credit Review Board and/or based on the merits of the Guarantee Application. The Guarantor shall approve or deny a Guarantee Application no later than 90 days after the date the Guarantee Application was advanced for substantive review.

2. The Guarantor reserves the right to approve Guarantees, in whole or in part, in response to any, all, or none of the Guarantee Applications submitted in response to this NOGA. The Guarantor also reserves the right to approve any Guarantees in an amount that is less than requested in the corresponding Guarantee Application. Pursuant to the Regulations at 12 CFR 1808.504(c), the Guarantor may limit the number of Guarantees made per year to ensure that a sufficient examination of Guarantee Applications is conducted.

3. The CDFI Fund will notify the Qualified Issuer in writing of the Guarantor's approval or disapproval of a Guarantee Application. Bond Documents and Bond Loan documents must be executed, and Guarantees will be provided, in the order in which Guarantee Applications are approved or by such other criteria that the CDFI Fund may establish, in its sole discretion, and in any event by September 30, 2021.

4. Please note that the most recently dated templates of Bond Documents and Bond Loan documents that are posted on the CDFI Fund's website will not be substantially revised or negotiated prior to closing of the Bond and Bond Loan and issuance of the corresponding Guarantee. If a Qualified Issuer or a proposed Eligible CDFI does not understand the terms and conditions of the Bond Documents or Bond Loan documents (including those listed in Section II.G., above), it should ask questions or seek technical assistance from the CDFI Fund. However, if a Qualified Issuer or a proposed Eligible CDFI disagrees or is uncomfortable with any term/condition, or if legal counsel to either cannot provide a legal opinion in substantially the same form and content of the required legal opinion, it should not apply for a Guarantee.

5. The Guarantee shall not be effective until the Guarantor signs and delivers the Guarantee.

F. *Guarantee denial.* The Guarantor, in the Guarantor's sole discretion, may deny a Guarantee, after consideration of the recommendation from the Credit Review Board and/or based on the merits of the Guarantee Application. In addition, the Guarantor reserves the right to deny a Guarantee Application if information (including any administrative error) comes to the Guarantor's attention that adversely affects the Qualified Issuer's eligibility, adversely affects the evaluation or scoring of an Application, or indicates fraud or mismanagement on the part of the Qualified Issuer, Program Administrator, Servicer, and/or Eligible CDFIs.

Further, if the Guarantor determines that any portion of the Guarantee Application is incorrect in any material respect, the Guarantor reserves the right, in the Guarantor's sole discretion, to deny the Application.

V. Guarantee Administration

A. Pricing information. Bond Loans will be priced based upon the underlying Bond issued by the

Qualified Issuer and purchased by the Federal Financing Bank (FFB or Bond Purchaser). As informed by CDFI Fund underwriting according to the criteria laid out in Section II ''General Application Information'' and Section IV ''Guarantee Applications'' of this NOGA, the FFB will set the liquidity premium at the time of the Bond Issue Date, based on the duration and maturity of the Bonds according to the FFB's lending policies (*www.treasury.gov/ffb*). Liquidity premiums will be charged in increments of 1/8th of a percent (*i.e.,* 12.5 basis points).

B. Fees and other payments. The following table includes some of the fees that may be applicable to Qualified Issuers and Eligible CDFIs after approval of a Guarantee of a Bond Issue, as well as Risk-Share Pool funding, prepayment penalties or discounts, and Credit Enhancements. The table is not exhaustive; additional fees payable to the CDFI Fund or other parties may apply.

Fee	Description
Agency Administrative Fee	Payable monthly to the CDFI Fund by the Eligible CDFI Equal to 10 basis points (annualized) on the amount of the unpaid principal of the Bond Issue.
Bond Issuance Fees	Amounts paid by an Eligible CDFI for reasonable and appropriate expenses, administrative costs, and fees for services in connection with the issuance of the Bond (but not including the Agency Administrative Fee) and the making of the Bond Loan. Fees negotiated between the Qualified Issuer, the Master Servicer/Trustee, and the Eligible CDFI. Up of 1% of Bond Loan Proceeds may be used to finance Bond Issuance Fees.
Servicer Fee	The fees paid by the Eligible CDFI to the Qualified Issuer's Servicer. Servicer fees are negotiated between the Qualified Issuer and the Eligible CDFI.
Program Administrator Fee	The fees paid by the Eligible CDFI to the Qualified Issuer's Program Administrator. Program Administrator fees are negotiated between the Qualified Issuer and the Eligible CDFI.
Master Servicer/Trustee Fee	The fees paid by the Qualified Issuer and the Eligible CDFI to the Master Servicer/Trustee to carry out the responsibilities of the Bond Trust Indenture. In general, the Master Servicer/Trustee fee for a Bond Issue with a single Eligible CDFI is the greater of 16 basis points per annum or $6,000 per month once the Bond Loans are fully disbursed. Fees for Bond Issues with more than one Eligible CDFI are negotiated between the Master Servicer/Trustee, Qualified Issuer, and Eligible CDFI. Any special servicing costs and resolution or liquidation fees due to a Bond Loan default are the responsibility of the Eligible CDFI. Please see the template legal documents at *https://www.cdfifund.gov/programs-training/Programs/cdfi-bond/Pages/closing-disbursement-step.aspx#step4* for more specific information.
Risk-Share Pool Funding	The funds paid by the Eligible CDFIs to cover Risk- Share Pool requirements; capitalized by pro rata payments equal to 3% of the amount disbursed on the Bond Loan from all Eligible CDFIs within the Bond Issue.
Prepayment Premiums or Discounts	Prepayment premiums or discounts are determined by the FFB at the time of prepayment.
Credit Enhancements	Pledges made to enhance the quality of a Bond and/or Bond Loan. Credit Enhancements include, but are not limited to, the Principal Loss Collateral Provision and letters of credit. Credit Enhancements must be pledged, as part of the Trust Estate, to the Master Servicer/Trustee for the benefit of the Federal Financing Bank.

C. Terms for Bond Issuance and disbursement of Bond Proceeds. In accordance with 12 CFR 1808.302(f), each year, beginning on the one year anniversary of the Bond Issue Date (and every year thereafter for the term of the Bond Issue), each Qualified Issuer must demonstrate that no less than 100% of the principal amount of the Guaranteed Bonds currently disbursed and outstanding has been used to make loans to Eligible CDFIs for Eligible Purposes. If a Qualified Issuer fails to demonstrate this requirement within the 90 days after the anniversary of the Bond Issue Date, the Qualified Issuer must repay on that portion of Bonds necessary to bring the Bonds that remain outstanding after such repayment is in compliance with the 100% requirement above.

D. Secondary Loan Requirements. In accordance with the Regulations, Eligible CDFIs must finance or refinance Secondary Loans for Eligible Purposes (not including loan loss reserves) that comply with Secondary Loan Requirements. The Secondary Loan Requirements are found on the CDFI Fund's website at *https://www.cdfifund.gov/programs-training/Programs/cdfi-bond/Pages/compliance-step.aspx#step5.* Applicants should become familiar with the published Secondary Loan Requirements. Secondary Loan Requirements are classified by asset class and are subject to a Secondary Loan commitment process managed by the Qualified Issuer. Eligible CDFIs must execute Secondary Loan documents (in the form of promissory notes) with Secondary Borrowers as follows: (i) No later than 12 months after the Bond Issue Date, Secondary Loan documents representing at least 50% of the Bond Loan proceeds allocated for Secondary Loans, and (ii) no later than 24 months after the Bond Issue Date, Secondary Loan documents representing 100% of the Bond Loan proceeds allocated for Secondary Loans. In the event that the Eligible CDFI does not comply with the foregoing requirements of clauses (i) or (ii) of this paragraph, the available Bond Loan proceeds at the end of the applicable period shall be reduced by an amount equal to the difference between the amount required by clauses (i) or (ii) for the applicable period minus the amount previously committed to the Secondary Loans in the applicable period. Secondary Loans shall carry loan maturities suitable to the loan purpose and be consistent with loan-to-value requirements set forth in the Secondary Loan Requirements. Secondary Loan maturities shall not exceed the corresponding Bond or Bond Loan maturity date. It is the expectation of the CDFI Fund that interest rates for the Secondary Loans will be reasonable based on the borrower and loan characteristics.

E. Secondary Loan collateral requirements.

1. The Regulations state that Secondary Loans must be secured by a first lien of the Eligible CDFI on pledged collateral, in accordance with the Regulations (at 12 CFR 1808.307(f)) and within certain parameters. Examples of acceptable forms of collateral may include, but are not limited to: real property (including land and structures), leasehold mortgages, machinery, equipment and movables, cash and cash equivalents, accounts receivable, letters of credit, inventory, fixtures, contracted revenue streams

from non-Federal counterparties, provided the Secondary Borrower pledges all assets, rights and interests necessary to generate such revenue stream, and a Principal Loss Collateral Provision. Intangible assets, such as customer relationships and intellectual property rights, are not acceptable forms of collateral. Loans secured by real property that are still in a construction phase will only be permitted when backed by a letter of credit issued by a bank deemed acceptable by the Bond Guarantee Program, in a format deemed acceptable to the Bond Guarantee Program, that guarantees the full value of the pledged collateral until at minimum completion of the construction and stabilization phases.

2. The Regulations require that Bond Loans must be secured by a first lien on a collateral assignment of Secondary Loans, and further that the Secondary Loans must be secured by a first lien or parity lien on acceptable collateral.

3. Valuation of the collateral pledged by the Secondary Borrower must be based on the Eligible CDFI's credit policy guidelines and must conform to the standards set forth in the Uniform Standards of Professional Appraisal Practice (USPAP) and the Secondary Loan Requirements.

4. Independent third-party appraisals are required for the following collateral: Real estate, leasehold interests, fixtures, machinery and equipment, movables stock valued in excess of $250,000, and contracted revenue stream from non-Federal creditworthy counterparties. Secondary Loan collateral shall be valued using the cost approach, net of depreciation and shall be required for the following: accounts receivable, machinery, equipment and movables, and fixtures.

F. Qualified Issuer approval of Bond Loans to Eligible CDFIs. The Qualified Issuer shall not approve any Bond Loans to an Eligible CDFI where the Qualified Issuer has actual knowledge, based upon reasonable inquiry, that within the past five (5) years the Eligible CDFI: (i) Has been delinquent on any payment obligation (except upon a demonstration by the Qualified Issuer satisfactory to the CDFI Fund that the delinquency does not affect the Eligible CDFI's creditworthiness), or has defaulted and failed to cure any other obligation, on a loan or loan agreement previously made under the Act; (ii) has been found by the Qualified Issuer to be in default of any repayment obligation under any Federal program; (iii) is financially insolvent in either the legal or equitable sense; or (iv) is not able to demonstrate that it has the capacity to comply fully with the payment schedule established by the Qualified Issuer.

G. Credit Enhancements; Principal Loss Collateral Provision.

1. In order to achieve the statutory zero-credit subsidy constraint of the CDFI Bond Guarantee Program and to avoid a call on the Guarantee, Eligible CDFIs are encouraged to include Credit Enhancements and Principal Loss Collateral Provisions structured to protect the financial interests of the Federal Government. Any Credit Enhancement or Principal Loss Collateral Provision must be pledged, as part of the Trust Estate, to the Master Servicer/Trustee for the benefit of the Federal Financing Bank.

2. Credit Enhancements may include, but are not limited to, payment guarantees from third parties or Affiliate(s), non-Federal capital, lines or letters of credit, or other pledges of financial resources that enhance the Eligible CDFI's ability to make timely interest and principal payments under the Bond Loan.

3. As distinct from Credit Enhancements, Principal Loss Collateral Provisions may be provided in lieu of pledged collateral and/or in addition to pledged collateral. A Principal Loss Collateral Provision shall be in the form of cash or cash equivalent guarantees from non-Federal capital in amounts necessary to secure the Eligible CDFI's obligations under the Bond Loan after exercising other remedies for default. For example, a Principal Loss Collateral Provision may include a deficiency guarantee whereby another entity assumes liability after other default remedies have been exercised, and covers the deficiency incurred by the creditor. The Principal Loss Collateral Provision shall, at a minimum, provide for the provision of cash or cash equivalents in an amount that is not less than the difference between the value of the collateral and the amount of the accelerated Bond Loan outstanding.

4. In all cases, acceptable Credit Enhancements or Principal Loss Collateral Provisions shall be proffered by creditworthy providers and shall provide information about the adequacy of the facility in protecting the financial interests of the Federal Government, either directly or indirectly through supporting the financial strength of the Bond Issue. The information provided must include the amount and quality of any Credit Enhancements, the financial strength of the provider of the Credit Enhancement, the terms, specific conditions such as renewal options, and any limiting conditions or revocability by the provider of the Credit Enhancement.

5. For Secondary Loans benefitting from a Principal Loss Collateral Provision (*e.g.,* a deficiency guarantee), the entity providing the Principal Loss Collateral Provision must be underwritten based on the same criteria as if the Secondary Loan were being made directly to that entity with the exception that the guarantee need not be collateralized.

6. If the Principal Loss Collateral Provision is provided by a financial institution that is regulated by an Appropriate Federal Banking Agency or an Appropriate State Agency, the guaranteeing institution must demonstrate performance of financially sound business practices relative to the industry norm for providers of collateral enhancements as evidenced by reports of Appropriate Federal Banking Agencies, Appropriate State Agencies, and auditors, as appropriate.

7. In the event that the Eligible CDFI proposes to use other Federal funds to service Bond Loan debt or as a Credit Enhancement, the CDFI Fund may require, in its sole discretion, that the Eligible CDFI provide written assurance from such other Federal program, in a form that is acceptable to the CDFI Fund and that the CDFI Fund may rely upon, that said use is permissible.

H. Reporting requirements.

1. Reports.

a. General. As required pursuant to the Regulations at 12 CFR 1808.619, and as set forth in the Bond Documents and the Bond Loan documents, the CDFI Fund will collect information from each Qualified Issuer which may include, but will not be limited to:

(i) Quarterly and annual financial reports and data (including an OMB single audit per 2 CFR 200 Subpart F, as applicable) for the purpose of monitoring the financial health, ratios and covenants of Eligible CDFIs that include asset quality (nonperforming assets, loan loss reserves, and net charge-off ratios), liquidity (current ratio, working capital, and operating liquidity ratio), solvency (capital ratio, self-sufficiency, fixed charge, leverage, and debt service coverage ratios); (ii) annual reports as to the compliance of the Qualified Issuer and Eligible CDFIs with the Regulations and specific requirements of the Bond Documents and Bond Loan documents; (iii) Master Servicer/Trustee summary of program accounts and transactions for each Bond Issue; (iv) Secondary Loan certifications describing Eligible CDFI lending, collateral valuation, and eligibility; (v) financial data on Secondary Loans to monitor underlying collateral, gauge overall risk exposure across asset classes, and assess loan performance,

quality, and payment history; (vi) annual certifications of compliance with program requirements; (vii) material event disclosures including any reports of Eligible CDFI management and/or organizational changes; (viii) annual updates to the Capital Distribution Plan (as described below); (ix) supplements and/or clarifications to correct reporting errors (as applicable); (x) project level reports to understand overall program impact and the manner in which Bond Proceeds are deployed for Eligible Community or Economic Development Purposes; and (xi) such other information that the CDFI Fund and/or the Bond Purchaser may require, including but not limited to racial and ethnic data showing the extent to which members of minority groups are beneficiaries of the CDFI Bond Guarantee Program, to the extent permissible by law.

b. Additional reporting by Qualified Issuers. A Qualified Issuer receiving a Guarantee shall submit annual updates to the approved Capital Distribution Plan, including an updated Proposed Sources and Uses of Funds for each Eligible CDFI, noting any deviation from the original baseline with regards to both timing and allocation of funding among Secondary Loan asset classes. The Qualified Issuer shall also submit a narrative, no more than five (5) pages in length for each Eligible CDFI, describing the Eligible CDFI's capacity to manage its Bond Loan. The narrative shall address any Notification of Material Events and relevant information concerning the Eligible CDFI's management information systems, personnel, executive leadership or board members, as well as financial capacity. The narrative shall also describe how such changes affect the Eligible CDFI's ability to generate impacts in Low-Income or Underserved Rural Areas.

c. Change of Secondary Loan asset classes. Any Eligible CDFI seeking to expand the allowable Secondary Loan asset classes beyond what was approved by the CDFI Bond Guarantee Program's Credit Review Board or make other deviations that could potentially result in a modification, as that term is defined in OMB Circulars A–11 and A–129, must receive approval from the CDFI Fund before the Eligible CDFI can begin to enact the proposed changes. The CDFI Fund will consider whether the Eligible CDFI possesses or has acquired the appropriate systems, personnel, leadership, and financial capacity to implement the revised Capital Distribution Plan. The CDFI Fund will also consider whether these changes assist the Eligible CDFI in generating impacts in Low-Income or Underserved Rural Areas. Such changes will be reviewed by the CDFI Bond Guarantee Program and presented to the Credit Review Board for approval, and appropriate consultation will be made with OMB to ensure compliance with OMB Circulars A–11 and A–129, prior to notifying the Eligible CDFI if such changes are acceptable under the terms of the Bond Loan Agreement. An Eligible CDFI may request such an update to its Capital Distribution Plan prior to Bond Issue Closing, and thereafter may only request such an update once per the Eligible CDFI's fiscal year.

d. Reporting by Affiliates and Controlling CDFIs. In the case of an Eligible CDFI relying, for CDFI certification purposes, on the financing entity activity of a Controlling CDFI, the CDFI Fund will require that the Affiliate and Controlling CDFI provide certain joint reports, including but not limited to those listed in subparagraph 1(a) above.

e. Detailed information on specific reporting requirements and the format, frequency, and methods by which this information will be transmitted to the CDFI Fund will be provided to Qualified Issuers, Program Administrators, Servicers, and Eligible CDFIs through the Bond Loan Agreement, correspondence, and webinar trainings, and/or scheduled outreach sessions.

f. Reporting requirements will be enforced through the Agreement to Guarantee and the Bond Loan Agreement, and will contain a valid OMB control number pursuant to the Paperwork Reduction Act, as applicable.

g. Each Qualified Issuer will be responsible for the timely and complete submission of the annual reporting documents, including such information that must be provided by other entities such as Eligible CDFIs, Secondary Borrowers or Credit Enhancement providers. If such other entities are required to provide annual report information or documentation, or other documentation that the CDFI Fund may require, the Qualified Issuer will be responsible for ensuring that the information is submitted timely and complete. Notwithstanding the foregoing, the CDFI Fund reserves the right to contact such entities and require that additional information and documentation be provided directly to the CDFI Fund.

h. Annual Assessments. Each Qualified Issuer and Eligible CDFI will be required to have an independent third-party conduct an Annual Assessment of its Bond Loan portfolio. The Annual Assessment is intended to support the CDFI Fund's annual monitoring of the Bond Loan portfolio and to collect financial health, internal control, investment impact measurement methodology information related to the Eligible CDFIs. This assessment is consistent with the program's requirements for Compliance Management and Monitoring (CMM) and Portfolio Management and Loan Monitoring (PMLM), and will be required pursuant to the Bond Documents and the Bond Loan documents. The assessment will also add to the Department of the Treasury's review and impact analysis on the use of Bond Loan proceeds in underserved communities and support the CDFI Fund in proactively managing portfolio risks and performance. The Annual Assessment criteria for Qualified Issuers and Eligible CDFIs is available on the CDFI Fund's website.

i. The CDFI Fund reserves the right, in its sole discretion, to modify its reporting requirements if it determines it to be appropriate and necessary; however, such reporting requirements will be modified only after notice to Qualified Issuers. Additional information about reporting requirements pursuant to this NOGA, the Bond Documents and the Bond Loan documents will be subject to the Paperwork Reduction Act, as applicable.

2. Accounting.

a. In general, the CDFI Fund will require each Qualified Issuer and Eligible CDFI to account for and track the use of Bond Proceeds and Bond Loan proceeds. This means that for every dollar of Bond Proceeds received from the Bond Purchaser, the Qualified Issuer is required to inform the CDFI Fund of its uses, including Bond Loan proceeds. This will require Qualified Issuers and Eligible CDFIs to establish separate administrative and accounting controls, subject to the applicable OMB Circulars.

b. The CDFI Fund will provide guidance to Qualified Issuers outlining the format and content of the information that is to be provided on an annual basis, outlining and describing how the Bond Proceeds and Bond Loan proceeds were used.

VI. Agency Contacts

A. General information on questions and CDFI Fund support. The CDFI Fund will respond to questions and provide support concerning this NOGA, the Qualified Issuer Application and the Guarantee Application between the hours of 9:00 a.m. and 5:00 p.m. ET, starting with the date of the publication of this NOGA. The final date to submit

questions is April 19, 2021. Applications and other information regarding the CDFI Fund and its programs may be obtained from the CDFI Fund's website at *http://www.cdfifund.gov.* The CDFI Fund will post on its website responses to questions of general applicability regarding the CDFI Bond Guarantee Program.

B. The CDFI Fund's contact information is as follows:

TABLE 2—CONTACT INFORMATION

Type of question	Telephone number (not toll free)	Email addresses
CDFI Bond Guarantee Program	(202) 653–0421 Option 5	*bgp@cdfi.treas.gov.*
CDFI Certification	(202) 653–0423	*ccme@cdfi.treas.gov.*
Certification, Compliance Monitoring and Evaluation	(202) 653–0423	*ccme@cdfi.treas.gov.*
Information Technology Support	(202) 653–0422	*AMIS@cdfi.treas.gov.*

C. Communication with the CDFI Fund. The CDFI Fund will communicate with applicants, Qualified Issuers, Program Administrators, Servicers, Certified CDFIs and Eligible CDFIs, using the contact information maintained in their respective AMIS accounts. Therefore, each such entity must maintain accurate contact information (including contact person and authorized representative, email addresses, fax numbers, phone numbers, and office addresses) in its respective AMIS account. For more information about AMIS, please see the AMIS Landing Page at *https://amis.cdfifund.gov.*

VII. Information Sessions and Outreach

The CDFI Fund may conduct webcasts, webinars, or information sessions for organizations that are considering applying to, or are interested in learning about, the CDFI Bond Guarantee Program. The CDFI Fund intends to provide targeted outreach to both Qualified Issuer and Eligible CDFI participants to clarify the roles and requirements under the CDFI Bond Guarantee Program. For further information, or to sign up for alerts, please visit the CDFI Fund's website at *http://www.cdfifund.gov.*

Authority: Pub. L. 111–240; 12 U.S.C. 4701, *et seq.;* 12 CFR part 1808; 12 CFR part 1805;12 CFR part 1815.

Jodie L. Harris,

Director, Community Development Financial Institutions Fund.

[FR Doc. 2021–04429 Filed 3–3–21; 8:45 am]

BILLING CODE 4810–70–P

U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION

Notice of Open Public Hearing

AGENCY: U.S.-China Economic and Security Review Commission.

ACTION: Notice of open public hearing.

SUMMARY: Notice is hereby given of the following hearing of the U.S.-China Economic and Security Review Commission. The Commission is mandated by Congress to investigate, assess, and report to Congress annually on ''the national security implications of the economic relationship between the United States and the People's Republic of China.'' Pursuant to this mandate, the Commission will hold a public hearing in Washington, DC, on March 19, 2021, on ''U.S. Investment in China's Capital Markets and Military-Industrial Complex.''

DATES: The hearing is scheduled for Friday, March 19, 2021, 9:15 a.m.

ADDRESSES: This hearing will be held with panelists and Commissioners participating in-person or online via videoconference. Members of the audience will be able to view a live webcast via the Commission's website at *www.uscc.gov.* Also, please check the Commission's website for possible changes to the hearing schedule. *Reservations are not required to attend the hearing.*

FOR FURTHER INFORMATION CONTACT: Any member of the public seeking further information concerning the hearing should contact Jameson Cunningham, 444 North Capitol Street NW, Suite 602, Washington DC 20001; telephone: 202–624–1496, or via email at *jcunningham@uscc.gov. Reservations are not required to attend the hearing.*

ADA Accessibility: For questions about the accessibility of the event or to request an accommodation, please contact Jameson Cunningham via email at *jcunningham@uscc.gov.* Requests for an accommodation should be made as soon as possible, and at least five business days prior to the event.

SUPPLEMENTARY INFORMATION: *Background:* This is the third public hearing the Commission will hold during its 2021 report cycle. The hearing will examine the Chinese government's use of capital markets to advance its technology and defense capabilities and evaluate the risks of U.S. investors' capital being leveraged for such ends. The opening panel will examine the evolving role of the state in China's capital markets, including the Chinese Communist Party's involvement in corporate governance. The second panel will review China's financial opening and U.S. and foreign investor participation in China's capital markets. The third panel will assess U.S. national security risks posed by investment in Chinese companies. The fourth panel will evaluate U.S. legal authority and current restrictions on outbound investment to China's capital markets.

The hearing will be co-chaired by Commissioner Robert Borochoff and Commissioner Jeffrey Fiedler. Any interested party may file a written statement by March 19, 2021 by transmitting to the contact above. A portion of the hearing will include a question and answer period between the Commissioners and the witnesses.

Authority: Congress created the U.S.-China Economic and Security Review Commission in 2000 in the National Defense Authorization Act (Pub. L. 106–398), as amended by Division P of the Consolidated Appropriations Resolution, 2003 (Pub. L. 108–7), as amended by Public Law 109–108 (November 22, 2005), as amended by Public Law 113–291 (December 19, 2014).

Dated: March 1, 2021.

Daniel W. Peck,

Executive Director, U.S.-China Economic and Security Review Commission.

[FR Doc. 2021–04507 Filed 3–3–21; 8:45 am]

BILLING CODE 1137–00–P

DEPARTMENT OF VETERANS AFFAIRS

Tiered Pharmacy Copayments for Medications; Calendar Year 2021 Update

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: This Department of Veterans Affairs (VA) Notice updates the information on Tier 1 medications.

FOR FURTHER INFORMATION CONTACT: Joseph Duran, Office of Community Care, Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420; *Joseph.Duran2@va.gov;* 303–370–1637. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Section 17.110 of title 38, CFR, governs copayments for medications that VA provides to veterans. Section 17.110 provides the methodologies for establishing the copayment amount for each 30-day or less supply of medication provided by VA on an outpatient basis (other than medication administered during treatment).

Tier 1 medication means a multi-source medication that has been identified using the process described in paragraph (b)(2) of this section. Not less than once per year, VA will identify a subset of multi-source medications as Tier 1 medications. Only medications that meet all of the criteria in 38 CFR 17.110(b)(2)(i), (ii), and (iii) will be eligible to be considered Tier 1 medications, and only those medications that meet all of the criteria in paragraph (b)(2)(i) of this section will be assessed using the criteria in paragraphs (b)(2)(ii) and (iii).

Based on the methodologies set forth in § 17.110, this notice updates the list of Tier 1 medications for Calendar Year 2021. The Tier 1 medication list is posted on VA's Community Care website at the following link: *https://www.va.gov/COMMUNITYCARE/revenue_ops/copays.asp* under the heading ''Tier 1 Copay Medication List.''

The following table is the Tier 1 Copay Medication List that is effective January 1, 2021 and will remain in effect until December 31, 2021.

Condition	VA product name
Arthritis and Pain	Aspirin Buffered Tablet.
	Aspirin Chewable Tablet.
	Aspirin Enteric Coated Tablet.
	Allopurinol Tablet.
	Celecoxib Capsule.
	Diclofenac Tablet.
	Ibuprofen Tablet.
	Meloxicam Tablet.
	Naproxen Tablet.
Blood Thinners and Platelet Inhibitors	Clopidogrel Bisulfate Tablet.
	Warfarin Sodium Tablet.
Bone Health	Alendronate Tablet.
Cholesterol	Atorvastatin Tablet.
	Ezetimibe Tablet.
	Pravastatin Tablet.
	Rosuvastatin Calcium Tablet.
	Simvastatin Tablet.
Dementia	Donepezil Tablet.
Diabetes	Glimepiride Tablet.
	Glipizide Tablet.
	Metformin Hydrochloride (HCL) Tablet.
	Metformin HCL 24-Hour Sustained Action (SA) Tablet.
	Pioglitazone HCL Tablet.
Electrolyte Supplement	Potassium SA Tablet.
	Potassium SA dispersible Tablet.
Gastrointestinal Health	Famotidine Tablet.
	Omeprazole Enteric Coated (EC) Capsule.
	Pantoprazole Sodium EC Capsule.
Glaucoma and Eye Care	Diclofenac Solution.
	Dorzolamide 2%/Timolol 0.5% Solution.
	Latanoprost 0.005% Solution.
	Polyethylene Glycol 400/Polyethylene Glycol 4000 Solution.
	Carboxymethylcellulose Sodium Solution.
Heart Health and Blood Pressure	Amlodipine Tablet.
	Amiodarone HCL Tablet.
	Aspirin (see Arthritis and Pain).
	Atenolol Tablet.
	Carvedilol Tablet.
	ChlorthalidoneTablet.
	Clonidine Tablet.
	Diltiazem 24-Hour Capsule.
	Diltiazem HCL Tablet.
	Enalapril Maleate Tablet.
	Furosemide Tablet.
	Hydralazine HCL Tablet.
	Hydrochlorothiazide Tablet/Capsule.
	Hydrochlorothiazide/Lisinopril Tablet.
	Hydrochlorothiazide/Losartan Tablet.
	Hydrochlorothiazide/Triamterene Tablet/Capsule.
	Isosorbide Mononitrate SA Tablet.
	Lisinopril Tablet.
	Losartan Tablet.
	Metoprolol Succinate SA Tablet.
	Metoprolol Tartrate Tablet.
	Nifedipine SA Capsule.

Condition	VA product name
	Nitroglycerin sublingual Tablet.
	Prazosin HCL Capsule.
	Propranolol HCL Tablet.
	Spironolactone Tablet.
Mental Health	Amitriptyline HCL Tablet.
	Buspirone HCL Tablet.
	Bupropion HCL Tablet.
	Bupropion HCL SA (12HR–SR) Tablet.
	Bupropion HCL SA (24HR–XL) Tablet.
	Citalopram Hydrobromide Tablet.
	Duloxetine HCL EC Capsule.
	Escitalopram Oxalate Tablet.
	Fluoxetine Tablet/Capsule.
	Mirtazapine Tablet.
	Paroxetine Tablet.
	Sertraline HCL Tablet.
	Trazodone Tablet.
	Venlafaxine HCL Immediate (IR) Tablet.
	Venlafaxine HCL SA Capsule.
Respiratory Condition	Montelukast NA Tablet.
Seizures	Gabapentin Capsule.
	Lamotrigine Tablet.
	Topiramate Tablet.
Thyroid Conditions	Levothyroxine Sodium Tablet.
Urologic (Bladder and Prostate) Health	Alfuzosin HCL SA Tablet.
	Doxazosin Mesylate Tablet.
	Finasteride Tablet.
	Oxybutynin Chloride IR Tablet.
	Oxybutynin Chloride SA Tablet.
	Sildenafil Tablet.
	Tamsulosin HCL Capsule.
	Terazosin HCL Capsule.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on February 26, 2021, 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.

Luvenia Potts,

Regulation Development Coordinator, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

[FR Doc. 2021–04458 Filed 3–3–21; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

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Part II

The President

Notice of March 2, 2021—Continuation of the National Emergency With Respect to Ukraine

Notice of March 2, 2021—Continuation of the National Emergency With Respect to Venezuela

Notice of March 2, 2021—Continuation of the National Emergency With Respect to Zimbabwe

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Presidential Documents

Title 3—

The President

Notice of March 2, 2021

Continuation of the National Emergency With Respect to Ukraine

On March 6, 2014, by Executive Order 13660, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions and policies of persons that undermine democratic processes and institutions in Ukraine; threaten its peace, security, stability, sovereignty, and territorial integrity; and contribute to the misappropriation of its assets.

On March 16, 2014, the President issued Executive Order 13661, which expanded the scope of the national emergency declared in Executive Order 13660, and found that the actions and policies of the Government of the Russian Federation with respect to Ukraine undermine democratic processes and institutions in Ukraine; threaten its peace, security, stability, sovereignty, and territorial integrity; and contribute to the misappropriation of its assets.

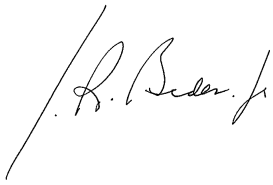
On March 20, 2014, the President issued Executive Order 13662, which further expanded the scope of the national emergency declared in Executive Order 13660, as expanded in scope in Executive Order 13661, and found that the actions and policies of the Government of the Russian Federation, including its purported annexation of Crimea and its use of force in Ukraine, continue to undermine democratic processes and institutions in Ukraine; threaten its peace, security, stability, sovereignty, and territorial integrity; and contribute to the misappropriation of its assets.

On December 19, 2014, the President issued Executive Order 13685, to take additional steps to address the Russian occupation of the Crimea region of Ukraine.

On September 20, 2018, the President issued Executive Order 13849, to take additional steps to implement certain statutory sanctions with respect to the Russian Federation.

The actions and policies addressed in these Executive Orders continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. For this reason, the national emergency declared on March 6, 2014, and the measures adopted on that date, on March 16, 2014, on March 20, 2014, on December 19, 2014, and on September 20, 2018, to deal with that emergency, must continue in effect beyond March 6, 2021. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13660.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
March 2, 2021.

[FR Doc. 2021–04759
Filed 3–3–21; 1:00 pm]
Billing code 3295–F1–P

Presidential Documents

Notice of March 2, 2021

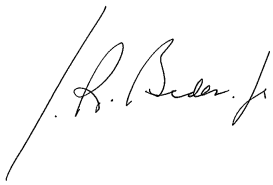
Continuation of the National Emergency With Respect to Venezuela

On March 8, 2015, the President issued Executive Order 13692, declaring a national emergency with respect to the situation in Venezuela, including the Government of Venezuela's erosion of human rights guarantees, persecution of political opponents, curtailment of press freedoms, use of violence and human rights violations and abuses in response to antigovernment protests, and arbitrary arrest and detention of antigovernment protestors, as well as the exacerbating presence of significant government corruption.

The President took additional steps pursuant to this national emergency in Executive Order 13808 of August 24, 2017; Executive Order 13827 of March 19, 2018; Executive Order 13835 of May 21, 2018; Executive Order 13850 of November 1, 2018; Executive Order 13857 of January 25, 2019; and Executive Order 13884 of August 5, 2019.

The circumstances described in Executive Order 13692, and subsequent Executive Orders issued with respect to Venezuela, have not improved, and they continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. Therefore in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13692.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,

March 2, 2021.

[FR Doc. 2021–04760

Filed 3–3–21; 1:00 pm]

Billing code 3295–F1–P

Presidential Documents

Notice of March 2, 2021

Continuation of the National Emergency With Respect to Zimbabwe

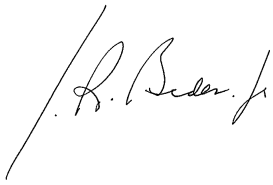
On March 6, 2003, by Executive Order 13288, the President declared a national emergency and blocked the property of certain persons, pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706), to deal with the unusual and extraordinary threat to the foreign policy of the United States constituted by the actions and policies of certain members of the Government of Zimbabwe and other persons to undermine Zimbabwe's democratic processes or institutions. These actions and policies had contributed to the deliberate breakdown in the rule of law in Zimbabwe, to politically motivated violence and intimidation in that country, and to political and economic instability in the southern African region.

On November 22, 2005, the President issued Executive Order 13391 to take additional steps with respect to the national emergency declared in Executive Order 13288 by ordering the blocking of the property of additional persons undermining democratic processes or institutions in Zimbabwe.

On July 25, 2008, the President issued Executive Order 13469, which expanded the scope of the national emergency declared in Executive Order 13288 and authorized the blocking of the property of additional persons undermining democratic processes or institutions in Zimbabwe.

The actions and policies of certain members of the Government of Zimbabwe and other persons to undermine Zimbabwe's democratic processes or institutions continue to pose an unusual and extraordinary threat to the foreign policy of the United States. For this reason, the national emergency declared on March 6, 2003, and the measures adopted on that date, on November 22, 2005, and on July 25, 2008, to deal with that emergency, must continue in effect beyond March 6, 2021. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13288.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
March 2, 2021.

[FR Doc. 2021–04761
Filed 3–3–21; 1:00 pm]
Billing code 3295–F1–P

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