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Presidential Documents

Title 3—

The President

Proclamation 10158 of March 22, 2021

National Agriculture Day, 2021

By the President of the United States of America

A Proclamation

On National Agriculture Day, we recognize the unique and irreplaceable value that farmers, ranchers, foresters, farmworkers, and other agricultural stewards have contributed to our Nation's past and present. America's agriculture sector safeguards our Nation's lands through sustainable management; ensures the health and safety of animals, plants, and people; provides a safe and abundant food supply; and facilitates opportunities for prosperity and economic development in rural America.

Over the last year, workers and other leaders across the agriculture sector have stepped up to ensure a stable food supply in the face of incredible challenges prompted by the COVID–19 pandemic. Farmworkers, who have always been vital to our food system, continued to grow, harvest, and package food, often at great personal risk. Local farmers helped to meet their communities' needs by selling food directly to consumers. Small meat processors increased their capacity as demand for their services skyrocketed. Restaurants found creative ways to bring food to members of their communities. Grocers and grocery workers also navigated new models, such as curbside pickup and online sales.

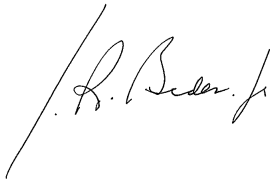
These collective efforts helped get food to the millions of adults and children in America experiencing nutrition insecurity. Programs such as the Supplemental Nutrition Assistance Program; the Special Supplemental Nutrition Program for Women, Infants, and Children; school meals; and others focused on eliminating nutrition insecurity play an integral role in making sure that every family has enough food on the table.

As we overcome the pandemic and build back better, we will advance an agriculture sector that works for everyone. When I took office, I made a commitment alongside Vice President Kamala Harris to put racial equity at the forefront of our Administration's priorities. For generations, Black, Indigenous, and other farmers of color have contributed to sustaining this Nation. They fed their communities, gave the country new food products, and nourished communities with rich food traditions. Yet for generations they have faced the harmful effects of systemic racism. On this National Agriculture Day, I remain determined to address racial inequity and create an equitable space for all to participate in the great American enterprise of agriculture.

I also made a commitment to tackle the climate crisis. Farmers, ranchers, and foresters play a critical role in combating climate change. From sequestering carbon in the soil to producing renewable energy on farms, we will continue to innovate and create new revenue streams for farmers and ranchers while building a resilient agriculture sector.

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 23, 2021, as National Agriculture Day. I call upon all Americans to join me in recognizing and reaffirming our commitment to and appreciation for our country's farmers, ranchers, foresters, farmworkers, and those who work in the agriculture sector across the Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second 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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Rules and Regulations

Federal Register

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

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DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS–2021–0003]

RIN 1601–AA96

Privacy Act of 1974: Implementation of Exemptions; U.S. Department of Homeland Security United States Coast Guard-061 Maritime Analytic Support System (MASS) System of Records

AGENCY: United States Coast Guard, U.S. Department of Homeland Security.

ACTION: Final rule.

SUMMARY: The U.S. Department of Homeland Security (DHS) is issuing a final rule to amend its regulations to exempt portions of an updated and reissued system of records titled, ''DHS/United States Coast Guard (USCG)-061 Maritime Analytic Support System (MASS) System of Records'' from certain provisions of the Privacy Act. Specifically, the Department exempts portions of the ''DHS/USCG–061 Maritime Analytic Support System (MASS) System of Records'' from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: This final rule is effective March 25, 2021.

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Kathleen Claffie, (202) 475–3515, Privacy Officer, Office of Privacy Management (CG–6P), United States Coast Guard, 2703 Martin Luther King, Jr. Ave. SE Stop 7710, Washington, DC 20593–7710. For privacy issues please contact: James Holzer, (202) 343–1717, Acting Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Department of Homeland Security (DHS) United States Coast Guard (USCG) published a notice of proposed rulemaking in the **Federal Register**, 85 FR 74616, November 23, 2020, proposing to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. The DHS/USCG–061 Maritime Analytic Support System (MASS) system of records notice was published concurrently in the **Federal Register**, 85 FR 74742, November 23, 2020. This system of records allows the DHS/USCG to collect and maintain records in a centralized location that relate to the U.S. Coast Guard's missions that are found within the maritime domain. The information covered by this system of records is relevant to the eleven U.S. Coast Guard statutory missions: (Port, Waterways, and Coastal Security (PWCS); Drug Interdiction; Aid to Maritime Navigation; Search and Rescue (SAR) Operations; Protection of Living Marine Resources; Ensuring Marine Safety, Defense Readiness; Migrant Interdiction; Marine Environmental Protection; Ice Operations; and Law Enforcement).

Comments were invited on both the Notice of Proposed Rulemaking (NPRM) and System of Records Notice (SORN).

Public Comments

DHS received 0 on the NPRM and 0 on the SORN.

List of Subjects in 6 CFR Part 5

Freedom of information, Privacy.

For the reasons stated in the preamble, DHS amends Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

■ 1. The authority citation for part 5 continues to read as follows:

Authority: 6 U.S.C. 101 *et seq.;* Pub. L. 107–296, 116 Stat. 2135; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

■ 2. In Appendix C to Part 5, paragraph 8 is revised to read as follows:

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

8. The DHS/USCG–061 Maritime Analytic Support System (MASS) System of Records consists of electronic and paper records and will be used by DHS and its components. The DHS/USCG–061 Maritime Analytic Support System (MASS) System of Records is a repository of information held by DHS in connection with its several and varied missions and functions, including, but not limited to the enforcement of civil and criminal laws; investigations, inquiries, and proceedings there under; and national security and intelligence activities. The DHS/USCG–061 Maritime Analytic Support System (MASS) System of Records contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other federal, state, local, tribal, foreign, or international government agencies. The Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to limitations set forth in 5 U.S.C. 552a(c)(3) and (c)(4); (d); (e)(1) through (3), (e)(4)(G) through (I), (e)(5) and (e)(8), (f); and (g)(1) pursuant to 5 U.S.C. 552a(j)(2). Additionally, the Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to limitations set forth in 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G) through (e)(4)(I); and (f) pursuant to 5 U.S.C. 552a(k)(1) and (k)(2). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) and (4) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.

(b) From subsection (d) (Access and Amendment to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension.

Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an unreasonable administrative burden by requiring investigations to be continually reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of federal law, the accuracy of information obtained or introduced occasionally may be unclear, or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsection (e)(2) (Collection of Information from Individuals) because requiring that information be collected from the subject of an investigation would alert the subject to the nature or existence of the investigation, thereby interfering with that investigation and related law enforcement activities.

(e) From subsection (e)(3) (Notice to Subjects) because providing such detailed information could impede law enforcement by compromising the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

(f) From subsections (e)(4)(G) through (I) (Agency Requirements) and (f) (Agency Rules), because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

(g) From subsection (e)(5) (Collection of Information) because with the collection of information for law enforcement purposes, it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Compliance with subsection (e)(5) would preclude DHS agents from using their investigative training and exercise of good judgment to both conduct and report on investigations.

(h) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with DHS's ability to obtain, serve, and issue subpoenas, warrants, and other law enforcement mechanisms that may be filed under seal and could result in disclosure of investigative techniques, procedures, and evidence.

(i) From subsection (g)(1) (Civil Remedies) to the extent that the system is exempt from other specific subsections of the Privacy Act.

* * * * *

James Holzer,

Acting Chief Privacy Officer, U.S. Department of Homeland Security.

[FR Doc. 2021–05941 Filed 3–24–21; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2020–0721; Special Conditions No. 25–785–SC]

Special Conditions: Mitsubishi Aircraft Corporation Model MRJ–200 Airplane; Use of Automatic Power Reserve for Go-Around Performance Credit

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Mitsubishi Aircraft Corporation (MITAC) Model MRJ–200 airplane. This airplane will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport-category airplanes. This design feature is an Automatic Takeoff Thrust Control System (ATTCS), referred to as an Automatic Power Reserve (APR), to set the performance level for approach-climb operation after an engine failure. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: This action is effective on MITAC on March 25, 2021. Send comments on or before May 10, 2021.

ADDRESSES: Send comments identified by Docket No. FAA–2020–0721 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov/* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.
- *Privacy:* 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 *http://www.regulations.gov/,* including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact received about this proposal.
- *Confidential Business Information:* Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this Notice 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 Notice, 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 the indicated comments will not be placed in the public docket of this Notice. Send submissions containing CBI to the person indicated in the Contact section below. Comments the FAA receives, which are not specifically designated as CBI, will be placed in the public docket for this rulemaking.
- *Docket:* Background documents or comments received may be read at *http://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Joe Jacobsen, Performance and Environment Section, AIR–625, Technical Innovation Policy Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, Washington 98198; telephone and fax 206–231–3158; email *joe.jacobsen@faa.gov.*

SUPPLEMENTARY INFORMATION: The substance of these special conditions has been published in the **Federal Register** for public comment in several prior instances with no substantive comments received. Therefore, the FAA has determined that prior public notice and comment are unnecessary, and finds that, for the same reason, good cause exists for adopting these special conditions upon publication in the **Federal Register**.

Comments Invited

The FAA invites interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

The FAA will consider all comments received by the closing date for comments. The FAA may change these special conditions based on the comments received.

Background

On March 3, 2015, MITAC applied for a type certificate for their new Model MRJ–200 airplane. This airplane is a twin-engine, transport-category airplane with seating for 92 passengers and a maximum takeoff weight of 98,767 pounds.

Type Certification Basis

Under the provisions of title 14, Code of Federal Regulations (14 CFR) 21.17, the applicant must show that the airplane meets the applicable provisions of 14 CFR part 25, as amended by amendments 25–1 through 25–141.

If the Administrator finds that the applicable airworthiness regulations (*e.g.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the MITAC Model MRJ–200 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the MITAC Model MRJ–200 airplane must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.17(a)(2).

Novel or Unusual Design Features

The MITAC Model MRJ–200 airplane will incorporate the following novel or unusual design feature:

An Automatic Takeoff Thrust Control System, referred to as an Automatic Power Reserve, to set the performance level for approach-climb operation after an engine failure.

Discussion

MITAC included an APR system (an ATTCS) in the Model MRJ–200 airplane and proposed using the APR function during go-around. They also requested approach-climb performance credit for the use of additional thrust set by the APR system. The MITAC Model MRJ–200 powerplant control system comprises a Full Authority Digital Engine Control (FADEC) for the engine. The engine FADEC system utilizes the APR function during the takeoff and go-around phases of the flight when additional thrust is needed from an operating engine following a single engine failure. The APR system is available at all times, without any additional action from the pilot. It allows the pilot to use the same power-setting procedure during a go-around regardless of whether or not an engine fails. Because the APR system is always armed, it will function automatically following an engine failure, and advance the remaining engine to a higher thrust level.

The part 25 standards for ATTCS, contained in § 25.904, and appendix I to part 25, specifically restrict performance credit for ATTCS to takeoff. Expanding the standards to include other phases of flight, including go-around, was considered at the time the standards were issued, but flightcrew workload issues precluded further consideration. As the preamble of amendment 25–62 states:

In regard to ATTCS credit for approach-climb and go-around maneuvers, current regulations preclude a higher power for the approach climb (§ 25.121(d)) than for the landing climb (§ 25.119). The workload required for the flightcrew to monitor and select from multiple in-flight power settings in the event of an engine failure during a critical point in the approach, landing, or go-around operations is excessive. Therefore, the amendment should not include the use of ATTCS for anything except the takeoff phase.

Because the airworthiness regulations do not contain appropriate safety standards to allow approach-climb performance credit for ATTCS, special conditions are required to ensure a level of safety equivalent to that established in the regulations. The definition of a critical time interval for the approach-climb case, during which time it must be extremely improbable to violate a flight path based on the § 25.121(d) gradient requirement, is of primary importance. In the event of a simultaneous failure of both an engine and the APR function, falling below the minimum flight path defined by the 2.5-degree approach, decision height, and climb gradient required by § 25.121(d) must be shown to be an extremely improbable event during this critical time interval. The § 25.121(d) gradient requirement implies a minimum one-engine-inoperative flight path capability with the airplane in the approach configuration. The engine may have been inoperative before initiating the go-around, or it may become inoperative during the go-around. The definition of the critical time interval must consider both possibilities.

These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Applicability

As discussed above, these special conditions are applicable to the MITAC Model MRJ–200 airplane. Should MITAC apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only a certain novel or unusual design feature on one model of airplanes. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Authority Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the

Administrator, the following special conditions are issued as part of the type certification basis for MITAC Model MRJ–200 airplanes.

1. The MITAC Model MRJ–200 airplane must comply with the requirements of 14 CFR 25.904, and appendix I, and the following requirements for the go-around phase of flight:

2. Definitions

a. Takeoff/go-around (TOGA): Throttle lever in takeoff or go-around position.

b. Automatic Takeoff Thrust Control System: The ATTCS in MITAC Model MRJ–200 airplanes is defined as the entire automatic system available during takeoff and in go-around mode, including all devices, both mechanical and electrical, that sense engine failure, transmit signals, actuate fuel controls or power levers (or increase engine power by other means on operating engines to achieve scheduled thrust or power increase), and furnish cockpit information on system operation.

c. Critical time interval:

(1) When conducting an approach for landing using ATTCS, the critical time interval is defined as follows:

(i) The critical time interval begins at a point on a 2.5-degree approach glide path from which, assuming a simultaneous engine and ATTCS failure, the resulting approach-climb flight path intersects a flight path originating at a later point on the same approach path that corresponds to the part 25 one-engine-inoperative approach-climb gradient. The period of time from the point of simultaneous engine and ATTCS failure, to the intersection of these flight paths, must be no shorter than the time interval used in evaluating the critical time interval for takeoff, beginning from the point of simultaneous engine and ATTCS failure and ending upon reaching a height of 400 feet.

(ii) The critical time interval ends at the point on a minimum performance, all-engines-operating go-around flight path from which, assuming a simultaneous engine and ATTCS failure, the resulting minimum approach-climb flight path intersects a flight path corresponding to the part 25 minimum one-engine-inoperative approach-climb gradient. The all-engines-operating go-around flight path, and the part 25 one-engine-inoperative approach-climb gradient flight path, originate from a common point on a 2.5-degree approach path. The period of time from the point of simultaneous engine and ATTCS failure, to the intersection of these flight paths, must be no shorter than the time interval used in evaluating the critical time interval for the takeoff, beginning from the point of simultaneous engine and ATTCS failure and ending upon reaching a height of 400 feet.

(2) The critical time interval must be determined at the altitude resulting in the longest critical time interval for which one-engine-inoperative approach-climb performance data are presented in the airplane flight manual.

(3) The critical time interval is illustrated in Figure 1:

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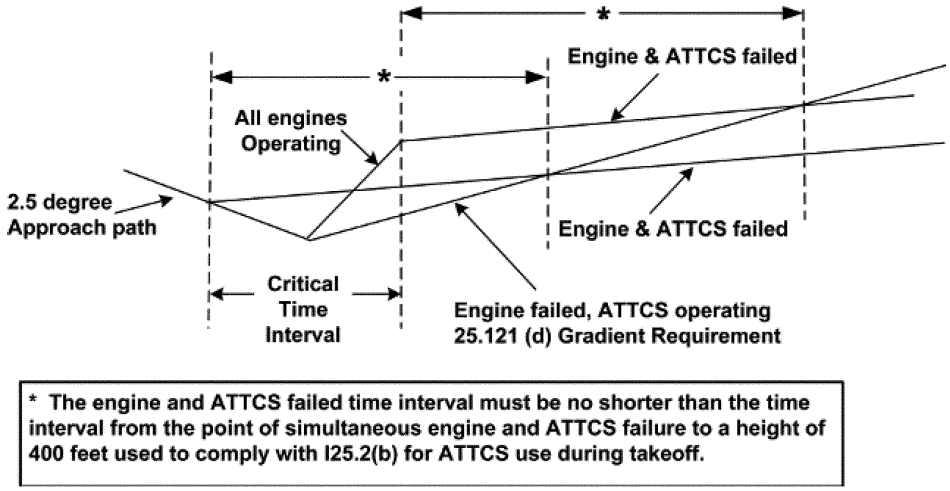

Figure 1: Go-around ATTCS

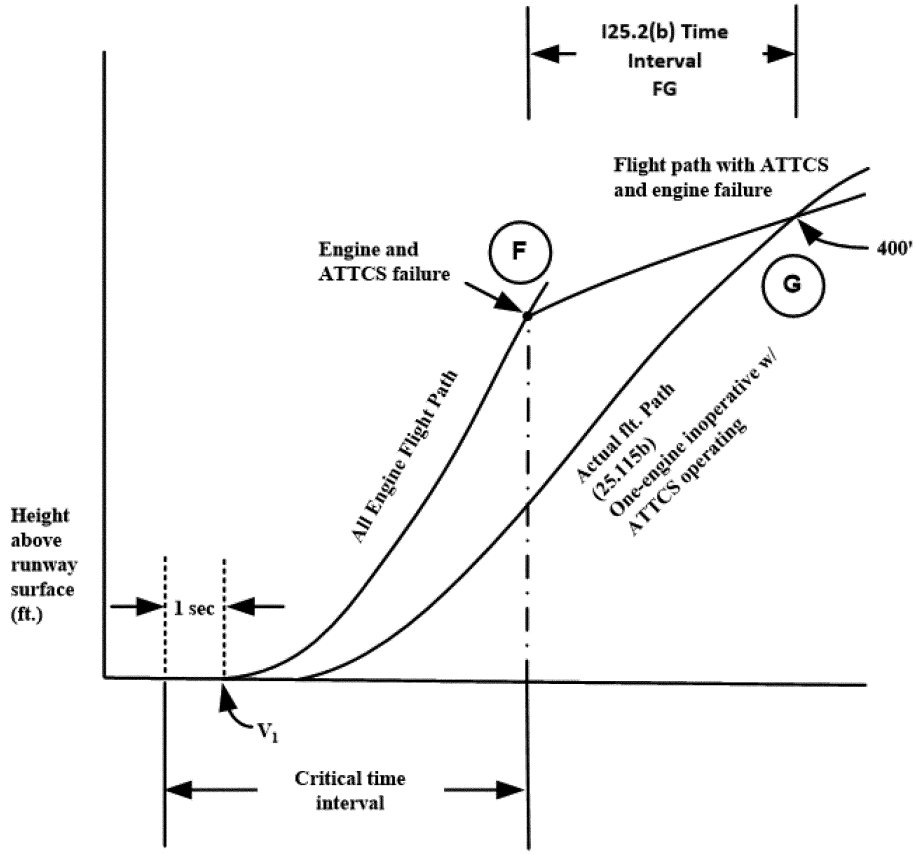

Figure 2: Appendix I25.2(b), "Critical Time Interval" (ATTCS takeoff)

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The all-engines-operating go-around flight path, and the part 25 one-engine-inoperative approach-climb gradient flight path (engine failed, ATTCS operating path in Figure 1), originate from a common point, point C, on a 2.5-degree approach path. The period of time, ''time interval DE,'' from the point of simultaneous engine and ATTCS failure, point D, to the intersection of these flight paths, point E, must be no shorter than the corresponding time in Figure 2, above.

d. The ''critical time interval AD'' is illustrated in Figure 1.

3. Performance and system reliability requirements: The applicant must comply with the performance and

ATTCS reliability requirements as follows:

a. An ATTCS failure or a combination of failures in the ATTCS during the critical time interval (Figure 1):

(1) Must not prevent the insertion of the maximum approved go-around thrust or power, or must be shown to be a remote event.

(2) Must not result in a significant loss or reduction in thrust or power, or must be shown to be an extremely improbable event.

b. The concurrent existence of an ATTCS failure and an engine failure during the critical time interval must be shown to be extremely improbable.

c. All applicable performance requirements of part 25 must be met with an engine failure occurring at the most critical point during go-around with the ATTCS functioning.

d. The probability analysis must include consideration of ATTCS failure occurring after the time at which the flightcrew last verifies that the ATTCS is in a condition to operate until the beginning of the critical time interval.

e. The propulsive thrust obtained from the operating engine, after failure of the critical engine during a go-around used to show compliance with the one-engine-inoperative climb requirements of § 25.121(d), may not be greater than the lesser of:

(1) The actual propulsive thrust resulting from the initial setting of power or thrust controls with the ATTCS functioning, or

(2) 111 percent of the propulsive thrust resulting from the initial setting of power or thrust controls with the ATTCS failing to reset thrust or power, and without any action by the flightcrew to reset thrust or power.

4. Thrust setting

a. The initial go-around thrust setting on each engine at the beginning of the go-around phase may not be less than any of the following:

(1) That required to permit normal operation of all safety-related systems and equipment dependent upon engine thrust or power lever position; or

(2) That are shown to be free of hazardous engine-response characteristics, and not to result in any unsafe airplane operating or handling characteristics when thrust or power is advanced from the initial go-around position to the maximum approved power setting.

b. For approval to use an ATTCS for go-arounds, the thrust-setting procedure must be the same for go-arounds initiated with all engines operating as for go-around initiated with one engine inoperative.

5. Powerplant controls

a. In addition to the requirements of § 25.1141, no single failure or malfunction, or probable combination thereof, of the ATTCS, including associated systems, may cause the failure of any powerplant function necessary for safety.

b. The ATTCS must be designed to:

(1) Apply thrust or power to the operating engine(s), following any one-engine failure during a go-around, to achieve the maximum approved go-around thrust without exceeding the engine operating limits;

(2) Permit manual decrease or increase in thrust or power up to the maximum go-around thrust approved for the airplane, under the existing conditions, through the use of the power lever. For airplanes equipped with limiters that automatically prevent the engine operating limits from being exceeded under existing ambient conditions, other means may be used to increase the thrust in the event of an ATTCS failure, provided that the means:

(i) Is located on or forward of the power levers;

(ii) Is easily identified and operated under all operating conditions by a single action of either pilot with the hand that is normally used to actuate the power levers; and

(iii) Meets the requirements of § 25.777(a), (b), and (c).

(3) Provide a means to verify to the flightcrew, before beginning an approach for landing, that the ATTCS is in a condition to operate (unless it can be demonstrated that an ATTCS failure, combined with an engine failure during an entire flight, is extremely improbable).

6. Powerplant instruments: In addition to the requirements of § 25.1305:

a. A means must be provided to indicate when the ATTCS is in the armed or ready condition; and

b. If the inherent flight characteristics of the airplane do not provide adequate warning that an engine has failed, a warning system that is independent of the ATTCS must be provided to give the pilot a clear warning of any engine failure during a go-around.

Issued in Kansas City, Missouri, on March 17, 2021.

Patrick R. Mullen,

Manager, Technical Innovation Policy Branch, Policy and Innovation Division, Aircraft Certification Service.

[FR Doc. 2021–06027 Filed 3–24–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0710; Project Identifier 2019–CE–037–AD; Amendment 39–21457; AD 2021–05–14]

RIN 2120–AA64

Airworthiness Directives; Air Tractor, Inc., Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Air Tractor, Inc., (Air Tractor) Models AT–250, AT–300, AT–301, AT–302, AT–400, AT–400A, AT–401, AT–401A, AT–401B, AT–402, AT–402A, AT–402B, AT–501, AT–502, AT–502A, AT–502B, AT–503, AT–503A, AT–504, AT–602, AT–802, and AT–802A airplanes. This AD was prompted by reports of cracks in the flap torque tube actuator attachment brackets that may cause the flap actuator to detach from the flap torque tube. This AD requires repetitive visual and dye penetrant inspections of the flap actuator attachment bracket welds for cracks and replacement if cracks are identified. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective April 29, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 29, 2021.

ADDRESSES: For service information identified in this final rule, contact Air Tractor, P.O. Box 485, Olney, TX 76374: phone: (940) 564–5616: email: *info@airtractor.com:* website: *https://airtractor.com/.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call 816–329–4148. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0710.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0710; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and

other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT:

Kenneth A. Cook, Aviation Safety Engineer, Fort Worth ACO Branch, AIR–7F0, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; phone: (817) 222–5475; email: *kenneth.a.cook@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Air Tractor Models AT–250, AT–300, AT–301, AT–302, AT–400, AT–400A, AT–401, AT–401A, AT–401B, AT–402, AT–402A, AT–402B, AT–501, AT–502, AT–502A, AT–502B, AT–503, AT–503A, AT–504, AT–602, AT–802, and AT–802A airplanes. The NPRM published in the **Federal Register** on July 28, 2020 (85 FR 45347). The NPRM was prompted by multiple reports of cracks in the brackets attaching the flap actuator motor to the flap torque tube on several models of Air Tractor airplanes.

One of the reports was on a Model AT–802A airplane where the brackets separated from the torque tube at the welds. The flaps suddenly retracted while maneuvering, and the pilot temporarily lost control of the airplane. The pilot was able to regain control of the airplane before it impacted the ground. Since then, there have been 13 reported airplanes with cracks in the flap torque tube attachment brackets.

The design of the flap actuator motor brackets on the Model AT–802A airplane is the same as on Models AT–250, AT–300, AT–301, AT–302, AT–400, AT–400A, AT–401, AT–401A, AT–401B, AT–402, AT–402A, AT–402B, AT–501, AT–502, AT–502A, AT–503, AT–503A, AT–504, AT–602, and AT–802 airplanes.

In the NPRM, the FAA proposed to require repetitive dye penetrant and visual inspections with replacement of the flap torque tube if cracks are found. The FAA is issuing this AD to address the unsafe condition on these products.

Discussion of Final Airworthiness Directive Comments

The FAA received comments from two commenters. The commenters were Air Tractor and Field Air Sales and Maintenance Pty Ltd (Field Air). The following presents the comments received on the NPRM and the FAA's response to each comment.

Requests Regarding the Compliance Times

Air Tractor requested the FAA clarify whether the hours time-in-service (TIS) compliance times are based on aircraft time or flap torque tube component time. The commenter requested that the AD require compliance based on the hours TIS of the flap torque tube component to account for new torque tubes installed on an existing aircraft.

The FAA disagrees with this comment. The hours TIS compliance required by this AD refers to the hours TIS the airplane operates after the effective date of the AD and after each inspection. Air Tractor has not provided data analysis to identify the root cause of the failures of the torque tubes or to indicate whether the failures are related to the hours TIS of the torque tubes.

Air Tractor and Field Air requested the FAA remove the proposed requirement to perform a dye penetrant inspection within 300 hours TIS after the effective date of the AD. Air Tractor said the proposed requirement does not provide consideration for flap torque tubes that have accumulated less than 900 hours and requested the FAA instead require visual inspections every 300 hours until the flap torque tube accumulates 900 hours TIS. Field Air requested the FAA provide its justification for requiring a dye penetrant inspection within 300 hours TIS.

The FAA disagrees with this comment. The FAA has received no data to indicate that torque tubes with less than 900 hours TIS are unaffected by the unsafe condition. The initial dye penetrant inspection should reveal cracking that might be present on affected airplanes and ensure those cracks are addressed before the repetitive visual and dye penetrant inspections start.

Field Air requested the FAA explain why the proposed AD does not allow the +/− 15 percent tolerance for the visual inspections as specified in Air Tractor Service Letter #347, Revision A, dated December 9, 2019 (SL #347A).

The FAA acknowledges this comment and has changed the compliance time for the visual inspections from 300 hours TIS to 345 hours TIS.

Request To Allow Replacement Parts With More Than Zero Hours TIS

Air Tractor and Field Air disagreed with the proposal to replace a cracked torque tube with a new (zero hours time-in-service) torque tube. Field Air requested the FAA explain its justification for this proposal. Air Tractor stated there is no safety reason to require replacement with a zero-time flap torque tube instead of a flap torque tube that has passed the inspection. Air Tractor noted that allowing replacement with an airworthy flap torque tube would minimize aircraft down time.

The FAA agrees with this comment and has changed the AD to allow the replacement with a used (more than zero hours TIS) torque tube provided the dye penetrant inspection was completed and the part passed the inspection.

Request Regarding Reporting Requirement

Air Tractor requested the FAA add a statement to the AD that the agency recommends that cracks be reported to the FAA or to Air Tractor for tracking. Air Tractor stated the language used in the proposed AD suggests that reporting is no longer recommended. Field Air requested the FAA explain its justification for not having a requirement in the AD to report to Air Tractor any cracked welds identified during the inspections.

The FAA acknowledges this comment. This AD is not an interim action. Mandating a report of the results of the inspection is not necessary to correct the unsafe condition. However, the FAA agrees that voluntarily reporting to Air Tractor when cracks are found could aid safety analysis of the fleet.

Request To Expand Service Letter References

Air Tractor requested that the requirement in the AD to perform a dye penetrant inspection include step 4B(1) from SL #347A, which specifies gaining access to the flap actuator area by removing skin panels and conducting a visual inspection of the flap control system.

The FAA disagrees with adding step 4B(1) since this step is not required to address the unsafe condition.

Air Tractor also requested the AD require step 4B(11) from SL #347A, which specifies recording in the aircraft records the results of the dye penetrant inspection and what type of dye penetrant was used. Air Tractor referenced the recommendations in FAA Special Airworthiness Bulletin CE–18–26, *Liquid Penetrant Inspection: Using Visible Dye Penetrant,* dated September 4, 2018, and noted that the type of dye penetrant is important information for future inspections.

The FAA disagrees that a change to the AD is necessary. Persons performing maintenance are required by 14 CFR part 43 to make an entry in the airplane maintenance records describing the

work performed. That description should identify the same information specified in step 4B(11).

The FAA did not change this AD based on this comment.

Conclusion

The FAA reviewed the relevant data, considered any comments received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. Except for minor editorial changes, and any other changes described previously, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Air Tractor, Inc. Service Letter #347, Revision A, dated December 9, 2019. The service letter specifies procedures for repetitive visual inspections and dye penetrant inspections of the flap torque tube brackets for cracks and instructs operators to replace the torque tube as necessary. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Differences Between the AD and the Service Information

Air Tractor SL #347, Rev A specifies performing the dye penetrant inspection within 900 hours TIS, and this AD requires the initial dye penetrant inspection within 300 hours TIS. Air Tractor SL #347, Rev A specifies replacing a cracked torque tube, while this AD requires replacing a cracked torque tube with a torque tube that has zero hours TIS. Air Tractor SL #347, Rev A specifies reporting any cracked welds identified during the inspections.

Costs of Compliance

The FAA estimates that this AD affects 1,662 airplanes of U.S. registry.

The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Dye penetrant inspection	4 work-hours × $85 per hour = $340 per inspection cycle.	Not applicable	$340 per inspection cycle	$565,080 per inspection cycle
Visual inspection	.5 work-hour × $85 per hour = $42.50 per inspection cycle.	Not applicable	$42.50	$70,635 per inspection cycle

The FAA estimates the following costs to do any necessary replacements that will be required based on the results of the inspection. The FAA has no way of determining the number of airplanes that might need this replacement.

ON-CONDITION COSTS FOR MODEL AT–802 AND AT–802A

[Potential 485 Airplanes]

Action	Labor cost	Parts cost	Cost per product
Replacement of torque tube	3 work-hours × $85 per hour = $255	$1,292	$1,547

ON-CONDITION COSTS FOR MODEL AT–602

[Potential 236 Airplanes]

Action	Labor cost	Parts cost	Cost per product
Replacement of torque tube	3 work-hours × $85 per hour = $255	$1,140	$1,395

ON-CONDITION COSTS FOR MODELS AT–501, AT–502, AT–502A, AT–502B, AT–503, AT–503A, AND AT–504

[Potential 512 Airplanes]

Action	Labor cost	Parts cost	Cost per product
Replacement of torque tube	3 work-hours × $85 per hour = $255	$955	$1,210

ON-CONDITION COSTS FOR MODELS AT–250, AT–300, AT–301, AT–302, AT–400, AT–400A, AT–401, AT–401A, AT–401B, AT–402, AT–402A, AND AT–402B

[Potential 429 Airplanes]

Action	Labor cost	Parts cost	Cost per product
Replacement of torque tube	3 work-hours × $85 per hour = $255	$927	$1,182

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2021–05–14 Air Tractor, Inc.: Amendment 39–21457; Docket No. FAA–2020–0710; Project Identifier 2019–CE–037–AD.

(a) Effective Date

This airworthiness directive (AD) is effective April 29, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Air Tractor, Inc., (Air Tractor), Models AT–250, AT–300, AT–301, AT–302, AT–400, AT–400A, AT–401, AT–401A, AT–401B, AT402, AT–402A, AT–402B, AT–501, AT–502, AT–502A, AT–502B, AT–503, AT–503A, AT–504, AT–602, AT–802, and AT–802A airplanes, all serial numbers, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) of America Code: 2750, TE flap control system

(e) Unsafe Condition

This AD was prompted by reports from Air Tractor that the flap actuator attachment brackets can crack and detach from the torque tube. The FAA is issuing this AD to detect and correct cracks in the flap actuator attachment brackets. The unsafe condition, if not addressed, could lead to the brackets detaching from the torque tube, which could result in an uncommanded retraction of the flaps with consequent loss of airplane control.

(f) Compliance

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

(g) Actions

(1) Within 300 hours time-in-service (TIS) after the effective date of this AD and thereafter at intervals not to exceed 900 hours TIS, perform a dye penetrant inspection of each flap torque tube actuator attachment bracket for cracks in accordance with steps 4B(2) through (7) of Air Tractor, Inc., Service Letter #347, Revision A, dated December 9, 2019 (Air Tractor SL #347, Rev A).

(i) If there is a crack, before further flight, replace the flap torque tube with a flap torque tube that has zero hours TIS or a part that has been inspected in accordance with paragraph (g)(1) of this AD and passed the inspection.

(ii) If there are no cracks, before further flight, complete the actions in steps 4B(9) and (10) of Air Tractor SL #347, Rev A.

(2) Within 345 hours TIS after the inspection required by paragraph (g)(1) of this AD and thereafter at intervals not to exceed 345 hours TIS, visually inspect each flap torque tube actuator attachment bracket for cracks in accordance with steps 4A(1) through (3) of Air Tractor SL #347, Rev A. If there is a crack, before further flight, replace the flap torque tube with a flap torque tube that has zero hours TIS or with a flap torque tube that has been inspected in accordance with paragraph (g)(1) of this AD and passed the inspection.

(3) Replacing a flap torque tube does not terminate any of the inspections required by this AD.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Fort Worth ACO Branch, AIR–7F0, has the authority to approve AMOCs for this AD, if requested using the procedures found in 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 Fort Worth ACO Branch, send it to the attention of the person identified in Related Information.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of your local Flight Standards District Office.

(i) Related Information

For more information about this AD, contact Kenneth A. Cook, Aviation Safety Engineer, Fort Worth ACO Branch, AIR–7F0, FAA, 10101 Hillwood Pkwy, Fort Worth, TX 76177; phone: (817) 222–5475; email: *kenneth.a.cook@faa.gov.*

(j) Material Incorporated by Reference

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

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

(i) Air Tractor, Inc., Service Letter #347, Revision A, dated December 9, 2019.

(ii) [Reserved]

(3) For Air Tractor, Inc., service information identified in this AD, contact Air Tractor, Inc., P.O. Box 485, Olney, TX 76374: phone: (940) 564–5616: email: *info@airtractor.com;* website: *https://airtractor.com/.*

(4) You may view this service information at FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust St, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

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

Issued on February 24, 2021.

Gaetano A. Sciortino,

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

[FR Doc. 2021–06142 Filed 3–24–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0883; Project Identifier 2019–CE–034–AD; Amendment 39–21460; AD 2021–05–17]

RIN 2120–AA64

Airworthiness Directives; Rockwell Collins, Inc. Flight Display System Application

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) AD 2019–12–09 for certain Rockwell Collins, Inc. (Rockwell Collins) FDSA–6500 flight display system applications installed on airplanes. AD 2019–12–09 imposed operating limitations on the traffic collision avoidance system (TCAS). AD 2019–12–09 was prompted by conflict between the TCAS display indications and aural alerts that may occur during a resolution advisory (RA) scenario. This AD retains the requirements of AD 2019–12–09 until a software upgrade is completed. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective April 29, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 29, 2021.

ADDRESSES: For service information identified in this final rule, contact Rockwell Collins at Collins Aviation Services, 400 Collins Road NE, M/S 164–100, Cedar Rapids, IA 52498–0001; phone: (319) 295–9258; fax: (319) 295–4351; email: *techmanuals@rockwellcollins.com;* website: *https://www.rockwellcollins.com/Services* and *Support/Publications.aspx.* You may view this service information at the Airworthiness Products Section, Operational Safety Branch, FAA, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (816) 329–4148. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0883.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0883; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Nhien Hoang, Aviation Safety Engineer, Wichita ACO Branch, FAA, 1801 Airport Road, Wichita, KS 67209; phone: (316) 946–4157; fax: (316) 946–4107; email: *Nhien.Hoang@faa.gov* or *Wichita-COS@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2019–12–09, Amendment 39–19664 (84 FR 32260, July 8, 2019), (AD 2019–12–09). AD 2019–12–09 applied to certain part-numbered Rockwell Collins FDSA–6500 flight display system applications that may be installed on, but not limited to, Bombardier Inc. Model CL–600–2B16 (604 variant) airplanes and Textron Aviation Inc. Models 525B, B200, B200C, B200CGT, B200GT, B300, B300C, and C90GTi airplanes. The NPRM published in the **Federal Register** on December 14, 2020 (85 FR 80686).

AD 2019–12–09 prohibited operation with the TCAS in TA/RA mode by requiring a revision to the Limitations section of the airplane flight manual (AFM) or AFM supplement (AFMS) and by fabricating and installing a placard on each aircraft primary flight display. AD 2019–12–09 resulted from a report that a conflict could occur between the TCAS primary cockpit display indications and the aural alerts during an RA scenario. The FAA issued AD 2019–12–09 as an interim action to address the immediate urgency to prevent the pilot from over-correcting or under-correcting for aircraft separation, which may result in a mid-air collision.

In the NPRM, the FAA proposed to retain the actions of AD 2019–12–09 and install updated software on the flight data system applications within 12 months. Once the software is upgraded, the FAA proposed to allow removal of the limitations and placard. Because the requirements proposed in the NPRM had a longer compliance time, the FAA provided the public an opportunity to comment. The FAA is issuing this AD to address the unsafe condition on these products.

Discussion of Final Airworthiness Directive Comments

The FAA received no comments on the NPRM or on the determination of the costs.

Conclusion

The FAA reviewed the relevant data and determined that air safety requires adoption of the AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. This AD is adopted as proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Rockwell Collins Service Information Letter FDSA–6500–19–1, Revision No. 2, dated June 12, 2019. This service information letter contains information regarding hardware and software compatibility for the FDSA–6500 flight display system and provides software download instructions. 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**.

Costs of Compliance

The FAA estimates that this AD affects 932 FDSA–6500 flight display system applications installed on 311 airplanes worldwide. The FAA has no way of knowing the number of FDSA–6500 applications installed on airplanes of U.S. Registry. The estimated cost on U.S. operators reflects the maximum possible cost based on worldwide applications.

The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Revise the Limitations section of the AFM or AFMS.	.5 work-hour × $85 per hour = $42.50.	Not applicable	$42.50 (per airplane)	Up to $13,217.50.

ESTIMATED COSTS—Continued

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Fabricate and install a placard	.5 work-hour × $85 per hour = $42.50.	Negligible	$42.50 (per primary flight display).	Up to $39,610.
FDSA–6500 software upgrade	1 work-hour × $85 per hour = $85.	Not applicable	$85 (per primary flight display).	Up to $79,220.

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, some of the costs of this 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 has determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive 2019–12–09, Amendment 39–19664 (84 FR 32260, July 8, 2019); and

■ b. Adding the following new airworthiness directive:

2021–05–17 Rockwell Collins, Inc.: Amendment 39–21460; Docket No. FAA–2020–0883; Project Identifier 2019–CE–034–AD.

(a) Effective Date

This airworthiness directive (AD) is effective April 29, 2021.

(b) Affected ADs

This AD replaces AD 2019–12–09, Amendment 39–19664 (84 FR 32260, July 8, 2019) (AD 2019–12–09).

(c) Applicability

This AD applies to Rockwell Collins, Inc., (Rockwell Collins) Flight Display System Application FDSA–6500 part numbers (P/Ns) 810–0234–1H0001, 810–0234–1H0002, 810–0234–1H0003, 810–0234–2H0001, 810–0234–2C0001, 810–0234–2C0002, and 810–0234–4B0001. These applications are installed on, but not limited to, Bombardier Inc. Model CL–600–2B16 (604 variant) airplanes and Textron Aviation Inc. Models 525B, B200, B200C, B200CGT, B200GT, B300, B300C, and C90GTi airplanes, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 3400, NAVIGATION SYSTEM.

(e) Unsafe Condition

This AD was prompted by a conflict between the traffic collision avoidance system (TCAS) primary display indications and aural alerts during a resolution advisory (RA) scenario. The FAA is issuing this AD to prevent conflicting TCAS information, which could result in the pilot under-correcting or over-correcting and may lead to inadequate aircraft separation and a mid-air collision.

(f) Compliance

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

(g) Actions

(1) Within 30 days after July 23, 2019 (the effective date of AD 2019–12–09), do the following:

(i) Revise the airplane flight manual (AFM) or AFM supplement (AFMS) by adding the following text to the Limitations section: For TCAS II installations, during flight, do not operate TCAS in the ''TA/RA'' mode; TCAS may only be operated in ''TA Only'' mode.

(ii) Fabricate a placard for each aircraft primary flight display, using at least ⅛ inch letters, with the following text: TCAS Flight Ops—TA Only mode (TA/RA mode prohibited).

(iii) Install the placard on the bottom of each aircraft primary flight display bezel in the area depicted in figure 1 to paragraph (g)(1)(iii) of this AD.

Note 1 to paragraph (g)(1): In ''TA/RA'' mode, the TA stands for traffic advisory and RA stands for resolution advisory.

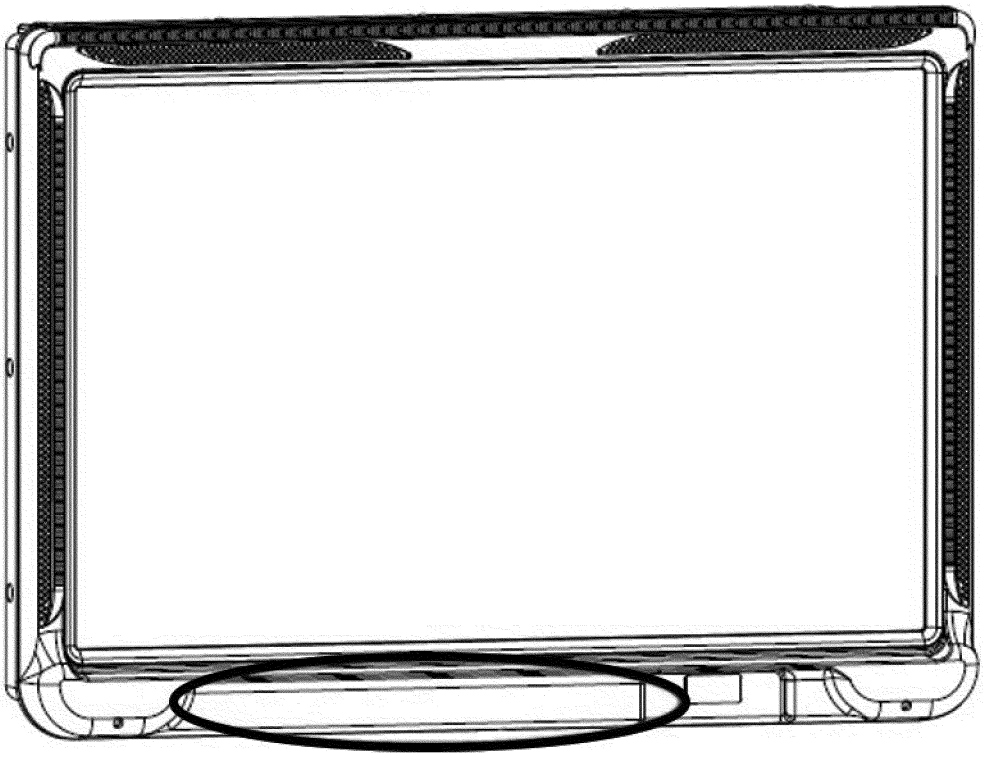

Figure 1 to paragraph (g)(1)(iii); placard location on bezel

(2) In addition to the provisions of 14 CFR 43.3 and 43.7, the actions required by paragraphs (g)(1)(i) through (iii) of this AD may be performed by the owner/operator (pilot) holding at least a private pilot certificate and must be entered into the aircraft records showing compliance with this AD in accordance with 14 CFR 43.9(a)(1) through (4) and 14 CFR 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417. This authority is not applicable to aircraft being operated under 14 CFR part 119.

(3) Within 12 months after the effective date of this AD, upgrade the FDSA–6500 field loadable software for your airplane as listed in the table in Section C and by following the instructions in Section F of Rockwell Collins Service Information Letter FDSA–6500–19–1, Revision No. 2, dated June 12, 2019.

(4) The airplane flight manual revision and placards required by paragraph (g)(1) of this AD may be removed after completing the software upgrade required by paragraph (g)(3) of this AD.

(5) As of the effective date of this AD, do not install a Rockwell Collins Flight Display System Application FDSA–6500 P/N 810–0234–1H0001, 810–0234–1H0002, 810–0234–1H0003, 810–0234–2H0001, 810–0234–2C0001, 810–0234–2C0002, or 810–0234–4B0001 on any airplane.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Wichita 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 Related Information.

(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

For more information about this AD, contact Nhien Hoang, Aviation Safety Engineer, Wichita ACO Branch, FAA, 1801 Airport Road, Wichita, KS 67209; phone: (316) 946–4157; fax: (316) 946–4107; email: *Nhien.Hoang@faa.gov* or *Wichita-COS@faa.gov.*

(j) Material Incorporated by Reference

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

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

(i) Rockwell Collins Service Information Letter FDSA–6500–19–1, Revision No. 2, dated June 12, 2019.

(ii) [Reserved]

(3) For Rockwell Collins service information identified in this AD, contact Rockwell Collins at Collins Aviation Services, 400 Collins Road NE, M/S 164–100, Cedar Rapids, IA 52498–0001; phone: (319) 295–9258; fax: (319) 295–4351; email: *techmanuals@rockwellcollins.com;* website: *https://www.rockwellcollins.com/Services_and_Support/Publications.aspx.*

(4) You may view this service information at FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

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

Issued on February 25, 2021.

Gaetano A. Sciortino,

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

[FR Doc. 2021–06156 Filed 3–24–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0700; Project Identifier AD–2020–00238–E; Amendment 39–21461; AD 2021–05–18]

RIN 2120–AA64

Airworthiness Directives; International Aero Engines AG Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2019–06–06 for all International Aero Engines AG (IAE) V2500–A1, V2522–A5, V2524–A5, V2525–D5, V2527–A5, V2527E–A5, V2527M–A5, V2528–D5, V2530–A5, and V2533–A5 model turbofan engines. AD 2019–06–06 required initial and repetitive borescope inspections (BSIs) of the M-flange and, if it fails the inspection, replacement of the diffuser case with a part eligible for installation. This AD requires an initial BSI of the M-flange and, if it fails the inspection, repetitive BSIs of the M-flange until replacement of the diffuser case M-flange. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective April 29, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 29, 2021.

ADDRESSES: For service information identified in this final rule, contact International Aero Engines AG, 400 Main Street, East Hartford, CT 06118; phone: (800) 565–0140; email: *help24@pw.utc.com;* website: *http://fleetcare.pw.utc.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (781) 238–7759. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0700.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0700; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Nicholas Paine, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7742; fax: (781) 238–7199; email: *nicholas.j.paine@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2019–06–06, Amendment 39–19604 (84 FR 11642, March 28, 2019), (AD 2019–06–06). AD 2019–06–06 applied to all IAE V2500–A1, V2522–A5, V2524–A5, V2525–D5, V2527–A5, V2527E–A5, V2527M–A5, V2528–D5, V2530–A5, and V2533–A5 model turbofan engines. The NPRM published in the **Federal Register** on September 9, 2020 (85 FR 55624). The NPRM was prompted by a crack found at the diffuser case M-flange during overhaul inspection. Since the FAA issued AD 2019–06–06, the manufacturer performed an updated safety risk analysis, which resulted in reducing the M-flange inspection intervals and adding the performance of a replacement of the diffuser case M-flange, which terminates the need for repetitive BSIs of the M-flange. In the NPRM, the FAA proposed to require an initial BSI of the M-flange and, if it fails the inspection, repetitive BSIs of the M-flange until replacement of the diffuser case M-flange.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from six commenters. The commenters were Air Line Pilots Association, International (ALPA); Cathay Dragon Airways (Cathay); IAE; MTU Maintenance Hannover GmbH (MTU); Willis Lease Finance Corporation (WLFC); and United Airlines (United). Five of six commenters requested changes to this AD. One commenter requested an update to Applicability. Two commenters requested clarification when cycles are unknown or cannot be determined. Three commenters requested that the FAA reference the latest service information. One commenter requested an update to terminology. Three commenters requested credit for replacement before the effective date of this AD. One commenter requested clarification to ''engine shop visit.'' One commenter requested an update to a Note in paragraph (g)(2) of this AD. One commenter requested an update to include diffuser case assembly part numbers (P/Ns) after modification. One commenter supported this AD as written. The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Update Applicability To Include IAE V2500–E5 Model Engines

IAE requested that the FAA update paragraph (c), Applicability, of this AD to include the IAE V2500–E5 model turbofan engine. IAE reasoned that the V2500–E5 model turbofan engine shares diffuser case assembly, P/N 2A2891–01, with IAE V2500–A1, –A5, and –D5 model turbofan engines.

The FAA agrees that the IAE V2500–E5 model turbofan engine shares an affected diffuser case assembly with other affected engines, and therefore, is susceptible to the unsafe condition of this AD. The FAA added the IAE V2531–E5 model turbofan engine to the Applicability of this AD. The IAE V2531–E5 model turbofan engine is not currently installed on any airplanes of U.S. registry. Therefore, this change to applicability does not add any additional burden on U.S. operators or increase the estimated cost of this AD.

Request To Clarify Compliance Time When Cycles Are Unknown or Cannot Be Determined

Cathay and WLFC requested clarification when to perform the actions if the cycles since new (CSN) are unknown or cannot be determined. Cathay suggested adding the following note to paragraphs (g)(1)(i), (ii), and (iii) of this AD for the BSI of the M-flange to align this AD with IAE Non-Modification Alert Service Bulletin (NMASB) V2500–ENG–72–A0706, Revision 2, dated November 7, 2019 (the NMASB): ''If the cycles on the diffuser case M-flange cannot be determined, you must use the total cycles on the diffuser case. If the cycles on the diffuser case cannot be determined, you must use the total engine cycles if it can be documented that the diffuser case was always with the engine.'' WLFC asked for clarification on the compliance time for the diffuser case M-flange replacement.

Although the FAA disagrees with adding the note suggested by Cathay, the FAA agrees to clarify when to perform the actions if the CSN are unknown or cannot be determined. The FAA updated paragraph (g)(1)(iii) of this AD to clarify when to perform the initial

BSI of the M-flange and added paragraph (g)(2)(ii) of this AD to clarify when to replace the diffuser case M-flange if the diffuser case M-flange CSN are unknown or cannot be determined.

Request To Update Service Information

IAE, MTU, and United requested that IAE Service Bulletin (SB) V2500–ENG–72–0709, Revision 1, dated February 20, 2020 (the SB), be referenced in this AD instead of the Original Issue, dated December 13, 2019. United also requested that ''IAE NMASB V2500–ENG–72–A0706, Revision 2, dated November 7, 2019,'' be referenced.

The FAA partially agrees. Revision 2 of the NMASB was already referenced in the NPRM and, therefore, no change is needed to this AD. The FAA agrees to reference Revision 1 to the SB, which was issued after publication of the NPRM. The SB provides guidance on performing the replacement of the diffuser case M-flange and is not required for compliance with the AD. Therefore, revising this AD to reference Revision 1 of the SB adds no additional burden on U.S. operators.

Request To Change ''Diffuser Case M-Flange'' References

IAE requested that the FAA change ''diffuser case M-flange'' to ''M-flange'' when referencing inspections. IAE reasoned that inspection zone 2 includes all three flanges of the M-flange: Diffuser case M-flange, nozzle guide vane support, and the high-pressure turbine (HPT) case forward flange, and all three flanges are required to be inspected.

The FAA agrees. The inspections are required on all surfaces of inspection zones 1, 2, and 3 of the M-flange. The FAA changed ''diffuser case M-flange'' to ''M-flange'' when referencing inspections throughout this AD. The FAA, however, did not change ''diffuser case M-flange'' when referencing replacement. Replacement of the diffuser case M-flange is the terminating action for the repetitive BSIs of the M-flange required by this AD.

Request for Credit for Diffuser Case M-Flange Replacement

Cathay, MTU, and WLFC requested credit for the replacement of the diffuser case M-flange if it was replaced before the effective date of this AD using TASK 72–42–11–300–028, Repair-028 (VRS3633), of the IAE V2500 Engine Manual (VRS3633 Repair-028). Cathay and WLFC reasoned that the replacement of the diffuser case M-flange resets the M-flange cycles to zero. Cathay and MTU cited the note to VRS3633 Repair-028 in the NMASB. Cathay also cited the note in the NMASB that fluorescent penetrant inspection (FPI) of the diffuser case M-flange bolt holes resets the cycles since the last FPI to zero.

The FAA disagrees with revising the Credit for Previous Actions section of this AD to give credit for replacement of the diffuser case M-flange using VRS3633 Repair-028. The FAA determined that it is not necessary to provide previous credit for replacement of the diffuser case M-flange because this AD does not require use of specific service information to perform this replacement. The FAA revised paragraph (i), Credit for Previous Actions, of this AD by removing references to providing credit for replacement of the diffuser case M-flange. If operators replaced the diffuser case M-flange prior to the effective date of this AD using any FAA-approved method, they meet the requirements of this AD under paragraph (f) of this AD.

Request To Clarify ''Major Mating Engine Flanges''

United requested that the FAA clarify the definition of ''engine shop visit'' and ''major mating engine flange.'' United asked if ''major flange'' aligns with the NMASB, which in Figure 1 of the NMASB, identifies the engine major flanges as H through P flanges. United also asked if the ''separation of pairs of major mating engine flanges'' includes the separation of H and J flanges when replacing damaged blades in HPC stages 3 through 6 during an HPC Surgical Strike Repair. If an engine shop visit includes separating flanges when performing an HPC Surgical Strike Repair, United requested that the FAA update estimated costs of this AD to include costs associated with the teardown of modules.

The FAA agrees to clarify this definition of ''engine shop visit'' in this AD. The FAA has revised the definition of ''engine shop visit'' in this AD to refer to the induction of the engine into the shop for maintenance involving the separation of pairs of major mating engine flanges, K–N. Based on this definition, separating H and J flanges during an HPC Surgical Strike Repair does not constitute an ''engine shop visit.''

The FAA disagrees with updating the estimated costs of this AD. The cost analysis in AD rulemaking actions typically includes only the costs associated with complying with the AD, and does not include secondary costs. The FAA's cost estimate includes the work hours and parts costs to inspect and replace the parts.

Request To Update Note to Paragraph (g)(2)

MTU requested that the FAA update Note 1 to paragraph (g)(2)(i) of this AD to ''Instructions on performing the replacement of the diffuser case M-flange can be found in the Accomplishment Instructions, paragraphs 1.A. and B., of IAE SB V2500–ENG–72–0709, Revision 1, dated February 20, 2020.'' MTU reasoned that the current wording suggests that there may be alternative instructions to replace the diffuser case M-flange other than the SB. MTU suggested that there are no alternatives to using IAE SB V2500–ENG–72–0709 to replace the diffuser case M-flange. Therefore, MTU notes that the language in the NPRM may generate ambiguity.

The FAA disagrees. The SB is referenced in Note 2 to paragraph (g)(2) of this AD as guidance for performing the replacement. The FAA is not mandating the use of a specific method to replace the diffuser case M-flange in this AD. The FAA did not change this AD based on this comment, but redesignated ''Note 1 to paragraph (g)(2)(i)'' in the NPRM to ''Note 2 to paragraph (g)(2)'' in this AD based on the addition of a Note earlier in paragraph (g) of this AD.

Request To Include Diffuser Case Assembly P/Ns After Modification

IAE requested that the FAA include the diffuser case assembly P/Ns, modified by the SB that are re-identified with new P/Ns after modification, and require replacement before the M-flange accumulates 20,000 CSN.

The FAA disagrees with including the list of diffuser case assembly P/Ns. The diffuser case M-flange, regardless of P/N, must be replaced at the next engine shop visit after the effective date of this AD or before the M-flange accumulates 20,000 CSN, whichever occurs later. Thereafter, the diffuser case M-flange must be replaced before accumulating 20,000 cycles since the previous replacement. Therefore, listing diffuser case assembly P/Ns is unnecessary.

Clarification to BSI Requirement

The FAA determined the need to clarify the instructions required by paragraph (g)(1)(iv) of the NPRM. The NPRM referenced paragraphs 2.A. through 2.G. of the NMASB to perform the BSI. However, paragraph 2.G. of the NMASB provides instructions to perform a FPI of the M-flange to confirm the indication as a crack. The FAA added a note to paragraph (g)(1)(iv) of this AD to clarify that paragraph 2.G. of the NMASB describes procedures for

performing a local FPI of the M-flange if you are unable to confirm if an indication is a crack.

Support for the AD

ALPA expressed support for the AD as written.

Conclusion

The FAA reviewed the relevant data, considered any comments received, and determined that air safety requires adopting the AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. Except for minor editorial changes, and any other changes described previously, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 1 CFR Part 51

The FAA reviewed International Aero Engines NMASB V2500–ENG–72–A0706, Revision 2, dated November 7, 2019. The NMASB describes procedures for inspecting the M-flange. 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**.

Other Related Service Information

The FAA reviewed International Aero Engines SB V2500–ENG–72–0709, Revision 1, dated February 20, 2020. The SB identifies the diffuser case assembly P/Ns and describes procedures for replacing the diffuser case M-flange.

Costs of Compliance

The FAA estimates that this AD affects 1,654 engines installed on airplanes of U.S. registry.

The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
BSI of M-flange	2 work-hours × $85 per hour = $170	$0	$170	$281,180
Replace the diffuser case M-flange	40 work-hours × $85 per hour = $3,400	20,000	23,400	38,703,600

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, some of the costs of this 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 has determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing airworthiness directive 2019–06–06, Amendment 39–19604 (84 FR 11642, March 28, 2019); and

■ b. Adding the following new airworthiness directive:

2021–05–18 International Aero Engines AG: Amendment 39–21461; Docket No. FAA–2020–0700; Project Identifier AD–2020–00238–E.

(a) Effective Date

This airworthiness directive (AD) is effective April 29, 2021.

(b) Affected ADs

This AD replaces AD 2019–06–06, Amendment 39–19604 (84 FR 11642, March 28, 2019).

(c) Applicability

This AD applies to all International Aero Engines AG (IAE) V2500–A1, V2522–A5, V2524–A5, V2525–D5, V2527–A5, V2527E–A5, V2527M–A5, V2528–D5, V2530–A5, V2531–E5, and V2533–A5 model turbofan engines.

(d) Subject

Joint Aircraft System Component (JASC) Code 7250, Turbine Section.

(e) Unsafe Condition

This AD was prompted by a crack found at the diffuser case M-flange during overhaul inspection. The FAA is issuing this AD to prevent failure of the diffuser case. The unsafe condition, if not addressed, could result in uncontained diffuser case rupture, damage to the engine, and damage to the airplane.

(f) Compliance

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

(g) Required Actions

(1) Borescope Inspection of M-Flange

For engines with a diffuser case assembly, part number 2A0051, 2A2081–01, 2A2581–01, 2A2883–01, 2A2885–01, 2A2889–01, 2A2891–01, 2A2896–01, 2A2897–01, or 2A3132 installed, perform an initial borescope inspection (BSI) of zones 1, 2, and 3 of the M-flange as follows:

(i) For engines with a diffuser case M-flange that has 19,000 or more cycles since

new (CSN) on the effective date of this AD, perform the initial BSI of the M-flange before accumulating the ''Inspect within (Cycles)'' in Table 1 to paragraph (g)(1) of this AD. If the CSLFPI is unknown, use the CSN of the diffuser case M-flange.

(ii) For engines with a diffuser case M-flange that has fewer than 19,000 CSN on the effective date of this AD, perform the initial BSI of the M-flange before accumulating 20,300 CSN.

(iii) For engines with a diffuser case M-flange or diffuser case in which the CSN is unknown or cannot be determined, perform the initial BSI of the M-flange before accumulating the ''Inspect within (Cycles)'' in Table 1 to paragraph (g)(1) of this AD using one of the following options:

(A) If the cycles of the diffuser case M-flange are unknown or cannot be determined, use the total cycles on the diffuser case.

(B) If the cycles on the diffuser case are unknown or cannot be determined and it can be documented that the diffuser case was always installed on the engine, use total engine cycles.

(C) If neither paragraph (g)(1)(iii)(A) or (B) applies, perform the BSI of the M-flange within 250 cycles after the effective date of this AD.

(iv) Use the Accomplishment Instructions, paragraphs 2.A. through 2.G. of IAE Non-Modification Alert Service Bulletin (NMASB) V2500–ENG–72–A0706, Revision 2, dated November 7, 2019 (the NMASB), to perform the initial BSI.

Note 1 to paragraph (g)(1)(iv): Paragraph 2.G. of the NMASB describes procedures for performing a local fluorescent penetrant inspection of the M-flange if you are unable to confirm if an indication is a crack.

(v) If no crack is found as a result of the inspections required by paragraphs (g)(1)(i) through (iv) of this AD, repeat the BSI of zones 1, 2, and 3 of the M-flange at intervals not to exceed 2,100 cycles since the previous BSI.

(vi) If a crack is found as a result of the inspections required by paragraphs (g)(1)(i) through (iv) of this AD, replace the diffuser case M-flange or repeat the BSI of zones 1, 2, and 3 of the M-flange as specified by either ''Table 2: Fly on Limits'' or ''Table 4: Fly on Limits,'' in paragraph 2.H., Accomplishment Instructions, of the NMASB as appropriate for the affected the engine model.

Table 1 to paragraph (g)(1) – *M-flange cycle inspection limits*

Cycles Since Last Fluorescent Penetrant Inspection (CSLFPI)	Inspect within (Cycles)
30,000 and greater	250
20,000 to 29,999	500
15,000 to 19,999	1,000
1 to 14,999	1,300
0	2,100

(2) Replacement of the Diffuser Case M-Flange

(i) At the next engine shop visit after the effective date of this AD or before the diffuser case M-flange accumulates 20,000 CSN, whichever occurs later, replace the diffuser case M-flange.

(ii) For engines with a diffuser case M-flange or diffuser case in which the CSN is unknown or cannot be determined, perform one of the following options:

(A) If the cycles of the diffuser case M-flange are unknown or cannot be determined, at the next engine shop visit after the effective date of this AD or before the diffuser case accumulates 20,000 CSN, whichever occurs later, replace the diffuser case M-flange.

(B) If the cycles of the diffuser case are unknown or cannot be determined, and if it can be documented that the diffuser case was always installed on the engine, at the next engine shop visit after the effective date of this AD or before the engine accumulates 20,000 CSN, whichever occurs later, replace the diffuser case M-flange.

(C) If the cycles on the diffuser case M-flange are unknown or cannot be determined based on the criteria identified in paragraphs (g)(2)(ii)(A) and (B), or it cannot be shown that the diffuser case was always installed on the engine, at the next engine shop visit after the effective date of this AD, replace the diffuser case M-flange.

Note 2 to paragraph (g)(2)(ii): Guidance on performing the replacement of the diffuser case M-flange described in paragraphs (g)(2)(i) and (ii) can be found in the Accomplishment Instructions, paragraphs 1.A. and B., of IAE SB V2500–ENG–72–0709, Revision 1, dated February 20, 2020.

(iii) Thereafter, repeat the replacement of the diffuser case M-flange before accumulating 20,000 cycles since the previous replacement.

(iv) Replacement of the diffuser case M-flange is the terminating action for the repetitive BSIs required by paragraph (g)(1) of this AD.

(h) Installation Prohibition

After the effective date of this AD, do not install a diffuser case onto any affected engine if the diffuser case M-flange has more than 20,000 CSN.

(i) Credit for Previous Actions

You may take credit for the initial BSIs that are required by paragraphs (g)(1)(i) through (iii) of this AD, if you performed those actions before the effective date of this AD using IAE NMASB V2500–ENG–72–A0706, Revision 1, dated June 28, 2019, or Original Issue, dated February 14, 2019; IAE V2500 Special Instruction (SI) No. 341F–18, dated November 19, 2018; IAE V2500 SI No. 350F–18, Rev. 1, dated December 17, 2018; IAE V2500 SI No. 356F–18, Rev. 1, dated January 9, 2019; IAE V2500 SI No. 372F–18, dated January 8, 2019; or IAE V2500 Special SI No. 04F–19, dated January 14, 2019.

(j) Definition

For the purpose of this AD, an ''engine shop visit'' is the induction of the engine into the shop for maintenance involving the separation of pairs of major mating engine flanges, K–N, except that the separation of engine flanges solely for the purposes of transportation without subsequent engine maintenance does not constitute an engine shop visit.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, ECO 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 Related Information. You may email your request to: *ANE-AD-AMOC@faa.gov.*

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

(l) Related Information

For more information about this AD, contact Nicholas Paine, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7742; fax: (781) 238–7199; email: *nicholas.j.paine@faa.gov.*

(m) Material Incorporated by Reference

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

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

(i) International Aero Engines (IAE) Non-Modification Alert Service Bulletin V2500–ENG–72–A0706, Revision 2, dated November 7, 2019.

(ii) [Reserved]

(3) For IAE service information identified in this AD, contact International Aero Engines AG, 400 Main Street, East Hartford, CT 06118; phone: (800) 565–0140; email: *help24@pw.utc.com;* website: *http://fleetcare.pw.utc.com.*

(4) You may view this service information at FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (781) 238–7759.

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

Issued on February 25, 2021.

Gaetano A. Sciortino,

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

[FR Doc. 2021–06139 Filed 3–24–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–1186; Airspace Docket No. 20–AGL–42]

RIN 2120–AA66

Amendment of Class E Airspace; Fosston and Little Falls, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace extending upward from 700 feet above the surface at Fosston Municipal Airport-Anderson Field, Fosston, MN, and Little Falls/Morrison County Airport-Lindbergh Field, Little Falls, MN. This action is the result of airspace reviews caused by the decommissioning of the Fosston and Little Falls non-federal non-directional beacons (NDBs). The names and geographic coordinates of the airports are also being updated to coincide with the FAA's aeronautical database.

DATES: Effective 0901 UTC, June 17, 2021. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (86 FR 3894; January 15, 2021) for Docket No. FAA–2020–1186 to amend the Class E airspace extending upward from 700 feet above the surface at Fosston Municipal Airport-Anderson Field, Fosston, MN, and Little Falls/Morrison County Airport-Lindbergh Field, Little Falls, MN. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

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

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

This amendment to 14 CFR 71:

Amends the Class E airspace extending upward from 700 feet above the surface to within a 6.3-mile (decreased from a 7-mile) radius of Fosston Municipal Airport-Anderson Field, Fosston, MN; adds an extension 1 mile each side of the 341° bearing from the airport extending from the 6.3-mile radius to 6.5 miles north of the airport; and updates the name (previously Fosston Municipal Airport) of the airport to coincide with the FAA's aeronautical database;

And amends the Class E airspace extending upward from 700 feet above the surface to within a 6.5-mile (decreased from a 7-mile) radius of Little Falls/Morrison County Airport-Lindbergh Field, Little Falls, MN; and updates the name (previously Little Falls-Morrison County Airport) and geographic coordinates of the airport to coincide with the FAA's aeronautical database.

This action is the result of airspace reviews caused by the decommissioning of the Fosston and Little Falls non-federal NDBs which provided

navigation information for the instrument procedures at these airports.

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

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

AGL MN E5 Fosston, MN [Amended]

Fosston Municipal Airport-Anderson Field, MN
(Lat. 47°35′34″ N, long. 95°46′25″ W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Fosston Municipal Airport-Anderson Field, and within 1 mile each side of the 341° bearing from the airport extending from the 6.3-mile radius to 6.5 miles north of the airport.

* * * * *

AGL MN E5 Little Falls, MN [Amended]

Little Falls/Morrison County Airport-Lindbergh Field, MN
(Lat. 45°56′58″ N, long. 94°20′49″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Little Falls/Morrison County Airport-Lindbergh Field.

Issued in Fort Worth, Texas, on March 22, 2021.

Martin A. Skinner,

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

[FR Doc. 2021–06157 Filed 3–24–21; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[DA 20–1490; FRS 17468]

Preventing Illegal Radio Abuse Through Enforcement Act (PIRATE Act)

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts final rules pursuant to the Preventing Illegal Radio Abuse Through Enforcement Act (PIRATE Act). Section 2 of the PIRATE Act adds a new section to the Communications Act of 1934, as amended (the Communications Act), enumerated as section 511 and entitled ''Enhanced Penalties for Pirate Radio Broadcasting; Enforcement Sweeps; Reporting.'' This Order amends the Commission's rules to implement that provision.

DATES: This rule is effective April 26, 2021.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Shannon Lipp of the Office of the Bureau Chief, Enforcement Bureau, at *Shannon.Lipp@fcc.gov* or (202) 418–8192.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order, DA 20–1490, adopted and released on December 17, 2020. The document is available for download at *https://docs.fcc.gov/public/attachments/DA-20-1490A1.pdf.* To request this document in accessible formats for people with disabilities (*e.g.,* Braille, large print, electronic files, audio format, etc.) or to request reasonable accommodations (*e.g.,* accessible format documents, sign language interpreters, CART, etc.), send an email to *fcc504@fcc.gov* or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Paperwork Reduction Act

This document does not contain new or modified information collection(s) subject to the Paperwork Reduction Act of 1995, Public Law 104–13. It does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Congressional Review Act

The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs, that this rule is non-major under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of this Order to Congress and the Government Accountability Office, pursuant to 5 U.S.C. 801(a)(1)(A).

Synopsis

1. The PIRATE Act grants the Commission additional enforcement authority, including higher forfeiture penalties, against pirate radio broadcasters and any person who permits the operation of pirate radio broadcasting. Section 2 of the PIRATE Act adds a new section to the Communications Act of 1934, as amended (the Communications Act), enumerated as section 511 and entitled ''Enhanced Penalties for Pirate Radio Broadcasting; Enforcement Sweeps; Reporting.'' This Order amends section 1.80 of the Commission's rules to implement that provision. We move directly to an order here because implementation of new section 511 entails no exercise of our administrative discretion and, therefore, notice and comment procedures are unnecessary

under the ''good cause'' exception to the Administrative Procedure Act (APA).

2. New section 511 provides specific authority for the Commission to combat pirate radio broadcasting with enhanced penalties. Pirate radio broadcasting is defined as ''the transmission of communications on spectrum frequencies between 535 and 1705 kilohertz, inclusive, or 87.7 and 108 megahertz, inclusive, without a license issued by the Commission, but does not include unlicensed operations in compliance with part 15 of title 47, Code of Federal Regulations.'' 47 U.S.C. 511(h). Sections 511(a) and (b) permit forfeitures of up to $100,000 per day, up to a maximum fine of $2 million, for any person who ''willfully and knowingly does or causes or suffers to be done'' any pirate radio broadcasting. These enhanced forfeiture amounts are ''in *addition* to any other penalties provided by law.'' 47 U.S.C. 511(b) (emphasis added). Section 511(f) directs the Commission to ''revise its rules to require that, absent good cause, in any case alleging a violation of subsection (a) or (b), the Commission shall proceed directly to issue a notice of apparent liability without first issuing a notice of unlicensed operation.''

3. We amend § 1.80 of our rules to implement section 511. First, we codify penalties for violations of section 511(a) or (b). Under the amended rule, the Commission has the authority to impose a penalty of up to $100,000 per day, up to a maximum fine of $2 million, against any person who willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting, in addition to any forfeiture penalty amount that may be proposed under any other provision of the Communications Act. These amounts are subject to annual adjustments due to inflation. *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation,* Order, 35 FCC Rcd 14879, 86 FR 3830 (Jan. 15, 2021) (EB 2020).

4. Second, consistent with section 511(f), we amend section 1.80 to provide that, absent good cause, the Commission shall, in the first instance, propose a penalty against any person who ''willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting.'' In other words, absent good cause to do otherwise, the Commission will not first issue a notice of unlicensed operation to a person who engages in such conduct. In applying the good cause standard in section 511(f), we may consider Commission precedent concerning waiver of our regulations for good cause shown. In general, this standard requires special circumstances warranting a deviation from the general rule and serving the public interest.

5. Consistent with previous decisions, we amend our rules without providing for prior public notice and comment. Our action here is ministerial because it simply effectuates regulations established by legislation and requires no exercise of administrative discretion. For this reason, we conclude that prior notice and comment would serve no useful purpose and is unnecessary. We therefore find that this action comes within the ''good cause'' exception to the notice and comment requirements of the APA.

6. The Enforcement Bureau is responsible for, among other things, rulemaking proceedings regarding general enforcement policies and procedures. In section 511(f) of the Communications Act, Congress mandated the Commission to prescribe implementing regulations. Additionally, the enhanced penalties set forth in sections 511 (a) and (b) require codification in the Commission's rules. Therefore, action on delegated authority is properly taken in this *Order* amending § 1.80 of our rules, which is part of the Commission's general enforcement policies and procedures. In addition, because a notice of proposed rulemaking is not required for these rule changes, no regulatory flexibility analysis is required.

7. *Effective Date.* The rules adopted in this Order shall be effective 30 days after publication in the **Federal Register**.

8. Accordingly, *it is ordered*, pursuant to sections 4(i), 4(j), and 511 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 511, and §§ 0.111(a)(22), 0.231(b), and 0.311(a)(1) of the Commission's rules, 47 CFR 0.111(a)(22), 0.311(a)(1), that this Order *is adopted*.

9. *It is further ordered* that § 1.80 of the Commission's rules, 47 CFR 1.80, is *amended* as set forth in the Appendix.

10. *It is further ordered* that this Order and the foregoing amendments to the Commission's rules *shall be effective* thirty (30) days after the date of publication in the **Federal Register**.

11. *It is further ordered* that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 1

Administrative practice and procedure, Penalties.

Federal Communications Commission.

Lisa Gelb,

Deputy Chief, Enforcement Bureau.

Final Rules

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

PART 1—PRACTICE AND PROCEDURE

■ 1. The authority citation for part 1 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.

§ 1.80 [Amended]

■ 2. Amend § 1.80 as follows:
■ a. Revising paragraph (a)(4);
■ b. Redesignating paragraphs (a)(5) and (6) as paragraphs (a)(6) and (7) and adding a new paragraph (a)(5);
■ c. Revising newly redesignated paragraph (a)(6);
■ d. Redesignating the Note to paragraph (a) as Note 1 to paragraph (a);
■ e. Redesignating paragraphs (b)(6) through (10) as paragraphs (b)(7) through (11) and adding a new paragraph (b)(6);
■ f. Revising newly redesignated paragraphs (b)(9) and (10);
■ g. Removing the Note to paragraph (b)(8) following newly redesignated paragraph (b)(10);
■ h. Revising the heading of the table in newly redesignated paragraph (b)(11)(ii);
■ i. Revising the Note following newly redesignated paragraph (b)(11);
■ j. Revising the introductory text to paragraph (d); and
■ k. Redesignating paragraphs (e) through (j) as paragraphs (f) through (k) and adding a new paragraph (e).

The revisions and additions read as follows:

§ 1.80 Forfeiture proceedings.

(a) * * *

(4) Violated any provision of sections 227(b) or (e) of the Communications Act or of §§ 64.1200(a)(1) through (5) and 64.1604 of this title;

(5) Violated any provision of section 511(a) or (b) of the Communications Act or of paragraph (b)(6) of this section;

(6) Violated any provision of section 1304, 1343, or 1464 of Title 18, United States Code; or

* * * * *

(b) * * *

(6) *Forfeiture penalty for pirate radio broadcasting.* (i) Any person who willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting shall be subject to a fine of not more than $2,023,640; and

(ii) Any person who willfully and knowingly violates the Act or any rule, regulation, restriction, or condition made or imposed by the Commission under authority of the Act, or any rule, regulation, restriction, or condition made or imposed by any international radio or wire communications treaty or convention, or regulations annexed thereto, to which the United States is party, relating to pirate radio broadcasting shall, in addition to any other penalties provided by law, be subject to a fine of not more than $101,182 for each day during which such offense occurs, in accordance with the limit described in this section.

* * * * *

(9) *Maximum forfeiture penalty for any case not previously covered.* In any case not covered in paragraphs (b)(1) through (8) of this section, the amount of any forfeiture penalty determined under this section shall not exceed $20,731 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $155,485 for any single act or failure to act described in paragraph (a) of this section.

(10) *Factors considered in determining the amount of the forfeiture penalty.* In determining the amount of the forfeiture penalty, the Commission or its designee will take into account the nature, circumstances, extent and gravity of the violations and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.

TABLE 1 TO PARAGRAPH (b)(10)—BASE AMOUNTS FOR SECTION 503 FORFEITURES

Forfeitures	Violation amount
Misrepresentation/lack of candor	([1])
Construction and/or operation without an instrument of authorization for the service	$10,000
Failure to comply with prescribed lighting and/or marking	10,000
Violation of public file rules	10,000
Violation of political rules: Reasonable access, lowest unit charge, equal opportunity, and discrimination	9,000
Unauthorized substantial transfer of control	8,000
Violation of children's television commercialization or programming requirements	8,000
Violations of rules relating to distress and safety frequencies	8,000
False distress communications	8,000
EAS equipment not installed or operational	8,000
Alien ownership violation	8,000
Failure to permit inspection	7,000
Transmission of indecent/obscene materials	7,000
Interference	7,000
Importation or marketing of unauthorized equipment	7,000
Exceeding of authorized antenna height	5,000
Fraud by wire, radio or television	5,000
Unauthorized discontinuance of service	5,000
Use of unauthorized equipment	5,000
Exceeding power limits	4,000
Failure to respond to Commission communications	4,000
Violation of sponsorship ID requirements	4,000
Unauthorized emissions	4,000
Using unauthorized frequency	4,000
Failure to engage in required frequency coordination	4,000
Construction or operation at unauthorized location	4,000
Violation of requirements pertaining to broadcasting of lotteries or contests	4,000
Violation of transmitter control and metering requirements	3,000
Failure to file required forms or information	3,000
Failure to make required measurements or conduct required monitoring	2,000
Failure to provide station ID	1,000
Unauthorized pro forma transfer of control	1,000
Failure to maintain required records	1,000

[1] Statutory Maximum for each Service.

TABLE 2 TO PARAGRAPH (b)(10)—VIOLATIONS UNIQUE TO THE SERVICE

Violation	Services affected	Amount
Unauthorized conversion of long distance telephone service	Common Carrier	$40,000
Violation of operator services requirements	Common Carrier	7,000
Violation of pay-per-call requirements	Common Carrier	7,000
Failure to implement rate reduction or refund order	Cable	7,500
Violation of cable program access rules	Cable	7,500
Violation of cable leased access rules	Cable	7,500
Violation of cable cross-ownership rules	Cable	7,500
Violation of cable broadcast carriage rules	Cable	7,500
Violation of pole attachment rules	Cable	7,500
Failure to maintain directional pattern within prescribed parameters	Broadcast	7,000
Violation of broadcast hoax rule	Broadcast	7,000
AM tower fencing	Broadcast	7,000
Broadcasting telephone conversations without authorization	Broadcast	4,000
Violation of enhanced underwriting requirements	Broadcast	2,000

TABLE 3 TO PARAGRAPH (b)(10)—ADJUSTMENT CRITERIA FOR SECTION 503 FORFEITURES

Upward Adjustment Criteria:
(1) Egregious misconduct.
(2) Ability to pay/relative disincentive.
(3) Intentional violation.
(4) Substantial harm.
(5) Prior violations of any FCC requirements.
(6) Substantial economic gain.
(7) Repeated or continuous violation.

Downward Adjustment Criteria:
(1) Minor violation.
(2) Good faith or voluntary disclosure.
(3) History of overall compliance.
(4) Inability to pay.

TABLE 4 TO PARAGRAPH (b)(10)—NON-SECTION 503 FORFEITURES THAT ARE AFFECTED BY THE DOWNWARD ADJUSTMENT FACTORS [1]

Violation	Statutory amount after 2021 annual inflation adjustment
Sec. 202(c) Common Carrier Discrimination.	$12,439, $622/day.
Sec. 203(e) Common Carrier Tariffs.	$12,439, $622/day.
Sec. 205(b) Common Carrier Prescriptions.	$24,877.
Sec. 214(d) Common Carrier Line Extensions.	$2,487/day.
Sec. 219(b) Common Carrier Reports.	$2,487/day.
Sec. 220(d) Common Carrier Records & Accounts.	$12,439/day.
Sec. 223(b) Dial-a-Porn.	$128,904/day.

TABLE 4 TO PARAGRAPH (b)(10)—NON-SECTION 503 FORFEITURES THAT ARE AFFECTED BY THE DOWNWARD ADJUSTMENT FACTORS [1]—Continued

Violation	Statutory amount after 2021 annual inflation adjustment
Sec. 227(e) Caller Identification.	$11,905/violation. *$35,715/day for each day of continuing violation, up to $1,190,546 for any single act or failure to act.
Sec. 364(a) Forfeitures (Ships).	$10,366/day (owner).
Sec. 364(b) Forfeitures (Ships).	$2,074 (vessel master).
Sec. 386(a) Forfeitures (Ships).	$10,366/day (owner).
Sec. 386(b) Forfeitures (Ships).	$2,074 (vessel master).
Sec. 511 Pirate Radio Broadcasting.	$2,023,640, $101,182/day.
Sec. 634 Cable EEO.	$919/day.

[1] Unlike section 503 of the Act, which establishes maximum forfeiture amounts, other sections of the Act, with two exceptions, state prescribed amounts of forfeitures for violations of the relevant section. These amounts are then subject to mitigation or remission under section 504 of the Act. One exception is section 223 of the Act, which provides a maximum forfeiture per day. For convenience, the Commission will treat this amount as if it were a prescribed base amount, subject to downward adjustments. The other exception is section 227(e) of the Act, which provides maximum forfeitures per violation, and for continuing violations. The Commission will apply the factors set forth in section 503(b)(2)(E) of the Act and this table 4 to determine the amount of the penalty to assess in any particular situation. The amounts in this table 4 are adjusted for inflation pursuant to the Debt Collection Improvement Act of 1996 (DCIA), 28 U.S.C. 2461. These non-section 503 forfeitures may be adjusted downward using the "Downward Adjustment Criteria" shown for section 503 forfeitures in table 3 to this paragraph (b)(10).

Note 2 to paragraph (b)(10): *Guidelines for Assessing Forfeitures.* The Commission and its staff may use the guidelines in tables 1 through 4 of this paragraph (b)(10) in particular cases. The Commission and its staff retain the discretion to issue a higher or lower forfeiture than provided in the guidelines, to issue no forfeiture at all, or to apply alternative or additional sanctions as permitted by the statute. The forfeiture ceilings per violation or per day for a continuing violation stated in section 503 of the Communications Act and the Commission's rules are described in paragraph (b)(11) of this section. These statutory maxima became effective September 13, 2013. Forfeitures issued under other sections of the Act are dealt with separately in table 4 to this paragraph (b)(10).

(11) * * *

(ii) * * *

Table 5 to Paragraph (b)(11)(ii)

* * * * *

Note 3 to paragraph (b)(11): Pursuant to Public Law 104–134, the first inflation adjustment cannot exceed 10 percent of the statutory maximum amount.

* * * * *

(d) *Preliminary procedure in some cases; citations.* Except for a forfeiture imposed under sections 227(b), 227(e)(5), 511(a), and 511(b) of the Act, no forfeiture penalty shall be imposed upon any person under the preceding sections if such person does not hold a license, permit, certificate, or other authorization issued by the Commission, and if such person is not an applicant for a license, permit, certificate, or other authorization issued by the Commission, unless, prior to the issuance of the appropriate notice, such person:

* * * * *

(e) *Preliminary procedure in Preventing Illegal Radio Abuse Through Enforcement Act (PIRATE Act) cases.* Absent good cause, in any case alleging a violation of subsection (a) or (b) of section 511 of the Act, the Commission shall proceed directly to issue a notice of apparent liability for forfeiture without first issuing a notice of unlicensed operation.

* * * * *

[FR Doc. 2021–04904 Filed 3–24–21; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 86, No. 56
Thursday, March 25, 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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 205

[Document Number AMS–NOP–19–0102; NOP–19–05]

RIN 0581–AD93

National Organic Program; National List of Allowed and Prohibited Substances—Crops and Handling From October 2019 NOSB

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the National List of Allowed and Prohibited Substances (National List) section of the United States Department of Agriculture's (USDA's) organic regulations to add potassium hypochlorite for pre-harvest use as a sanitizer in organic crop production and fatty alcohols for sucker control in organic tobacco production. In addition, this rule proposes to remove the listing for dairy cultures, as it is redundant with an existing listing.

DATES: Comments must be received by May 24, 2021.

ADDRESSES: Interested persons may comment on the proposed rule using the following procedures:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jared Clark, Standards Division, National Organic Program, USDA–AMS–NOP, 1400 Independence Ave. SW, Room 2642–S, Ag Stop 0268, Washington, DC 20250–0268. Telephone: (202) 720–3252.

Instructions: All submissions received must include the docket number AMS–NOP–19–0102, NOP–19–05, and/or Regulatory Information Number (RIN) 0581–AD93 for this rulemaking. When submitting a comment, clearly indicate the proposed rule topic and section number to which the comment refers. In addition, comments should clearly indicate whether the commenter supports the action being proposed and clearly indicate the reason(s) for the position. Comments can also include information on alternative management practices, where applicable, that support alternatives to the proposed amendments. Comments should also offer any recommended language change(s) that would be appropriate to the position. Please include relevant information and data to support the position such as scientific, environmental, manufacturing, industry, or impact information, or similar sources. Only relevant material supporting the position should be submitted. All comments received will be posted without change to *https://www.regulations.gov.*

Document: To access the document and read background documents, or comments received, go to *https://www.regulations.gov* (search for Docket ID AMS–NOP–19–0102).

FOR FURTHER INFORMATION CONTACT: Jared Clark, Standards Division, National Organic Program. Telephone: (202) 720–3252.

SUPPLEMENTARY INFORMATION:

I. Background

On December 21, 2000, the Secretary established the National List within part 205 of the USDA organic regulations (7 CFR 205.600 through 205.607). The National List identifies the synthetic substances allowed in organic farming and the nonsynthetic substances prohibited in organic farming. The National List also identifies nonagricultural and nonorganic agricultural substances (ingredients) that may be used in organic handling.

The Organic Foods Production Act of 1990 (OFPA), as amended (7 U.S.C. 6501–6524), and the USDA organic regulations (7 CFR part 205) specifically prohibit the use of any synthetic substance in organic production and handling unless the synthetic substance is on the National List (§§ 205.601, 205.603 and 205.605(b)). Section 205.105 also requires that any nonorganic agricultural substance and any nonsynthetic nonagricultural substance used in organic handling be on the National List (§§ 205.605(a) and 205.606). Under the authority of OFPA, the National List can be amended by the Secretary based on recommendations presented by the National Organic Standards Board (NOSB). Since the final rule establishing the National Organic Program (NOP) became effective on October 21, 2002, USDA's Agricultural Marketing Service (AMS) has published multiple rules amending the National List.

This proposed rule would amend the National List to reflect three recommendations submitted to the Secretary by the NOSB on October 25, 2019. This action would make the following changes to the National List based on the NOSB recommendations for three substances. Two substances are proposed to be added to the National List for use in organic crop production in response to petitions from the public. One substance is being recommended for removal from the National List because it is redundant to another listing on the National List. AMS published two notices in the **Federal Register** announcing the NOSB meetings and inviting public comments on the materials included in this proposed rule: November 26, 2018 (83 FR 60373) and May 22, 2019 (84 FR 23522). AMS also hosted public webinars (April 16 & 18, 2019, and October 15 & 17, 2019), to provide additional opportunities for public comment. The NOSB received additional comment during its public meetings on April 24–25, 2019,[1] and October 23–24, 2019.[2] Table 1 summarizes the proposed changes to the National List.

[1] National Organic Standards Board (NOSB) Spring 2019 Meeting: *https://www.ams.usda.gov/event/national-organic-standards-board-nosb-meeting-seattle-wa.*

[2] National Organic Standards Board (NOSB) Fall 2019 Meeting: *https://www.ams.usda.gov/event/national-organic-standards-board-nosb-meeting-pittsburgh-pa.*

TABLE 1—PROPOSED AMENDMENTS TO THE NATIONAL LIST

Substance	National list section	Proposed rule action
Potassium hypochlorite	§ 205.601	Add to National List.
Fatty alcohols (C_6, C_8, C_{10}, C_{12})	§ 205.601	Add to National List.
Dairy cultures	§ 205.605	Remove from National List.

II. Overview of Proposed Amendments

The following provides an overview of the proposed amendments to designated sections of the National List regulations:

§ 205.601 Synthetic Substances Allowed for Use in Organic Crop Production

This proposed rule would add two substances to § 205.601, synthetic substances allowed for use in organic crop production.

Potassium Hypochlorite

The proposed rule would amend the National List to add potassium hypochlorite to § 205.601(a) as a synthetic substance allowed for use as a pre-harvest sanitizer in irrigation water in organic crop production. Table 2 illustrates the proposed listing.

TABLE 2—PROPOSED AMENDMENT FOR POTASSIUM HYPOCHLORITE

Proposed amendment:	Add potassium hypochlorite to § 205.601(a)(2).

In November 2018, AMS received a petition to add potassium hypochlorite as a synthetic substance allowed for use in organic crop production.[3] [4] The petition proposed to add potassium hypochlorite to § 205.601 as a type of chlorine material that can be used as a pre-harvest sanitizer.

After considering the petition, the 2011 technical report on chlorine materials, and the public comments, the NOSB determined that this use of potassium hypochlorite meets the OFPA criteria for allowed synthetic substances in organic crop production.[5] The NOSB concluded that potassium hypochlorite is similar to other chlorine materials allowed in organic crop production and allowing its use supports compliance with the Food Safety and Modernization Act (FSMA) (21 U.S.C. 2201–2252) to sanitize irrigation water. In addition, the NOSB indicated that potassium hypochlorite has advantages over sodium hypochlorite, also an allowed chlorine material at § 205.601(a)(2)(iv), because potassium is a plant nutrient and is unlikely to increase soil salinization because it does not contain sodium.

The NOSB recommended adding potassium hypochlorite to § 205.601 as a synthetic substance allowed for use as a pre-harvest sanitizer for use in irrigation water in organic crop production. The recommendation also specified that the concentration of potassium hypochlorite in irrigation water should not exceed maximum residual disinfectant limits specified under the Safe Drinking Water Act (SDWA) (42 U.S.C. 300(f) *et seq.*).[6] [7] Notably, the recommendation also explained the intent for a more limited allowance for potassium hypochlorite in comparison to other allowed chlorine substances on the National List for crop production. The recommendation specified that an allowance for potassium hypochlorite be limited to irrigation water. Additional uses, including post-harvest, would be prohibited.

AMS concurs with the NOSB's determination that potassium hypochlorite is a synthetic substance and that the use of potassium hypochlorite satisfies the OFPA criteria for allowed synthetic substances in organic crop production. Consistent with the NOSB recommendation, this proposed rule would amend the National List by adding potassium hypochlorite to the National List as a type of chlorine material that can be used as a pre-harvest sanitizer. Given that the NOSB recommendation specified that potassium hypochlorite be allowed for irrigation water only, we are proposing that potassium hypochlorite would not be allowed for organic edible sprout production. This would clarify how the allowance for potassium hypochlorite is different from other allowed chlorine materials which are permitted for use in organic edible sprout production.

Fatty Alcohols (C_6, C_8, C_{10}, C_{12})

The proposed rule would amend the National List to add fatty alcohols (C_6, C_8, C_{10}, C_{12}) to § 205.601 as a synthetic substance allowed for use in crop production. Table 3 illustrates the proposed listing.

TABLE 3—PROPOSED AMENDMENT FOR FATTY ALCOHOLS (C_6, C_8, C_{10}, C_{12})

Current rule:	N/A.
Proposed amendment:	Add fatty alcohols (C_6, C_8, C_{10}, and/or C_{12}) to § 205.601(k).

AMS received a petition to add fatty alcohols (C_6, C_8, C_{10}, C_{12}) to the National List for use in organic crop production.[8] [9] The petition identified the intended use as sucker control in tobacco production. The petition explained that sucker control in tobacco production improves yield and quality of the plant, reduces pest pressure and supports crop rotation practices.

After considering the petition, the technical report on fatty alcohols, and the public comments, the NOSB determined that this use of fatty alcohols meets the OFPA criteria for allowed synthetic substances in organic tobacco production.[10] The NOSB concluded that the alternative materials for sucker control are ineffective and that fatty alcohols used for sucker

[3] The initial petition for potassium hypochlorite was submitted in November 2018: *https://www.ams.usda.gov/sites/default/files/media/PotassiumHypochloritePetition.pdf.*

[4] A revised petition for potassium hypochlorite was submitted in March 2019: *https://www.ams.usda.gov/sites/default/files/media/PotassiumHypochloriteRevisedPetition03262019.pdf.*

[5] Chlorine compounds technical report, 2011: *https://www.ams.usda.gov/sites/default/files/media/Chlorine%202%20TR%202011.pdf.* This technical report describes the manufacture, industry uses, regulation, and chemical properties of chlorine compounds. Information in this technical report is transferable to potassium hypochlorite.

[6] NOSB potassium hypochlorite recommendation: *https://www.ams.usda.gov/sites/default/files/media/CSPotassiumHypochlorite.pdf.*

[7] Safe Drinking Water Act (SDWA) *https://www.epa.gov/sdwa.*

[8] Fatty alcohols petition, December 10, 2018: *https://www.ams.usda.gov/sites/default/files/media/RevisedPetitionNaturalFattyAlcoholsforUseonOrganicTobaccoCrops.pdf.*

[9] In 2015, a petition was submitted for fatty alcohols octanol-decanol mix. The NOSB did not recommend listing this substance. The 2015 fatty alcohols petition and the corresponding 2017 NOSB recommendation are available in the list of petitioned substances on the AMS website: *https://www.ams.usda.gov/rules-regulations/organic/national-list/f.*

[10] Fatty alcohols technical report, 2016: *https://www.ams.usda.gov/sites/default/files/media/FattyAlcohols020217.pdf.*

control are essential for organic tobacco production. Further, the NOSB also cited human health issues from manual desuckering which can cause nicotine poisoning and other health issues in workers due to heavy exposure to the nicotine present in the tobacco plant through dermal (skin) exposure. Consequently, the NOSB recommended the addition of fatty alcohols (C_6, C_8, C_{10}, C_{12}) to the National List for organic tobacco production.[11]

AMS concurs with the NOSB's determination that fatty alcohols are a synthetic substance and that the use of fatty alcohols satisfies the OFPA criteria for allowed synthetic substances. Some discussion opined that the use of fatty alcohols for desuckering is primarily for economic benefit and that manual desuckering of tobacco plants, while more expensive, is the only method compatible with organic production. AMS is not persuaded by that argument because manual desuckering may pose adverse health risks to workers due to contact with tobacco plants. There are no alternative practices or allowed materials under current USDA organic regulations that perform this function. Therefore, AMS concurs that this substance is necessary for organic tobacco production and is consistent with organic farming. This proposed rule would amend the National List by adding fatty alcohols (C_6, C_8, C_{10}, and/or C_{12}) for sucker control in organic tobacco production.

The parenthetical content (C_6, C_8, C_{10}, and/or C_{12}) for the proposed listing specifies the range of alcohols that would be included in this listing. AMS is proposing that fatty alcohol products allowed for sucker control in organic production may contain either some or all of these fatty alcohols. NOP understands that referring to the carbon chain length of fatty alcohols are commonly understood by industry and regulation. In listing ''C6, C8, C10, and/or C12'' as allowed fatty alcohols, it should be understood that these carbon chain designations refer to 1-hexanol, 1-octanol, 1-decanol, and 1-dodecanol. AMS welcomes comments on whether the proposed listing provides the clarity for material reviewers to clearly determine which products would be permitted for sucker control in organic tobacco production.

§ 205.605 Nonagricultural (Nonorganic) Substances Allowed as Ingredients in or on Processed Products Labeled as ''Organic'' or ''Made With Organic (Specified Ingredients or Food Group(s))''

This proposed rule would remove one substance from § 205.605 Nonagricultural (nonorganic) substances allowed as ingredients in or on processed products labeled as ''organic'' or ''made with organic (specified ingredients or food group(s)).''

Dairy Cultures

The proposed rule would amend the National List by removing dairy cultures as a nonsynthetic nonagricultural substance listed in § 205.605(a) for use in organic handling. The NOSB recommended removing dairy cultures from the National List because dairy cultures are allowed under the listing for ''microorganisms'' in § 205.605.[12] The NOSB determined that dairy cultures is a redundant listing and that removing dairy cultures would have no negative impacts because these ingredients would continue to be allowed in organic handling. In addition, the NOSB indicated that permitted ancillary substances in dairy cultures would continue to be allowed under the ''microorganisms'' listing.

AMS concurs that microorganisms are inclusive of dairy cultures and that listing both dairy cultures and microorganisms on the National List is redundant. AMS' intent and belief are that current use patterns for approved dairy cultures would not be affected by the changes included in this proposed rule. Therefore, AMS is proposing to remove dairy cultures from the National List.

III. Related Documents

AMS published two notices in the **Federal Register** announcing the April 2019 and October 2019 NOSB meetings: November 26, 2018 (83 FR 60373) and May 22, 2019 (84 FR 23522). At these meetings, the NOSB deliberated on substances petitioned as amendments to the National List and substances under sunset review.

IV. Statutory and Regulatory Authority

The OFPA authorizes the Secretary to make amendments to the National List based on recommendations developed by the NOSB. Sections 6518(k) and 6518(n) of the OFPA authorize the NOSB to develop recommendations for submission to the Secretary to amend the National List and to establish a process by which persons may petition the NOSB for the purpose of having substances evaluated for inclusion on or deletion from the National List. Section 205.607 of the USDA organic regulations permits any person to petition to add or remove a substance from the National List and directs petitioners to obtain the petition procedures from USDA. The current petition procedures published in the **Federal Register** (81 FR 12680, March 10, 2016) for amending the National List can be accessed through the NOP Program Handbook on the NOP website at *https://www.ams.usda.gov/rules-regulations/organic/handbook.*

A. Executive Orders 12866 and Regulatory Flexibility Act

This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) has exempted from Executive Order 12866.

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) requires agencies to consider the economic impact of each rule on small entities and evaluate alternatives that would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the market. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to the action. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

The Small Business Administration (SBA) sets size criteria for each industry described in the North American Industry Classification System (NAICS) to delineate which operations qualify as small businesses.[13] The SBA has classified small agricultural producers that engage in crop and animal production as those with average annual receipts of less than $1,000,000. Handlers are involved in a broad spectrum of food production activities and fall into various categories in the

[11] NOSB recommendation for fatty alcohols, October 2019: *https://www.ams.usda.gov/sites/default/files/media/CSFattyAlcoholsFinalRec_0.pdf.*

[12] The NOSB recommended the removal of dairy cultures from the National List as part of its 2021 sunset review. The OFPA sunset provision (7 U.S.C. 6517(e)) requires the NOSB to review exemptions or prohibitions to the National List within 5 years of such exemption or prohibition being adopted or reviewed. The NOSB subsequently votes to remove a substance allowance or prohibition from the National List. The NOSB recommendation to remove dairy cultures is available here: *https://www.ams.usda.gov/sites/default/files/media/HS2021SunsetReviews.pdf.*

[13] Table of Small Business Size Standards Matched to North American Industrial Classification System Codes, August 19, 2019: *https://www.naics.com/wp-content/uploads/2017/10/SBA_Size_Standards_Table.pdf.*

NAICS Food Manufacturing sector. The small business thresholds for food manufacturing operations are based on the number of employees and range from 500 to 1,250 employees, depending on the specific type of manufacturing. Certifying agents fall under the NAICS subsector, ''All other professional, scientific and technical services.'' For this category, the small business threshold is average annual receipts of less than $16.5 million.

AMS has considered the economic impact of this proposed rulemaking on small agricultural entities. Data collected by the USDA National Agricultural Statistics Service and the NOP indicate most of the certified organic production operations in the United States would be considered small entities. According to the 2019 Certified Organic Survey, 16,524 organic farms in the United States reported sales of organic products and total farmgate sales in excess of $9.9 billion.[14] Based on that data, organic sales average $601,000 per farm. Assuming a normal distribution of producers, we expect that most of these producers would fall under the $1,000,000 sales threshold to qualify as a small business.

According to the NOP's Organic Integrity Database, there are 19,832 organic handlers that are certified under the USDA organic regulations, of which 10,500 are based in the U.S.[15] The Organic Trade Association's 2020 Organic Industry Survey [16] has information about employment trends among organic manufacturers. The reported data are stratified into three groups by the number of employees per company: Less than 5; 5 to 49; and 50 plus. These data are representative of the organic manufacturing sector and the lower bound (50) of the range for the larger manufacturers is significantly smaller than the SBA's small business thresholds (500 to 1,250). Therefore, AMS expects that most organic handlers would qualify as small businesses.

The USDA has 77 accredited certifying agents who provide organic certification services to producers and handlers. The certifying agent that reports the most certified operations, nearly 3,500, would need to charge approximately $4,200 in certification fees in order to exceed the SBA's small business threshold of $16.5 million. The costs for certification generally range from $500 to $3,500, depending on the complexity of the operation. Therefore, AMS expects that most of the accredited certifying agents would qualify as small entities under the SBA criteria.

The economic impact on entities affected by this rule would not be significant. The effect of this rule, if implemented as final, would be to allow the use of two additional substances in organic crop production and remove one redundant listing from the regulations. Adding two substances to the National List would increase regulatory flexibility and would give small entities more tools to use in day-to-day operations. This action would also remove dairy cultures as a redundant listing and would have no impact on the industry. AMS reviewed comments submitted to the NOSB regarding the materials petitioned for inclusion on and recommended for removal from the National List. Therefore, AMS concludes that the economic impact of this addition, if any, would be minimal. Accordingly, USDA certifies that this rule would not have a significant economic impact on a substantial number of small entities.

B. Executive Order 12988

Executive Order 12988 instructs each executive agency to adhere to certain requirements in the development of new and revised regulations in order to avoid unduly burdening the court system. This proposed rule is not intended to have a retroactive effect.

Accordingly, to prevent duplicative regulation, states and local jurisdictions are preempted under the OFPA from creating programs of accreditation for private persons or state officials who want to become certifying agents of organic farms or handling operations. A governing state official would have to apply to USDA to be accredited as a certifying agent, as described in section 6514(b) of the OFPA. States are also preempted under sections 6503 through 6507 of the OFPA from creating certification programs to certify organic farms or handling operations unless the state programs have been submitted to, and approved by, the Secretary as meeting the requirements of the OFPA.

Pursuant to section 6507(b)(2) of the OFPA, a state organic certification program that has been approved by the Secretary may, under certain circumstances, contain additional requirements for the production and handling of agricultural products organically produced in the state and for the certification of organic farm and handling operations located within the state. Such additional requirements must (a) further the purposes of the OFPA, (b) not be inconsistent with the OFPA, (c) not be discriminatory toward agricultural commodities organically produced in other States, and (d) not be effective until approved by the Secretary.

In addition, pursuant to section 6519(c)(6) of the OFPA, this proposed rule would not supersede or alter the authority of the Secretary under the Federal Meat Inspection Act (21 U.S.C. 601–624), the Poultry Products Inspection Act (21 U.S.C. 451–471), or the Egg Products Inspection Act (21 U.S.C. 1031–1056), concerning meat, poultry, and egg products, respectively, nor any of the authorities of the Secretary of Health and Human Services under the Federal Food, Drug and Cosmetic Act (21 U.S.C. 301 *et seq.*), nor the authority of the Administrator of the Environmental Protection Agency under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136 *et seq.*).

C. Paperwork Reduction Act

No additional collection or recordkeeping requirements are imposed on the public by this proposed rule. Accordingly, OMB clearance is not required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, Chapter 35.

D. Executive Order 13175

This proposed rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on tribal governments and will not have significant tribal implications.

F. General Notice of Public Rulemaking

This proposed rule reflects recommendations submitted by the NOSB to the Secretary to add two substances to the National List and to remove one substance from the National List. A 60-day period for interested persons to comment on this rule is provided.

List of Subjects in 7 CFR Part 205

Administrative practice and procedure, Agriculture, Archives and records, Crops, Imports, Labeling, National list, National Organic Standards Board (NOSB), Organically produced products, Plants, Reporting and recordkeeping requirements, Seals and insignia, Soil conservation, Sunset.

[14] U.S. Department of Agriculture, National Agricultural Statistics Service. 2019 Organic Survey. *https://www.nass.usda.gov/Publications/AgCensus/2017/Full_Report/Volume_1,_Chapter_1_US/*. The number of organic farms includes only certified farms.

[15] Organic Integrity Database: *https://organic.ams.usda.gov/Integrity/*. Accessed on August 18, 2020.

[16] 2020 Organic Industry Survey, Organic Trade Association. Available for purchase at *https://ota.com/organic-market-overview/organic-industry-survey*.

For the reasons set forth in the preamble, AMS proposes to amend 7 CFR part 205 as follows:

PART 205—NATIONAL ORGANIC PROGRAM

■ 1. The authority citation for 7 CFR part 205 is revised to read as follows:

Authority: 7 U.S.C. 6501–6524.

■ 2. Amend § 205.601 by:
■ a. Revising paragraph (a)(2)(iv);
■ b. Adding paragraph (a)(2)(v); and
■ c. Revising paragraph (k).

The revisions and addition to read as follows:

§ 205.601 Synthetic substances allowed for use in organic crop production.

* * * * *

(a) * * *

(2) * * *

(iv) Potassium hypochlorite—not allowed for edible sprout production.

(v) Sodium hypochlorite.

* * * * *

(k) As plant growth regulators.

(1) Ethylene gas—for regulation of pineapple flowering.

(2) Fatty alcohols (C_6, C_8, C_{10}, and/or C_{12})—for sucker control in organic tobacco production.

* * * * *

§ 205.605 [Amended]

■ 3. In § 205.605, amend paragraph (a) by removing the words ''Dairy cultures''.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2021–05700 Filed 3–24–21; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE–2019–BT–STD–0036]

RIN 1904–AE82

Energy Conservation Program: Energy Conservation Standards for Consumer Products; Early Assessment Review; Boilers

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Request for information.

SUMMARY: The U.S. Department of Energy (DOE) is undertaking an early assessment review for consumer boilers to determine whether to amend the applicable energy conservation standards for this product. Specifically, through this request for information (RFI), DOE seeks data and information to evaluate whether amended energy conservation standards would result in significant savings of energy, be technologically feasible, and be economically justified. DOE welcomes written comments from the public on any subject within the scope of this document (including those topics not specifically raised in this RFI), as well as the submission of data and other relevant information concerning this early assessment review.

DATES: Written comments and information are requested and will be accepted on or before April 26, 2021.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the instructions for submitting comments. Alternatively, interested persons may submit comments by email to the following address: *Email: ConsumerBoilers2019STD0036@ee.doe.gov.* Include ''Consumer Boilers RFI'' and docket number EERE–2019–BT–STD–0036 and/or RIN 1904–AE82 in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format, and avoid the use of special characters or any form of encryption.

Although DOE has routinely accepted public comment submissions through a variety of mechanisms, including postal mail and hand delivery/courier, the Department has found it necessary to make temporary modifications to the comment submission process in light of the ongoing Covid–19 pandemic. DOE is currently accepting only electronic submissions at this time. If a commenter finds that this change poses an undue hardship, please contact Appliance Standards Program staff at (202) 586–1445 to discuss the need for alternative arrangements. Once the Covid–19 pandemic health emergency is resolved, DOE anticipates resuming all of its regular options for public comment submission, including postal mail and hand delivery/courier.

No telefacsimiles (faxes) will be accepted. For detailed instructions on submitting comments and additional information on this process, see section III of this document (Submission of Comments).

Docket: The docket for this activity, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at *http://www.regulations.gov.* All documents in the docket are listed in the *http://www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket web page can be found at: *http://www.regulations.gov/#!docketDetail;D=EERE-2019-BT-STD-0036.* The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section III of this document for information on how to submit comments through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT:

Ms. Catherine Rivest, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–7335. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–5827. Email: *Eric.Stas@hq.doe.gov.*

For further information on how to submit a comment or review other public comments and the docket, contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

SUPPLEMENTARY INFORMATION:

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I. Introduction

DOE has established an early assessment review process to conduct a more focused analysis to evaluate, based on statutory criteria, whether a new or amended energy conservation standard is warranted. Based on the information received in response to the RFI and DOE's own analysis, DOE will determine whether to proceed with a rulemaking for a new or amended energy conservation standard. If DOE makes an initial determination that a new or amended energy conservation standard would satisfy the applicable statutory criteria or DOE's analysis is inconclusive, DOE would undertake the

preliminary stages of a rulemaking to issue a new or amended energy conservation standard. Otherwise, if DOE makes an initial determination based upon available evidence that a new or amended energy conservation standard would not meet the applicable statutory criteria, DOE would engage in notice and comment rulemaking before issuing a final determination that new or amended energy conservation standards are not warranted.

A. Authority

The Energy Policy and Conservation Act, as amended (EPCA),[1] among other things, authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B [2] of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles. These products include consumer boilers, the subject of this document. (42 U.S.C. 6292(a)(5))

Under EPCA, DOE's energy conservation program consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA specifically include definitions (42 U.S.C. 6291), test procedures (42 U.S.C. 6293), labeling provisions (42 U.S.C. 6294), energy conservation standards (42 U.S.C. 6295), and the authority to require information and reports from manufacturers (42 U.S.C. 6296).

Federal energy efficiency requirements for covered products established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297(a)–(c)) DOE may, however, grant waivers of Federal preemption in limited instances for particular State laws or regulations, in accordance with the procedures and other provisions set forth under EPCA. (42 U.S.C. 6297(d))

DOE must follow specific statutory criteria for prescribing new or amended standards for covered products. EPCA requires that any new or amended energy conservation standard prescribed by the Secretary of Energy (Secretary) be designed to achieve the maximum improvement in energy or water efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) The Secretary may not prescribe an amended or new standard that will not result in significant conservation of energy or is not technologically feasible or economically justified. (42 U.S.C. 6295(o)(3))

EPCA requires that, no later than six years after the issuance of any final rule establishing or amending a standard, DOE evaluate the energy conservation standards for each type of covered product, including those at issue here, and publish either a notice of determination that the standards do not need to be amended, or a notice of proposed rulemaking (NOPR) that includes new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m)(1)) DOE must make the analysis on which its notice if based publicly available and provide an opportunity for written comment. (42 U.S.C. 6295(m)(2)) DOE is issuing this early assessment review pursuant to the requirements of 42 U.S.C. 6295(m)(1).

B. Rulemaking History

EPCA established energy conservation standards for consumer furnaces and boilers in terms of the Annual Fuel Utilization Efficiency (AFUE) (42 U.S.C. 6295(f)(1)–(3)) and directed DOE to conduct a series of rulemakings to determine whether to amend these standards (42 U.S.C. 6295(f)(4); *see also* 42 U.S.C. 6295(m)). DOE completed the most recent rulemaking cycle to amend the standards for consumer boilers by publishing a final rule in the **Federal Register** on January 15, 2016 (January 2016 final rule), as required under 42 U.S.C. 6295(f)(4)(C). 81 FR 2320. The January 2016 final rule adopted new standby mode and off mode standards for consumer boilers in addition to amended AFUE energy conservation standards. *Id.* Compliance with the new and amended standards for consumer boilers is required beginning January 15, 2021. *Id.* The current energy conservation standards for consumer boilers are located at title 10 of the Code of Federal Regulations (CFR) part 430, subpart C, section 32(e)(2). 10 CFR 430.32(e)(2). The currently applicable DOE test procedures for consumer boilers appear at 10 CFR part 430, subpart B, appendix N (Appendix N).

II. Request for Information and Comments

DOE is publishing this RFI to collect data and information during the early assessment review to inform its decision, consistent with its obligations under EPCA, as to whether the Department should proceed with an energy conservation standards rulemaking. Below DOE has identified certain topics for which information and data are requested to assist in the evaluation of the potential for amended energy conservation standards. DOE also welcomes comments on other issues relevant to its early assessment that may not specifically be identified in this document.

A. Product Classes

When evaluating and establishing energy conservation standards, DOE may divide covered products into product classes by the type of energy used, or by capacity or other performance-related features that justify a different standard. (42 U.S.C. 6295(q)). In making a determination whether capacity or another performance-related feature justifies a different standard, DOE must consider such factors as the utility of the feature to the consumer and other factors DOE deems appropriate. (*Id.*)

On January 15, 2021, DOE published a final interpretive rule determining that in the context of residential furnaces, commercial water heaters, and similarly-situated products/equipment, use of non-condensing technology (and associated venting) constitutes a performance-related ''feature'' under EPCA that cannot be eliminated through adoption of an energy conservation standard. 86 FR 4776. Consumer boilers are similarly-situated products given that there are consumer boilers currently on the market which employ non-condensing technology (and the associated venting). In considering whether to amend the energy conservation standards for consumer boilers, DOE seeks information that would allow the agency to evaluate non-condensing technology (and the associated venting) consistent with the final interpretative rule, and whether a separate product class is warranted under 42 U.S.C. 6295(q)(1).

On this topic, DOE is particularly interested in comments, information, and data on the following:

Issue 1: DOE requests feedback on the current consumer boiler product classes and whether changes to these individual product classes and their descriptions should be made or whether certain classes should be separated or merged. Specifically, with regard to consumer boilers that use condensing technology, DOE requests information and data on potential impacts as compared to consumer boilers that use non-condensing technology, such as, but not limited to, the complexity/cost of installation, changes to a home's living/storage space, and the potential for fuel switching.

[1] All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020).

[2] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

Issue 2: DOE also requests comment on other instances where it may be appropriate to separate or combine any of the existing product classes and whether such potential changes would impact product utility by eliminating any performance-related features or reduce any compliance burdens.

B. Significant Savings of Energy

On January 15, 2016, DOE established an energy conservation standard for consumer boilers that is expected to result in 0.14 quadrillion British thermal units (quads) of site energy savings over a 30-year period.[3] 81 FR 2320, 2396. The adopted levels can be met by consumer boilers using either condensing or noncondensing technology. Additionally, in the January 2016 final rule, DOE estimated that an energy conservation standard established at an energy efficiency level equivalent to that achieved using the maximum available technology (max-tech) would have resulted in 1.295 additional quads of site energy savings over a 30-year period. *Id.* For gas-fired hot water boilers and oil-fired hot water boilers, energy conservation standards at the max-tech levels analyzed in the January 2016 final rule could only be met by consumer boilers utilizing condensing technology (96 percent AFUE and 91 percent AFUE, respectively). 81 FR 2320, 2381 (Jan. 15, 2016). The majority of the additional potential energy savings were from the gas-fired hot water boiler product class.

Currently, based on information from the DOE Compliance Certification Management System (CCMS) certification database, non-condensing gas-fired hot water boilers range in AFUE from 84.0 percent to 86.1 percent, and condensing gas-fired hot water boilers range in AFUE from 88.3 percent to 96.8 percent. Based on the CCMS certification database, oil-fired hot water boilers currently on the market are non-condensing and range in AFUE from 86.0 to 88.2 percent. All gas-fired steam and oil-fired steam boilers in the CCMS certification database are non-condensing, ranging in AFUE from 82.0 to 83.4 and 85.0 to 86.5 percent, respectively.

While DOE's request for information is not limited to the following issues, DOE is particularly interested in comment, information, and data on the issues discussed in the following paragraphs.

As part of the rulemaking process, DOE conducts an energy use analysis to identify how products are used by consumers, which then allows the Department to determine the energy savings potential of energy efficiency improvements. The purpose of the energy use analysis is to determine the annual energy consumption of consumer boilers at different efficiencies in representative U.S. single-family homes, manufactured housing, multi-family residences, and commercial buildings, and to assess the energy savings potential of increased consumer boiler efficiency. The energy use analysis estimates the range of energy use of consumer boilers in the field (*i.e.,* as they are actually used by consumers). Furthermore, the energy use analysis provides the basis for other analyses DOE performs, particularly assessments of the energy savings and the savings in consumer operating costs that could result from adoption of amended or new standards, including the life-cycle cost (LCC) and payback period (PBP) analysis and the national impact analysis (NIA). DOE will estimate the annual energy consumption of consumer boilers at specified energy efficiency levels across a range of applications, house or building types, and climate zones. Similar to the January 2016 final rule, DOE intends to determine the annual energy consumption, including the use of natural gas, liquefied petroleum gas (LPG), oil, or electricity for space and water heating,[4] as well as use of electricity for any auxiliary components.

Issue 3: DOE requests feedback on the levels of energy savings that could be expected from the adoption of a more-stringent standard for consumer boilers. Specifically, with regard to potential product class changes discussed in section II.A of this RFI, DOE requests information and data on the potential change in energy savings if certain classes are split or merged.

Issue 4: DOE seeks input and sources of data or recommendations to support sizing of consumer boilers typical in consumer space heating and water heating applications.

Issue 5: DOE requests comment on the fraction of installations and classes of consumer boilers that are used in commercial applications.

Issue 6: DOE seeks field data and input on representative space heating usage, space heating load profile, and representative return water temperatures for consumer boilers used in various consumer and commercial space heating applications.

Issue 7: DOE requests comment on the fraction of installations by consumer boiler product classes used for different space heating applications include radiant heating (in-floor, radiant panels, radiators, baseboards) and forced air using fan coils or central air handlers.

Issue 8: DOE seeks input on adjusting AFUE for different return water temperatures, for automatic means for adjusting water temperature, and for jacket losses. DOE seeks input on any other adjustments to AFUE to better capture field conditions. DOE also seeks data on the relationship between return water temperature and AFUE to more accurately calculate the return water temperature adjustment.

Issue 9: DOE seeks additional data on the fraction of boiler shipments that go to installations that serve both space heating and water heating by product class, by efficiency level or boiler technology type (*e.g.,* non-condensing and condensing), and type of water heating (*e.g.,* indirect tank water heating, combination products, and tankless coil).

C. Technological Feasibility

DOE considers technologies incorporated in commercially-available products or in working prototypes to be technologically feasible. 10 CFR part 430. subpart C, appendix A, sections 6(c)(3)(i) and 7(b)(1). In the rulemaking proceeding leading to the January 2016 final rule, DOE considered a number of technology options that manufacturers could use to reduce energy consumption in consumer boilers. 81 FR 2320, 2340–2341 (Jan. 15, 2016). Table II.1 shows the technologies previously considered for the January 2016 final rule.

[3] This estimate of 0.14 quads reflects site energy savings, which for natural gas and oil are considered equal to the primary energy savings because they are supplied to the user without transformation from another form of energy. The January 2016 final rule presented the 30-year energy savings estimate as 0.16 quads, reflecting full-fuel-cycle (FFC) energy savings. The FFC measure includes point-of-use (site) energy; the energy losses associated with generation, transmission, and distribution of electricity; and the energy consumed in extracting, processing, and transporting or distributing primary fuels. For purposes of its consideration of significant energy savings, DOE has calculated its estimate of potential site energy savings from the estimate of FFC energy savings in the January 2016 final rule.

[4] Space heating applications for consumer boilers include radiant heating (*e.g.,* in-floor, radiant panels, radiators, baseboard) and forced air using fan coils or central air handlers. Domestic water heating applications for consumer boilers include indirect water heating, combination products, and tankless coil.

TABLE II.1—TECHNOLOGY OPTIONS FOR CONSUMER BOILERS CONSIDERED IN THE DEVELOPMENT OF THE JANUARY 2016 FINAL RULE

Heat exchanger improvements.
Modulating operation.
Dampers.†
Direct vent.
Pulse combustion.*
Premix burners.
Burner derating.*
Delayed-action oil pump solenoid valve.
Electronic ignition.†
Low-pressure air-atomized oil burner.
Transformer improvements (standby mode and off mode).
Control relay for models with brushless permanent magnet motors (standby mode and off mode).*
Switching mode power supply (standby mode and off mode).

† Technology already in baseline units, so not considered further.
* Screened-out technology.

DOE seeks comment on any changes to these technology options that could affect DOE's evaluation of whether energy conservation standards need to be amended. DOE also seeks comment on whether there are any other technology options that DOE should consider in its analysis.

While DOE's request for information is not limited to the following issues, DOE is particularly interested in comment, information, and data on the following:

Issue 10: DOE seeks information on technologies that may impact the efficiency of consumer boilers as measured according to the DOE test procedure. DOE also seeks information on how these technologies may have changed since they were considered in the January 2016 final rule analysis. Specifically, DOE seeks information on the range of efficiencies or performance characteristics that are currently available for each technology option.

Issue 11: DOE seeks comment on other technology options that it should consider for inclusion in its analysis and whether these technologies would be expected to impact product features or consumer utility of consumer boilers.

DOE defines the max-tech efficiency level to represent the theoretical maximum possible efficiency if all available design options are incorporated in a model. In the January 2016 final rule, the max-tech efficiency levels for AFUE corresponded to the maximum available AFUE levels in products on the market at the time of the analysis (except for oil-fired hot water boilers for which the max-tech level was slightly below the maximum available level).[5] For standby mode and off mode energy consumption, the max-tech efficiency levels (*i.e.,* the levels with the lowest amount of energy consumption) were determined by starting with the baseline design and implementing design options based on cost-effectiveness until all available technologies were employed.[6] At the time this RFI was drafted, based on data from the CCMS database, the maximum available AFUE efficiency levels currently on the market for the subject products are as follows: 86.1 percent for non-condensing gas-fired hot water boilers, 96.8 percent for condensing gas-fired hot water boilers, 88.2 percent for oil-fired hot water boilers (which are all non-condensing), 83.4 percent for gas-fired steam boilers (which are all non-condensing), and 86.5 percent oil-fired steam boilers (which are all non-condensing). In the January 2016 final rule, DOE identified the max-tech level for standby mode and off mode consumption as follows: 9 watts for gas-fired hot water boilers; 8 watts for gas-fired steam, electric hot water, and electric steam boilers; and 11 watts for oil-fired hot water and oil-fired steam boilers. 81 FR 2320, 2345–2346 (Jan. 15, 2016).

Issue 12: DOE seeks input on whether the maximum available AFUE efficiency levels are appropriate and technologically feasible for potential consideration as possible energy conservation standards—and if not, why not. DOE also seeks feedback on the design options incorporated at max-tech efficiency levels. As part of this request, DOE also seeks information as to whether there are limitations on the use of certain combinations of design options.

Issue 13: DOE seeks input on the max-tech standby mode and off mode efficiency levels. In particular, are more-stringent (*i.e.,* lower) standby mode and off mode efficiency levels technologically feasible that are appropriate for consideration as possible energy conservation standards, and if so, what are the design options incorporated at those levels. DOE also seeks information as to whether there are limitations on the use of certain combinations of design options.

D. Economic Justification

In determining whether a proposed energy conservation standard is economically justified, DOE analyzes, among other things, the potential economic impact on consumers, manufacturers, and the Nation. DOE seeks comment on whether there are economic barriers to the adoption of more-stringent energy conservation standards for consumer boilers. DOE also seeks comment and data on any other aspects of its economic justification analysis from the January 2016 final rule that may indicate whether a more-stringent energy conservation standard would be economically justified or cost-effective.

While DOE's request for information is not limited to the following issues, DOE is particularly interested in comment, information, and data on the issues discussed in the following paragraphs.

In its analysis, DOE intends to take into account consumer prices from locations where ultra-low-NO_X gas-fired hot water and steam boilers would be required by the compliance date for any amended standards, such as the Bay Area Air Quality Management District (AQMD) (Regulation 9, Rule 6),[7]

[5] See the technical support document for the January 2016 final rule, Chapter 3, section 3.2.9 and chapter 5, section 5.4.4. Available at: *https://www.regulations.gov/document/EERE-2012-BT-STD-0047-0070.*

[6] See the technical support document for the January 2016 final rule, chapter 5, section 5.4.2. Available at: *https://www.regulations.gov/document/EERE-2012-BT-STD-0047-0070.*

[7] Bay Area Air Quality Management District, Regulation 9: Inorganic Gaseous Pollutants; Rule 6:

Continued

Sacramento Metropolitan AQMD (Rule 414),[8] San Joaquin Valley Air Pollution Control District (APCD) (Rule 4308),[9] Santa Barbara County APCD (Rule 360),[10] South Coast AQMD (Rule 1146.2),[11] and Ventura County AQMD (Rule 74–11.1).[12]

Issue 14: DOE seeks input on whether there are additional jurisdictions requiring ultra-low-NO_X gas-fired hot water and steam boilers.

In the January 2016 final rule, to determine the venting installation costs for consumer boilers, DOE considered vent categories as defined in the National Fuel Gas Code.[13] 81 FR 2320, 2359–2361 (Jan. 15, 2016). In its analysis, DOE determined that all natural draft boilers and a fraction of mechanical draft boilers would be vented as a Category I appliance (negative pressure vent system with high temperature flue gases). DOE determined that the remaining fraction of mechanical draft boilers would be vented as a Category III appliance (positive pressure vent system with high temperature flue gases). DOE determined that very few non-condensing models would be installed as a Category II appliance (negative pressure vent system with low temperature flue gases) or a Category IV appliance (positive pressure vent system with low flue gases temperatures). However, DOE determined that all condensing installations would be vented as a Category IV appliance. For non-condensing boilers, DOE accounted for both commonly-vented consumer boilers (together with a water heater) and isolated consumer boilers (separately vented). For replacements, DOE added any costs associated with updating or repairing existing flue venting including vent resizing, chimney relining, and updating of flue vent connectors. DOE also accounted for additional labor costs associated with larger boilers, replacing a larger drain pan, and potential space-constraint issues when the original boiler location is too small to accommodate the replacement boiler. For efficiency levels that include electronic ignition, power vent, or condensing design, DOE added the cost of installing an electrical outlet, a new venting system, any additional cost for condensate disposal, any additional costs for secondary and primary piping, and cost of a Y-strainer, if required for a fraction of installations.

In the January 2016 final rule, DOE also included installation adders for new construction, as well as for new owner installations for hot water gas-fired boilers. 81 FR 2320, 2361 (Jan. 15, 2016). For non-condensing boilers, the only adder would be a new metal flue vent (including a fraction with stainless steel venting) and condensate withdrawal for a fraction of category III models. For condensing gas boilers, the additional costs for new construction installations related to potential amended standards would include a new flue vent, combustion air venting for direct vent installations and accounting for a commonly-vented water heater, and condensate withdrawal.

Issue 15: DOE seeks input on issues and costs associated with venting of flue gases of boilers, in particular regarding retrofit issues related to installing a new vent system for higher-efficiency consumer boilers, disconnecting the existing consumer boiler from a non-condensing common venting system, and upgrading existing non-condensing venting (chimney relining or vent resizing). DOE also seeks input on how often and in what applications direct venting or sealed combustion are used or required.

Issue 16: DOE seeks input on issues and costs associated with condensate disposal for higher-efficiency consumer boilers, specifically how often and in what applications a condensate filter or a condensate pump is installed.

Issue 17: DOE seeks input on issues and costs associated with installing consumer boilers in multi-family buildings.

DOE measures LCC and PBP impacts of potential standard levels relative to a no-new-standards case that reflects the likely market in the absence of amended standards. Similar to the 2016 final rule, DOE plans to develop market-share efficiency data (*i.e.,* the distribution of product shipments by efficiency) for the product classes DOE is considering, for the year in which compliance with any potential amended standards would be required. For the 2016 final rule, DOE developed market shares of different consumer boiler energy efficiency levels in the no-new-standards case, using historical shipments data provided by stakeholders, data from the Air-Conditioning, Heating and Refrigeration Institute (AHRI) contractor survey, and ENERGY STAR unit shipment data for residential boilers.[14] 81 FR 2320, 2364–2366 (Jan. 15, 2016). If DOE determines that a rulemaking is necessary, DOE intends to use the most recent data available from these sources, together with any more current data that may be provided by stakeholders. Also similar to the January 2016 final rule, because these data may not cover all of the energy efficiency levels under consideration, DOE intends to use most the recent data on the number of water heater models at different energy efficiency levels, as reported in DOE's compliance certification database,[15] the AHRI directory of certified product performance,[16] the California Energy Commission appliance efficiency database,[17] and the ENERGY STAR certified boiler directory.[18]

Issue 18: DOE requests shipments data for consumer boilers, broken down by product class, that show current

Nitrogen Oxides Emissions from Natural Gas-Fired Boilers and Water Heaters (Available at: *https://ww3.arb.ca.gov/drdb/ba/curhtml/r9-6.pdf*) (Last accessed October 30, 2019).

[8] Sacramento Metropolitan Air Quality Management District, Rule 414: Water Heaters, Boilers and Process Heaters Rated Less Than 1,000,000 BTU PER HOUR Adopted 08–01–96 (Amended 03–25–10) (Available at: *http://www.airquality.org/ProgramCoordination/Documents/rule414.pdf*) (Last accessed October 30, 2019).

[9] San Joaquin Valley Air Pollution Control District, Rule 4308: Boilers, Steam Generators, and Process Heaters—0.075 MMBtu/hr to less than 2.0 MMBtu/hr (Adopted October 20, 2005, amended December 17, 2009, Amended November 14, 2013) (Available at: *https://www.valleyair.org/rules/currntrules/03-4308_CleanRule.pdf*) (Last accessed October 30, 2019).

[10] Santa Barbara County Air Pollution Control District, Rule 360: Boilers, Steam Generators, and Process Heaters (0.075–2 MMBtu/hr) (Adopted 10/17/2002, revised 3/15/2018) (Available at: *https://www.ourair.org/wp-content/uploads/rule360.pdf*) (Last accessed October 30, 2019).

[11] South Coast Air Quality Management District, Rule 1146.2: Emissions of Oxides of Nitrogen from Large Water Heaters and Small Boilers and Process Heaters (Adopted January 9, 1998, amended January 7, 2005, amended May 5, 2006, amended December 7, 2018) (Available at: *http://www.aqmd.gov/docs/default-source/rule-book/reg-xi/rule-1146-2.pdf?sfvrsn=17*) (Last accessed October 30, 2019).

[12] Ventura County Air Quality Management District, Rule 74–11.1: Large Water Heaters and Small Boilers (Adopted 9/14/99, revised 9/11/12) (Available at: *http://vcapcd.org/Rulebook/Reg4/RULE%2074.11.1.pdf*) (Last accessed October 30, 2019).

[13] Available at: *https://catalog.nfpa.org/NFPA-54ANSI-Z2231-National-Fuel-Gas-Code-P1184.aspx* (Last accessed March 5, 2021).

[14] ENERGY STAR, Unit Shipments data (Available at: *http://www.energystar.gov/index.cfm?c=partners.unit_shipment_data*) (Last accessed October 30, 2019).

[15] U.S. Department of Energy, Compliance Certification Database (Available at: *https://www.regulations.doe.gov/certification-data/#q=Product_Group_s%3A**) (Last accessed October 30, 2019).

[16] Air-Conditioning Heating and Refrigeration Institute, Directory of Certified Product Performance for Residential Boilers (Available at: *https://www.ahridirectory.org/NewSearch?programId=25&searchTypeId=3*) (Last accessed October 30, 2019).

[17] California Energy Commission (CEC), Appliance Efficiency Database. (Available at: *https://cacertappliances.energy.ca.gov/Pages/ApplianceSearch.aspx*) (Last accessed October 30, 2019).

[18] ENERGY STAR, ENERGY STAR Certified Boilers Directory (Available at: *https://www.energystar.gov/productfinder/product/certified-boilers/results*) (Last accessed October 30, 2019).

market shares by efficiency level. DOE also seeks input on similar historic data from 2016–2020.

Issue 19: DOE also requests information on expected future trends in efficiency for consumer boiler product classes, including the relative market shares of condensing versus non-condensing products in the market for gas-fired and oil-fired hot water boilers in the absence of amended efficiency standards.

Issue 20: DOE requests 2016–2020 data on the fraction of sales in the residential and commercial sector for consumer boilers.

Issue 21: DOE requests comment on the anticipated future market share of higher-efficiency products, such as condensing gas-fired and oil-fired hot water boilers, as compared to less-efficient products for each consumer boiler product class.

III. Submission of Comments

DOE invites all interested parties to submit in writing by the date specified under the **DATES** heading of this document, comments and information on matters addressed in this RFI and on other matters relevant to DOE's early assessment of whether more-stringent energy conservation standards are warranted for consumer boilers.

Submitting comments via http://www.regulations.gov. The *http://www.regulations.gov* web page requires you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. If this instruction is followed, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *http://www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through *http://www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *http://www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *http://www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email. Comments and documents submitted via email also will be posted to *http://www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. Telefacsimiles (faxes) will not be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English, and free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: One copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

DOE considers public participation to be a very important part of the process for developing test procedures and energy conservation standards. DOE actively encourages the participation and interaction of the public during the comment period in each stage of this process. Interactions with and between members of the public provide a balanced discussion of the issues and assist DOE in the process. Anyone who wishes to be added to the DOE mailing list to receive future notices and information about this process should contact Appliance and Equipment Standards Program staff at (202) 287–1445 or via email at *ApplianceStandardsQuestions@ee.doe.gov.*

Signing Authority

This document of the Department of Energy was signed on March 18, 2021, by Kelly Speakes-Backman, Principal Deputy Assistant Secretary and Acting Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on March 19, 2021.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2021–06071 Filed 3–24–21; 8:45 am]

BILLING CODE 6450–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Chapter II

[Release Nos. 33–10934; 34–91344; 39–2537; IA–5698; IC–34225; File No. S7–02–21]

List of Rules To Be Reviewed Pursuant to the Regulatory Flexibility Act

AGENCY: Securities and Exchange Commission.

ACTION: Publication of list of rules scheduled for review.

SUMMARY: The Securities and Exchange Commission is publishing a list of rules to be reviewed pursuant to Section 610 of the Regulatory Flexibility Act. The list is published to provide the public with notice that these rules are scheduled for review by the agency and to invite public comment on whether the rules should be continued without change, or should be amended or rescinded to minimize any significant economic impact of the rules upon a substantial number of small entities.

DATES: Comments should be submitted by April 26, 2021.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/submitcomments.htm*); or

Paper Comments

- Send paper comments to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number S7–02–21. We will post all submitted comments, requests, other submissions and other materials on our internet website (*http://www.sec.gov/rules/other.shtml*). Typically, comments are also available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Due to pandemic conditions, however, access to the Commission's public reference room is not permitted at this time. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Leila Bham, Senior Special Counsel, Office of the General Counsel, 202–551–5532.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (''RFA''), codified at 5 U.S.C. 601–612, requires an agency to review its rules that have a significant economic impact upon a substantial number of small entities within ten years of the publication of such rules as final rules. 5 U.S.C. 610(a). The purpose of the review is ''to determine whether such rules should be continued without change, or should be amended or rescinded . . . to minimize any significant economic impact of the rules upon a substantial number of such small entities.'' 5 U.S.C. 610(a). The RFA sets forth specific considerations that must be addressed in the review of each rule:

- The continued need for the rule;
- the nature of complaints or comments received concerning the rule from the public;
- the complexity of the rule;
- the extent to which the rule overlaps, duplicates or conflicts with other federal rules, and, to the extent feasible, with state and local governmental rules; and
- the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule. 5 U.S.C. 610(b).

The list below includes rules adopted in 2011 that may have a significant economic impact on a substantial number of small entities (but excludes rules that have been substantially changed since adoption, rules that are minor amendments to previously adopted rules, and rules that are ministerial, procedural, or technical in nature). Where the Commission has previously made a determination of a rule's impact on small businesses, the determination is noted on the list.

The Commission particularly solicits public comment on whether the rules listed below affect small businesses in new or different ways than when they were first adopted. The rules and forms listed below are scheduled for review by staff of the Commission.

Title: Mine Safety Disclosure.

Citation: 17 CFR 229.104, 17 CFR 229.601, 17 CFR 249.308, 17 CFR 249.308a, 17 CFR 249.310, 17 CFR 249.220f, 17 CFR 249.240f, and 17 CFR 239.13.

Authority: 15 U.S.C. 77g, 77j, 77s(a), 78*l,* 78m, 78*o,* 78w; and Section 1503 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'').

Description: The Commission adopted rule amendments to implement Section 1503 of the Dodd-Frank Act. Section 1503(a) of the Dodd-Frank Act requires issuers that are operators, or that have a subsidiary that is an operator, of a coal or other mine to disclose in their periodic reports filed with the Commission information regarding specified health and safety violations, orders and citations, related assessments and legal actions, and mining-related fatalities. Section 1503(b) of the Dodd-Frank Act mandates the filing of a Form 8–K disclosing the receipt of certain orders and notices from the Mine Safety and Health Administration.

Prior RFA Analysis: When the Commission adopted the rule amendments on December 21, 2011, it published a Final Regulatory Flexibility Analysis in the adopting release, Release No. 33–9286, available at: *https://www.federalregister.gov/documents/2011/12/28/2011-33148/mine-safety-disclosure.* The Commission received no comments on the Initial Regulatory Flexibility Analysis published in the proposing release, Release No. 33–9164 (Dec. 15, 2010), available at: *https://www.federalregister.gov/documents/2010/12/22/2010-31941/mine-safety-disclosure.*

* * * * *

Title: Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF; Joint Final Rule.

Citation: 17 CFR 275.204(b)–1 and 17 CFR 279.9.

Authority: 15 U.S.C. 80b–4 and 80b–11.

Description: The Commodity Futures Trading Commission and the Securities and Exchange Commission adopted new rules under the Commodity Exchange Act and the Investment Advisers Act of 1940 (''Advisers Act'') to implement provisions of Title IV of the Dodd-Frank Act. The rule adopted by the SEC, Rule 204(b)–1, requires investment advisers registered with the SEC that advise one or more private funds and have at least $150 million in private fund assets under management to file Form PF with the SEC. Advisers must file Form PF electronically, on a confidential basis. The information contained in Form PF

was designed, among other things, to assist the Financial Stability Oversight Council in its assessment of systemic risk in the U.S. financial system.

Prior RFA Analysis: When the Commission adopted this rule on October 31, 2011, it published a Final Regulatory Flexibility Analysis in the adopting release, Release No. IA–3308, available at: *https://www.federalregister.gov/documents/2011/11/16/2011-28549/reporting-by-investment-advisers-to-private-funds-and-certain-commodity-pool-operators-and-commodity.* The Commission received no comments on its Initial Regulatory Flexibility Analysis published in the proposing release, Release No. IA–3145 (Jan. 26, 2011), available at: *https://www.sec.gov/rules/proposed/2011/ia-3145fr.pdf.*

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Title: Rules Implementing Amendments to the Investment Advisers Act of 1940.

Citation: 17 CFR 275.0–7, 17 CFR 275.203–1, 17 CFR 275.203A–1, 17 CFR 275.203A–2, 17 CFR 275.203A–3, 17 CFR 275.203A–5, 17 CFR 275.204–1, 17 CFR 275.204–2, 17 CFR 275.204–4, 17 CFR 275.206(4)–5, 17 CFR 275.222–1, 17 CFR 275.222–2, 17 CFR 279.1, 17 CFR 279.3, and 17 CFR 279.4.

Authority: 15 U.S.C. 77s(a), 77sss(a), 78a–37(a), 78w(a), 78bb(e)(2), 80b–3(c)(1), 80b–3A(a)(2)(B)(ii), 80b–3A(c), 80b–4, 80b–6(4), 80b–6A, and 80b–11(a).

Description: The Commission adopted new rules and rule amendments under the Advisers Act to implement provisions of the Dodd-Frank Act. These rules and rule amendments were designed to give effect to provisions of Title IV of the Dodd-Frank Act that, among other things, increase the statutory threshold for registration by investment advisers with the Commission, require advisers to hedge funds and other private funds to register with the Commission, and require reporting by certain investment advisers that are exempt from registration. In addition, the Commission adopted rule amendments, including amendments to the Commission's pay to play rule, that address a number of other changes made by the Dodd-Frank Act.

Prior RFA Analysis: When the Commission adopted these rules and rule amendments on June 22, 2011, it published a Final Regulatory Flexibility Analysis in the adopting release, Release No. IA–3221, available at: *https://www.federalregister.gov/documents/2011/07/19/2011-16318/rules-implementing-amendments-to-the-investment-advisers-act-of-1940.* The Commission received no comments on its Initial Regulatory Flexibility Analysis published in the proposing release, Release No. IA–3110 (Nov. 19, 2010), available at: *https://www.federalregister.gov/documents/2010/12/10/2010-29956/rules-implementing-amendments-to-the-investment-advisers-act-of-1940.*

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Title: Family Offices.

Citation: 17 CFR 275.202(a)(11)(G)–1.

Authority: 15 U.S.C. 80b–2(a)(11)(G) and 80b–6A.

Description: The Commission adopted a rule to define ''family offices'' that are excluded from the definition of an investment adviser under the Advisers Act and are thus not subject to regulation under the Advisers Act.

Prior RFA Analysis: When the Commission adopted this rule on June 22, 2011, it published a Final Regulatory Flexibility Analysis in the adopting release, Release No. IA–3220, available at: *https://www.federalregister.gov/documents/2011/06/29/2011-16117/family-offices.* The Commission received no comments on its Initial Regulatory Flexibility Analysis published in the proposing release, Release No. IA–3098 (Oct. 12, 2010), available at: *https://www.federalregister.gov/documents/2010/10/18/2010-26086/family-office.*

* * * * *

Title: Shareholder Approval of Executive Compensation and Golden Parachute Compensation.

Citation: 17 CFR 240.14a–21, 17 CFR 240.14a–4, 17 CFR 240.14a–6, 17 CFR 240.14a–8, 17 CFR 240.14a–101, 17 CFR 240.14c–101, 17 CFR 229.402, 17 CFR 229.1011, 17 CFR 240.13e–100, 17 CFR 240.14d–100, 17 CFR 240.14d–101, and 17 CFR 249.308.

Authority: 15 U.S.C. 77c(b), 77f, 77g, 77j, 77s(a), 78m, 78n(a), 78n–1, 78w(a), and 78mm, and Section 951 of the Dodd-Frank Act.

Description: The Commission adopted rule amendments to implement the provisions of the Dodd-Frank Act relating to shareholder approval of executive compensation and ''golden parachute'' compensation arrangements. Section 951 of the Dodd-Frank Act amended the Securities Exchange Act of 1934 by adding Section 14A, which requires companies to conduct a separate shareholder advisory vote to approve the compensation of executives, as disclosed pursuant to Item 402 of Regulation S–K or any successor to that item. Section 14A also requires companies to conduct a separate shareholder advisory vote to determine how often an issuer will conduct a shareholder advisory vote on executive compensation. In addition, Section 14A requires companies soliciting votes to approve merger or acquisition transactions to provide disclosure of certain ''golden parachute'' compensation arrangements and, in certain circumstances, to conduct a separate shareholder advisory vote to approve the golden parachute compensation arrangements.

Prior RFA Analysis: When the Commission adopted the rule amendments on January 25, 2011, it published a Final Regulatory Flexibility Analysis in the adopting release, Release No. 33–9178, available at: *https://www.federalregister.gov/documents/2011/02/02/2011-1971/shareholder-approval-of-executive-compensation-and-golden-parachute-compensation.* The Commission received no comments on its Initial Regulatory Flexibility Analysis published in the proposing release, Release No. 33–9153 (Oct. 18, 2010), available at: *https://www.federalregister.gov/documents/2010/10/28/2010-26535/shareholder-approval-of-executive-compensation-and-golden-parachute-compensation.*

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By the Commission.

Dated: March 17, 2021.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–05928 Filed 3–24–21; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 10

Wage and Hour Division

29 CFR Parts 516, 531, 578, 579, and 580

RIN 1235–AA21

Tip Regulations Under the Fair Labor Standards Act (FLSA); Delay of Effective Date

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Proposed delay of effective date.

SUMMARY: On February 26, 2021, the Department of Labor (Department) published a final rule (Delay Rule) extending until April 30, 2021, the effective date of the rule titled Tip Regulations Under the Fair Labor Standards Act (2020 Tip final rule) in order to allow the Department the

opportunity to review issues of law, policy, and fact raised by the 2020 Tip final rule before it takes effect. This notice of proposed rulemaking (NPRM) proposes to further extend the effective date of three portions of the 2020 Tip final rule in order to complete a separate rulemaking, published elsewhere in this issue of the **Federal Register**, and to provide the Department additional time to consider whether to withdraw and repropose that portion of the 2020 Tip final rule addressing the application of the FLSA's tip credit provision to tipped employees who perform both tipped and non-tipped duties. The proposed 8-month delay, until December 31, 2021, would allow the Department to finalize the separate rulemaking, which would include, inter alia, a 60-day comment period and at least a 30-day delay between publication and the rule's effective date.

DATES: The amendments to 29 CFR 10.28(b)(2), 531.56(e), 578.1, 578.3, 578.4, 579.1, 579.2, 580.2, 580.3, 580.12, and 580.18, published at 85 FR 86756 (December 30, 2020), and delayed at 86 FR 11632 (February 26, 2021) until April 30, 2021, are proposed to be further delayed until December 31, 2021. Submit written comments on or before April 14, 2021.

ADDRESSES: You may submit comments, identified by Regulatory Information Number (RIN) 1235–AA21, by either of the following methods: *Electronic Comments:* Submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* Follow the instructions for submitting comments. *Mail:* Address written submissions to 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. *Instructions:* Please submit only one copy of your comments by only one method. Commenters submitting file attachments on *https://www.regulations.gov* are advised that uploading text-recognized documents—*i.e.,* documents in a native file format or documents which have undergone optical character recognition (OCR)—enable staff at the Department to more easily search and retrieve specific content included in your comment for consideration. Anyone who submits a comment (including duplicate comments) should understand and expect that the comment will become a matter of public record and will be posted without change to *https://www.regulations.gov,* including any personal information provided. The Department will post comments gathered and submitted by a third-party organization as a group under a single document ID number on *https://www.regulations.gov.* All comments must be received by 11:59 p.m. on April 14, 2021 for consideration in this proposed delay of effective date. The Department strongly recommends that commenters submit their comments electronically via *https://www.regulations.gov* to ensure timely receipt prior to the close of the comment period, as the Department continues to experience delays in the receipt of mail. Submit only one copy of your comments by only one method. *Docket:* For access to the docket to read background documents or comments, go to the Federal eRulemaking Portal at *https://www.regulations.gov.*

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 proposal 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.

SUPPLEMENTARY INFORMATION:

I. Background

In the Consolidated Appropriations Act of 2018 (CAA), Congress amended section 3(m) of the FLSA to prohibit employers from keeping tips received by employees, regardless of whether the employers take a tip credit under section 3(m). On December 30, 2020, the Department published the 2020 Tip final rule in the **Federal Register** to address these amendments. *See* 85 FR 86756. The 2020 Tip final rule would also codify the Wage and Hour Division's (WHD) guidance, unrelated to the CAA amendments, regarding the application of the FLSA's tip credit provision to tipped employees who perform tipped and non-tipped duties. *See id.* The original effective date of the 2020 Tip final rule was March 1, 2021. *See id.* A legal challenge to the 2020 Tip final rule was filed on January 19, 2021 and is pending in the United States District Court for the Eastern District of Pennsylvania.[1]

On February 26, 2021, after engaging in notice-and-comment rulemaking and considering the comments submitted about a proposed effective date delay (86 FR 8325 (February 5, 2021)), the Department delayed the effective date for the 2020 Tip final rule by 60 days to April 30, 2021, in order to provide the Department additional opportunity to review and consider questions of law, policy, and fact raised by the rule. *See* 86 FR 11632 (February 26, 2021). The 60-day delay of the 2020 Tip final rule's effective date was sought pursuant to 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.'' *See* 86 FR 7424. The Department explained in the Delay Rule that it would use the delay to consider, among other things, whether the 2020 Tip final rule properly implements the CAA amendments to section 3(m) of the FLSA, in particular, the incorporation of the CAA's language regarding civil money penalties (CMPs) for violations of section 3(m)(2)(B) of the FLSA; whether the 2020 Tip final rule revisions to portions of the CMP regulations on willful violations were appropriate; whether the 2020 Tip final rule adequately considered the possible costs, benefits, and transfers between employers and employees related to the codification of guidance on applying the tip credit to tipped employees who perform tipped and non-tipped duties; and whether the 2020 Tip final rule otherwise effectuates the CAA amendments to the FLSA. *See id.* The Department explained that allowing the 2020 Tip final rule to go into effect while the Department reviewed these issues could lead to confusion among workers and employers in the event that the Department proposed to revise the 2020 Tip final rule after its review; delaying the 2020 Tip final rule would avoid such confusion. *Id.*

II. Proposed Second Delay of Effective Date for Three Portions of the 2020 Tip Final Rule

In this NPRM, the Department is proposing to delay the effective date of three portions of the 2020 Tip final rule for an additional 8 months, through December 31, 2021. Specifically, the Department is proposing to delay the two portions of the 2020 Tip final rule which address the assessment of CMPs, and to delay the portion of the 2020 Tip final rule that addresses the application of the FLSA tip credit to tipped employees who perform tipped and non-tipped duties. These three portions of the 2020 Tip final rule encompass those parts of the rule that are being challenged under the Administrative Procedure Act (APA) in the January 19, 2021 complaint pending in the United

[1] *Commonwealth of Pennsylvania et al.* v. *Scalia et al.,* No. 2:21–cv–00258 (E.D. Pa., Jan. 19, 2021).

States District Court for the Eastern District of Pennsylvania (''*Pennsylvania* complaint'').[2] The Department seeks comment on its proposed further delay of the effective date of these three portions of the 2020 Tip final rule. To further aid its review, the Department also seeks comments on these three portions of the 2020 Tip final rule, and in particular, on the merits of withdrawing or retaining the portion of the rule that amends the Department's dual jobs regulations to address the application of the FLSA tip credit to tipped employees who perform both tipped and non-tipped duties.

In another NPRM published elsewhere in this issue of the **Federal Register** the Department is proposing to withdraw and revise the two portions of the 2020 Tip final rule which address the assessment of CMPs under the FLSA: The regulations which address the statutory provision establishing CMPs for violations of section 3(m)(2)(B) of the Act, §§ 578.3(a)–(b), 578.4, 579.1, 580.2, 580.3, and 580.12, and 580.18(b)(3), and the portion of its CMP regulations which address when a certain violation is ''willful,'' §§ 578.3(c) and 579.2.[3]

The Department is not proposing to further extend the remaining provisions of the 2020 Tip final rule not addressed in this NPRM. The remainder of the 2020 Tip final rule—consisting of those portions addressing the keeping of tips and tip pooling,[4] recordkeeping,[5] and those portions making other minor changes to update the regulations to reflect the new statutory language and citations added by the CAA amendments and clarify other references consistent with the statutory text[6]—will become effective upon the expiration of the first effective date extension, which extended the effective date of the 2020 Tip final rule through April 30, 2021.

III. Basis for Proposed Second Delay

The Department is proposing this second delay of the effective date for three portions of the 2020 Tip final rule so that it has sufficient time to engage in a comprehensive review of these parts of the 2020 tip final rule, and to take further action as needed to complete its review. The Department believes that review of these three portions of the 2020 Tip final rule before they go into effect is particularly important given that the *Pennsylvania* litigants and individuals who submitted comments on the Department's Delay Rule raised significant substantive and procedural concerns regarding these three portions of the 2020 Tip final rule. The Department has proposed to withdraw and repropose two portions of the 2020 Tip final rule relating to CMPs to better align them with the FLSA and Supreme Court caselaw. Allowing these provisions to go into effect could lead to practices the Department ultimately determines to be inconsistent with the FLSA and judicial opinions. In addition to causing confusion, this could result in increased compliance costs, and potentially disruptive changes in employment practices in the event that the Department withdraws and revises these portions of the 2020 Tip final rule.

The first portion of the 2020 Tip final rule that the Department is proposing to further delay addresses the assessment of CMPs for violations of section 3(m)(2)(B) of the FLSA, which prohibits employers, including managers and supervisors, from ''keeping'' tips. The CAA amended section 16(e)(2) of the FLSA to provide for the assessment of CMPs for violations of section 3(m)(2)(B) ''as the Secretary determines appropriate[.]'' Notwithstanding this statutory grant of discretion, the 2020 Tip final rule would limit the Secretary's ability to assess CMPs for violations of 3(m)(2)(B) to those instances where the violation is ''repeated'' or ''willful.'' *See, e.g.,* 85 FR 86772–73. The *Pennsylvania* litigants argue that this portion of the 2020 Tip final rule addressing CMP assessments for violations of section 3(m)(2)(B) is inconsistent with the plain language of the statute and Congressional intent, noting that, unlike in the case of CMPs for minimum wage and overtime violations, ''Congress did not make the imposition of civil money penalties for violations of section 3(m)(2)(B) of the Act contingent upon a finding of willfulness.''[7] Stakeholders who submitted comments in support of the Department's proposal to delay the effective date of the 2020 Tip final rule for 60 days expressed this same concern, similarly noting that section 16(e)(2) of the FLSA does not require a finding of willfulness to assess a CMP for a violation of section 3(m)(2)(B). *See, e.g.,* National Employment Law Project (NELP); National Women's Law Center (NWLC); NETWORK Lobby for Catholic Social Justice. Upon review of the *Pennsylvania* complaint and the comments received regarding its Delay Rule, the Department is concerned that the 2020 Tip Final rule unlawfully circumscribes its discretion to issue CMPs for section 3(m)(2)(B) violations. Accordingly, as explained in the NPRM published separately in this edition of the **Federal Register**, the Department is proposing to withdraw and repropose this part of the 2020 Tip final rule. To avoid codifying a limitation on the Department's ability to assess CMPs that may lack a basis in law, the Department believes that it may be necessary to delay that portion of the 2020 Tip final rule regarding CMPs for section 3(m)(2)(B) while it completes this rulemaking.

The second portion of the 2020 Tip final rule that the Department is proposing to further delay addresses those parts of the Department's FLSA regulations which address when a violation of that Act is ''willful.'' The Department's definition of a ''willful'' violation in §§ 578.3(c) and 579.2 of its regulations is based on the Supreme Court's opinion in *McLaughlin* v. *Richland Shoe Co.,* 486 U.S. 128, 133 (1988), which held that a violation is willful if the employer ''knew or showed reckless disregard'' for whether its conduct was prohibited by the FLSA. Among the concerns raised by the *Pennsylvania* litigants regarding this portion of the 2020 Tip final rule is the rule's removal of language regarding the meaning of ''reckless disregard'' from these regulations.[8] According to the *Pennsylvania* litigants, this and other changes to these regulations ''contradict the Supreme Court's long-established

[2] *See Commonwealth of Pennsylvania et al.* v. *Scalia et al.,* No. 2:21–cv–00258, pp. 42–43 (E.D. Pa., Jan. 19, 2021).

[3] The sections of the 2020 Tip final rule related to CMPs that the Department is proposing to withdraw and revise are in §§ 578.3, 578.4, 579.1, 579.2, 580.2, 580.3, 580.12 and 580.18 of part 29; the third portion of the 2020 Tip final rule that the Department is continuing to consider are those regulations related to the tip credit's application to tipped employees who perform tipped and non-tipped duties, §§ 10.28(b) and 531.56(e) of part 29. The Department is not proposing to withdraw and reproprose the 2020 Tip final rule's changes to the Department's CMP regulation at § 578.1, which only generally references tip CMPs. To avoid confusion for the regulated community, however, the Department is delaying the effective date of the entire portion of its CMP regulations addressed in the 2020 Tip final rule. The Department's 2018 Field Assistance Bulletin explains the interim procedures that the Department is following in assessing tip CMPs. *See* Field Assistance Bulletin 2018–3 (Apr. 6, 2018).

[4] 29 CFR 10.28(c), (e)–(f); 531.50 through 531.52, 531.54.

[5] 29 CFR 516.28(b).

[6] 29 CFR 531.50, 531.51, 531.52, 531.55, 531.56(a), 531.56(c)–(d), 531.59, and 531.60.

[7] *See Commonwealth of Pennsylvania et al.* v. *Scalia et al.,* No. 2:21–cv–00258, p. 98 (E.D. Pa., Jan. 19, 2021).

[8] *See Commonwealth of Pennsylvania et al.* v. *Scalia et al.,* No. 2:21–cv–00258, pp. 23–24; *see also* p. 94 (E.D. Pa., Jan. 19, 2021) (''The Final Rule also removes an employer's failure to inquire further into whether its conduct was in compliance with the Act from the Department's description of willfulness.'')

definition of willfulness.'' [9] In its comment on the proposed Delay Rule, NELP similarly argued that the 2020 Tip final rule's revisions addressing when a violation is ''willful'' ''do[ ] not comport with Congress's intent or with longstanding U.S. Supreme Court precedent and its progeny,'' including *McLaughlin* v. *Richland Shoe.*[10] Following its review of the *Pennsylvania* complaint and comments on the proposed Delay Rule, the Department is proposing in an NPRM published separately in this edition of the **Federal Register** to withdraw and repropose this part of the 2020 Tip final rule to make changes to the portion of the rule regarding the meaning of ''willfulness'' under the Department's CMP regulations; these changes include reinserting language addressing the meaning of reckless disregard. The Department believes that delaying the effective date of the portion of the 2020 Tip final rule while it completes rulemaking on this issue is necessary to ensure that the new regulations comport with the Supreme Court's decision in *Richland Shoe* and will prevent confusion and uncertainty among the regulated community regarding what constitutes a ''willful'' violation.

The third portion of the 2020 Tip final rule that the Department is proposing to further delay addresses the amendment of its ''dual jobs'' regulation to address when an employer can continue to take an FLSA tip credit for an employee who is engaged in a tipped occupation and performs both tipped and non-tipped duties, *see* § 531.56(e).[11] The *Pennsylvania* litigants and commenters on the Department's proposal to delay the 2020 Tip final rule for 60 days raised significant substantive and procedural concerns regarding this portion of the 2020 Tip final rule. Regarding the economic analysis, the *Pennsylvania* litigants argue that the Department ''failed to consider or quantify the effect'' that this portion of the rule ''would have on workers and their families'' and ''disregarded'' the data and analysis provided by a commenter on the NPRM for the 2020 Tip final rule, the Economic Policy Institute (EPI).[12] In its comment regarding the Delay Rule, EPI stated that the final rule's response to its analysis and its qualitative discussion of benefits and transfers associated with this portion of the rule ''is not sufficient and delaying the effective date of the rule is highly appropriate to give the Department time to reassess the rule.'' This concern strongly suggests that the Department should revisit the economic analysis regarding the portion of the 2020 Tip final rule addressing the application of the FLSA tip credit to tipped employees who perform tipped and non-tipped work, and calls into question whether this portion of the rule would withstand a challenge under the Administrative Procedure Act claiming that the Department's failure to include a quantitative economic analysis for this portion of the rule was arbitrary and capricious.

Regarding the substance of this portion of the rule, the *Pennsylvania* litigants argue that the 2020 Tip final rule's new test for when an employer can take a tip credit for a tipped employee who performs non-tipped, related duties—limiting the tip credit to non-tipped related duties performed ''contemporaneously with'' or for a ''reasonable time before or after tipped duties—relies on ''ill-defined'' terms and fails to ''provide any guidance as to when—or whether—a worker could be deemed a dual employee during a shift or how long before or after a shift constitutes a reasonable time.'' [13] District courts have also found these terms in the Department's current guidance, which the 2020 Tip final rule largely codified, to be unclear and have refused to follow it.[14] Additionally, the *Pennsylvania* litigants challenged the 2020 Tip final rule's use of the Occupational Information Network (O*NET) to define ''related duties,'' which, according to their complaint, authorizes employers to engage in ''conduct that has been prohibited under the FLSA for decades.'' [15] Commenters who supported the proposed Delay Rule argued that the 2020 Tip final rule's new test for when an employer can take a tip credit for a tipped employee who performs non-tipped, related duties ''does not comply with the CAA Amendments,'' since it ''permits employers to take tips that belong to employees.'' *See* NELP; *see also* NWLC; National Employment Lawyers Association (NELA). These commenters also asserted that most courts that have considered the Department's current guidance on this issue, which the 2020 Tip final rule largely codified, have not afforded it any deference.[16]

These arguments by the *Pennsylvania* litigants and commenters on the proposed Delay Rule further call into question whether this portion of the rulemaking can withstand judicial review, as well as whether the 2020 Tip final rule accurately identifies when a tipped employee who is performing non-tipped duties is still engaged in a tipped occupation under the auspices of

[9] *Id.*

[10] NELP specifically argued that the 2020 Tip final rule's revisions to the regulations regarding the meaning of ''willfulness'' ''make[ ] it easier for employers to either ignore compliance advice from the Department, or to fail to pursue inquiry regarding compliance with minimum wage and overtime protections.''

[11] *See also* § 10.28(b) (incorporating the same guidance on when an employer can continue to take an FLSA tip credit for an employee who is engaged in a tipped occupation and performs both tipped and non-tipped duties in the Department's regulations relating to Executive Order 13658, ''Establishing a Minimum Wage for Contractors'').

[12] *See Commonwealth of Pennsylvania et al.* v. *Scalia et al.,* No. 2:21–cv–00258, pp. 103, 109 (E.D. Pa., Jan. 19, 2021)

[13] *Id.* at 128, 131; *see also id.* at p. 129 (''The Department never provides a precise definition of 'contemporaneous,' simply stating that it means 'during the same time as'' before making the caveat that it ''does not necessarily mean that the employee must perform tipped and non-tipped duties at the exact same moment in time.' '')

[14] The preamble to the 2020 Tip final rule lists many of these decisions. *See* 85 FR 86770–71. In *Belt* v. *P.F. Chang's China Bistro, Inc.,* 401 F. Supp. 3d 512, 533 (E.D. Pa. 2019), for example, the district court held that the dual jobs guidance was unreasonable because ''the temporal limitations it imposes on untipped related work conflict with'' certain language (''occasionally,'' ''part of [the] time'') that remains in ''the text of the Dual Jobs regulation.'' *See also Berger* v. *Perry's Steakhouse of Ill., LLC,* 430 F. Supp. 3d 397, 411–12 (N.D. Ill. 2019) (same). Another district court stated that 2018 DOL guidance ''inserts new uncertainty and ambiguity into the analysis'' and noted that the Department ''fails to explain how long a 'reasonable time' would be, or what is meant by performing non-tipped work 'contemporaneously' with tipped work.'' *Flores* v. *HMS Host Corp.,* No. 18–3312, 2019 WL 5454647 (D. Md. Oct. 23, 2019).

[15] *See Commonwealth of Pennsylvania et al.* v. *Scalia et al.,* No. 2:21–cv–00258, p. 115 (E.D. Pa., Jan. 19, 2021) (''Because it seeks to describe the work world as it is, not as it should be, O*NET cannot and does not account for FLSA violations in industries known to have high violation rates like the restaurant industry; therefore, using it to determine related duties will sanction conduct that has been prohibited under the FLSA for decades.''); *id.* at p. 117 (''O*NET tasks for waiters and waitresses include 'cleaning duties, such as sweeping and mopping floors, vacuuming carpet, tidying up server station, taking out trash, or checking and cleaning bathrooms'—when from 1988 until 2018, the Department's Field Operations Handbook specified as an example, 'maintenance work (*e.g.,* cleaning bathrooms and washing windows) [is] not related to the tipped occupation of a server; such jobs are non-tipped occupations.' ''). Some district courts have levied this same criticism against the use of O*NET to perform this test. *See, e.g., O'Neal* v. *Denn-Ohio, LLC,* No. 19–280, 2020 WL 210801 at *7 (N.D. Ohio Jan. 14, 2020) (declining to defer to the 2018 guidance in part because O*NET relies in part on data obtained by asking employees which tasks their employers assign them to perform, which ''would allow employers to ''re-write the regulation without going through the normal rule-making process,'' and is therefore unreasonable).

[16] In support of this assertion, commenters cited a variety of cases, including *Belt* v. *P.F. Chang's China Bistro, Inc.,* 401 F. Supp. 3d 512, 533 (E.D. Pa. 2019), *Spencer* v. *Macado's, Inc.,* 399 F. Supp. 3d 545, 553 (W.D. Va. 2019), and *Cope* v. *Let's Eat Out, Inc.,* 354 F. Supp. 3d 976, 986 (W.D. Mo. 2019). *See* NELP; *see also* NETWORK, Restaurant Opportunities Center United, NELA (cross-referencing NELP's citations to these cases).

the statute, such that an employer can continue to take a tip credit for the time the tipped employee spends on such non-tipped work. The Department's test for determining when a tipped employee can continue to be paid with a tip credit when he or she is not performing tip-generating work has always been contained in subregulatory guidance. Given the serious concerns noted with this portion of the rulemaking, the Department believes that delaying the effective date of this portion of the 2020 Tip final rule so that it can fully consider the merits of these claims and to consider whether to engage in further rulemaking on this issue may be prudent before it codifies such a test for the first time into its regulations. For example, employers have already adjusted their practices to accommodate the Department's 2019 guidance addressing when they can continue to take a tip credit for tipped employees who perform non-tipped work that is related to their tipped occupation. It would be disruptive to these employers to adjust their practices to accommodate the new test articulated in the 2020 Tip final rule, and then have to readjust if that test does not survive judicial scrutiny or if the Department decides to propose a new test. Delaying the effective date while the Department undertakes its review, instead of allowing these portions of the rule to be implemented, addresses this concern and before employers change their practices to accommodate a new test that ultimately may not survive judicial scrutiny.

The Department's ongoing review of these three portions of the 2020 Tip final rule has identified similar concerns to those noted above, including potential legal issues and the sufficiency of the economic analysis for the third portion of the rule. Accordingly, the Department believes that this proposed delay may best inform the Department's comprehensive review of these parts of the 2020 Tip final rule and consideration of alternate paths, and provide it a meaningful opportunity to do so, which is of paramount importance given the pending challenge to these parts of the rule in the *Pennsylvania* litigation.

The Department believes that the proposed delay of these three portions of the 2020 Tip final rule through December 31, 2021, is reasonable given the numerous issues of fact, law, and policy raised by these portions of the 2020 Tip final rule. In light of the claims raised in the *Pennsylvania* litigation and the comments received on the Delay NPRM, which highlight very serious concerns with the substance of the dual jobs portion of the 2020 Tip final rule and the process through which it was promulgated, as well as the two portions of the 2020 Tip final rule addressing CMPs, the Department believes additional action may be needed and it proposes to delay implementation of these portions of the rule until it determines an appropriate method to determine when a tipped employee is engaged in a tipped occupation and to conduct a rulemaking to ensure that the two CMP portions of the rule are consistent with the FLSA and Supreme Court precedent interpreting what constitutes a ''willful'' violation under that Act. As explained above, allowing these provisions to go into effect could lead to practices the Department ultimately determines to be inconsistent with the FLSA and judicial opinions. In addition to causing confusion, this could result in increased compliance costs, and potentially disruptive changes in employment practices in the event that the Department withdraws and revises these three portions of the 2020 Tip final rule. Further, the three portions of the 2020 Tip final rule that the Department is proposing to delay also encompass those parts of the rule that are being challenged in the *Pennsylvania* lawsuit.

The Department has considered allowing these three portions of the rule to take effect pending its review and the assessment of potential new rulemaking; however, the Department believes that the concerns discussed above call into question fundamental aspects of the rulemaking to such a degree that the best approach is to propose to delay these three portions of the rulemaking rather than allow them to take effect without seeking additional public input. Relatedly, the Department preliminarily believes that delaying the effective date for these three portions of the rule will prevent confusion and uncertainty among the regulated community while the Department conducts its review.

Therefore, the Department believes that the prudent and reasonable approach is to propose to delay the effective date, and thus the implementation of these three portions of the 2020 Tip final rule while it undertakes its review. While the Department acknowledges that the proposed delay is significant, based on its initial review and given the concerns described above, it is clear that a significant amount of time is necessary to consider all aspects of these portions of the rulemaking. This proposed delay will allow the Department sufficient time to conduct rulemaking on two portions of the 2020 Tip final rule, and evaluate commenters' concerns and consider whether to propose withdrawing and reproposing the third portion of the rule. The Department seeks public comment on the proposed delay, including whether it should delay the effective date for these portions of the 2020 Tip final rule and whether the proposed period of delay is an appropriate length of time or whether other lengths of time may be more appropriate. The Department specifically seeks comment on whether, rather than delaying implementation as proposed herein, the Department should allow these portions of the rule to take effect while it conducts its review and considers any new proposal(s) to amend the regulations in question. The Department also invites the public to share any relevant knowledge and specific facts about any benefits, costs, or other impacts of this proposal on the regulated community, workers, and other relevant stakeholders. Lastly, the Department solicits comment on any other potential consequences of not delaying the effective date of these portions of the 2020 Tip final rule.

In sum, this NPRM seeks comment on the Department's proposal to further delay the effective date for three portions of the 2020 Tip final rule, to December 31, 2021, in order to complete the rulemaking published elsewhere in this issue of the **Federal Register**, and to further review and consider one additional portion of the 2020 Tip final rule. This NPRM also seeks comment on the substance of these three portions of the 2020 Tip final rule, and in particular, its amendment of the Department's dual jobs regulation to address the application of the FLSA's tip credit to tipped employees who perform both tipped and non-tipped duties. The remainder of the 2020 Tip final rule will become effective upon the expiration of the first effective date extension, which extended the effective date of the 2020 Tip final rule through April 30, 2021.

IV. Executive Order 12866, Regulatory Planning and Review; and Executive Order 13563, Improved Regulation and Regulatory Review

A. Introduction

Under Executive Order 12866, OMB's Office of Information and Regulatory Affairs (OIRA) determines whether a regulatory action is significant and, therefore, subject to the requirements of the Executive Order and OMB review.[17] Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as a regulatory action that is likely to

[17] *See* 58 FR 51735, 51741 (Oct. 4, 1993).

result in a rule that may: (1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities (also referred to as economically significant); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive order. OIRA has determined that this proposed delay is not economically significant under section 3(f) of Executive Order 12866.

Executive Order 13563 directs agencies to, among other things, propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; that it is tailored to impose the least burden on society, consistent with obtaining the regulatory objectives; and that, in choosing among alternative regulatory approaches, the agency has selected those approaches that maximize net benefits. Executive Order 13563 recognizes that some costs and benefits are difficult to quantify and provides that, when appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts. The analysis below outlines the impacts that the Department anticipates may result from this proposed delay and was prepared pursuant to the above-mentioned executive orders.

In this NPRM, the Department proposes to further extend the effective date of three portions of the 2020 Tip final rule in order to complete a separate rulemaking, published elsewhere in this issue of the **Federal Register**. This delay will provide the Department additional time to consider whether to withdraw and repropose the portion of the 2020 Tip final rule addressing the application of the FLSA's tip credit provision to tipped employees who perform both tipped and non-tipped duties. The remainder of the 2020 Tip final rule, including portions addressing the keeping of tips and tip pooling,[18] recordkeeping,[19] and other minor changes[20] will become effective upon the expiration of the first effective date extension, which extended the effective date of the 2020 Tip final rule to April 30, 2021. *See* 86 FR 11632.

In March 2018, Congress amended section 3(m) and sections 16(b), (c), and (e) of the FLSA to prohibit employers from keeping their employees' tips, to permit recovery of tips that an employer unlawfully keeps, and to suspend the operations of the portions of the 2011 final rule that restricted tip pooling when employers do not take a tip credit. In the economic analysis of the 2020 Tip final rule, the Department quantified transfer payments that could occur when employers institute non-traditional tip pools. Because these transfers have already been quantified, and the provision regarding tip pooling will go into effect on April 30, 2021, this proposed delay will not have any impact on these quantified transfers.

The Department acknowledges that the industries that may be affected by the proposed delay are those that were acknowledged to have tipped workers in the 2020 Tip final rule. These industries are classified under the North American Industry Classification System (NAICS) as 713210 (Casinos), 721110 (Hotels and Motels), 722410 (Drinking Places (Alcoholic Beverages)), 722511 (Full-service Restaurants), 722513 (Limited Service Restaurants), and 722515 (Snack and Nonalcoholic Beverage Bars). The 2017 data from the Statistics of US Businesses (SUSB) reports that these industries have 503,915 private firms and 661,198 private establishments.[21]

Part of the reason for proposing an additional delay of the effective date is for the Department to consider withdrawing or retaining the portion of the rule that amends the Department's dual jobs regulations to address the application of the FLSA tip credit to tipped employees who perform both tipped and non-tipped duties. In the 2020 Tip final rule, the Department amended its dual jobs regulation to largely codify WHD's recent guidance regarding when an employer can take a tip credit for hours that a tipped employee performs non-tipped duties related to his or her occupation, which replaced the 20 percent limitation on related non-tipped duties with an updated related duties test. The Department provided a qualitative analysis of this change, and stated that the removal of a 20 percent cap on tasks that are not directly tied to receipt of a tip may result in tipped workers such as wait staff and bartenders performing more non-tipped related duties.[22] The Department acknowledged that one outcome could be that employment of workers currently performing these duties may fall while tipped workers might lose tipped income by spending more of their time performing duties where they are not earning tips, while still receiving cash wages of less than the minimum wage. The Department also stated that eliminating the cost to scrutinize employees' time to demonstrate compliance with the 20 percent approach would result in costs savings to employers.

As discussed above, the *Pennsylvania* litigants and individuals who submitted comments on the Department's Delay Rule raised significant concerns regarding the economic analysis of the portion of the 2020 Tip final rule that amends the dual jobs regulation. *See, e.g.,* EPI; Results for America; Restaurant Opportunities Centers United. The proposed effective date delay will allow the Department to better consider this portion of the 2020 Tip final rule, and determine if there is a clearer way to address the application of the FLSA tip credit to tipped employees who perform both tipped and non-tipped duties. In the event that there would have been transfers or cost savings associated with the change, these effects will be delayed. The delay will also provide the Department more time to quantify any impact associated with a change to the dual jobs regulation.

The Department does not believe that the proposed delay in the CMP portions of the 2020 Tip final rule will have an impact on costs or transfers, as these provisions only apply when an employer violates the FLSA.

The Department welcomes any comments and data on possible costs or benefits associated with this proposed delay.

V. Regulatory Flexibility Act (RFA) Analysis

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121 (1996), requires Federal agencies engaged in rulemaking to consider the impact of their proposals on small entities, consider alternatives to minimize that impact, and solicit public comment on their analyses. The

[18] 29 CFR 10.28(c), (e)–(f); 531.50 through 531.52, 531.54.

[19] 29 CFR 516.28(b).

[20] 29 CFR 531.50, 531.51, 531.52, 531.55, 531.56(a), 531.56(c)–(d), 531.59, and 531.60.

[21] Statistics of U.S. Businesses 2017, *https://www.census.gov/data/tables/2017/econ/susb/2017-susb-annual.html,* 2016 SUSB Annual Data Tables by Establishment Industry.

[22] Examples of such duties are cleaning and setting tables, toasting bread, making coffee, and occasionally washing dishes or glasses.

RFA requires the assessment of the impact of a regulation on a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions. Accordingly, the Department examined this proposed rule to determine whether it would have a significant economic impact on a substantial number of small entities. The most recent data on private sector entities at the time this NPRM was drafted are from the 2017 Statistics of U.S. Businesses (SUSB).[23] The Department limited this analysis to a few industries that were acknowledged to have tipped workers in the 2020 Tip final rule. These industries are classified under the North American Industry Classification System (NAICS) as 713210 (Casinos), 721110 (Hotels and Motels), 722410 (Drinking Places (Alcoholic Beverages)), 722511 (Full-service Restaurants), 722513 (Limited Service Restaurants), and 722515 (Snack and Nonalcoholic Beverage Bars). The SUSB reports that these industries have 503,915 private firms and 661,198 private establishments. Of these, 501,322 firms and 554,088 establishments have fewer than 500 employees.

The Department has not quantified any costs, transfers, or benefits associated with this delay, and therefore certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. The Department welcomes any comments and data on this Regulatory Flexibility Act Analysis, including the costs and benefits of this proposed rule on small entities.

VI. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (UMRA)[24] requires agencies to prepare a written statement for rules with a Federal mandate that may result in increased expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, of $165 million ($100 million in 1995 dollars adjusted for inflation) or more in at least one year.[25] This statement must: (1) Identify the authorizing legislation; (2) present the estimated costs and benefits of the rule and, to the extent that such estimates are feasible and relevant, its estimated effects on the national economy; (3) summarize and evaluate state, local, and tribal government input; and (4) identify reasonable alternatives and select, or explain the non-selection, of the least costly, most cost-effective, or least burdensome alternative. This proposed rule is not expected to result in increased expenditures by the private sector or by state, local, and tribal governments of $165 million or more in any one year.

VII. Executive Order 13132, Federalism

The Department has (1) reviewed this proposed rescission in accordance with Executive Order 13132 regarding federalism and (2) determined that it does not have federalism implications. The proposed rule would not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

VIII. Executive Order 13175, Indian Tribal Governments

This proposed rule would not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Signed this 22nd day of March, 2021.

Jessica Looman,

Principal Deputy Administrator, Wage and Hour Division.

[FR Doc. 2021–06244 Filed 3–23–21; 4:15 pm]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Parts 516, 531, 578, 579, and 580

RIN 1235–AA21

Tip Regulations Under the Fair Labor Standards Act (FLSA); Partial Withdrawal

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this notice of proposed rulemaking (NPRM), the Department proposes to withdraw and repropose two portions of the Tip Regulations Under the Fair Labor Standards Act (FLSA) (2020 Tip final rule) and seeks comment on whether to revise one other portion of the 2020 Tip final rule relating to the statutory amendments to the FLSA made by the Consolidated Appropriations Act of 2018 (CAA). The Department also asks questions about how it might improve the recordkeeping requirements in the 2020 Tip final rule in a future rulemaking. This rulemaking is related to a second NPRM, published elsewhere in this issue of the **Federal Register**, which proposes to further extend the effective date of three portions of the 2020 Tip final rule in order to complete this rulemaking involving two of those portions and provide the Department additional time to consider whether to withdraw and repropose a third portion of the 2020 Tip final rule concerning the use of the tip credit when employees perform both tipped and non-tipped work.

DATES: Portions of the final rule published on December 30, 2020 (85 FR 86756), and delayed February 26, 2021, at 86 FR 11632, are proposed to be withdrawn. Comments must be received on or before May 24, 2021.

ADDRESSES: To facilitate the receipt and processing of written comments on this NPRM, the Department encourages interested persons to submit their comments electronically. You may submit comments, identified by Regulatory Information Number (RIN) 1235–AA21, by either of the following methods: *Electronic Comments:* Follow the instructions for submitting comments on the Federal eRulemaking Portal *https://www.regulations.gov. Mail:* Address written submissions to Amy DeBisschop, Director of the 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. *Instructions:* This NPRM is available through the **Federal Register** and the *https://www.regulations.gov* website. You may also access this document via the Wage and Hour Division's (WHD) website at *https://www.dol.gov/whd/.* All comment submissions must include the agency name and Regulatory Information Number (RIN 1235–AA21) for this NPRM. Response to this NPRM is voluntary. The Department requests that no business proprietary information, copyrighted information, or personally identifiable information be submitted in response to this NPRM. Submit only one copy of your comment by only one method (*e.g.,* persons submitting comments electronically are encouraged not to submit paper copies). Commenters submitting file attachments on *www.regulations.gov* are advised that uploading text-recognized documents—*i.e.,* documents in a native file format or documents which have undergone

[23] Statistics of U.S. Businesses 2017, *https://www.census.gov/data/tables/2017/econ/susb/2017-susb-annual.html,* 2016 SUSB Annual Data Tables by Establishment Industry.

[24] *See* 2 U.S.C. 1501.

[25] Calculated using growth in the Gross Domestic Product deflator from 1995 to 2019. Bureau of Economic Analysis. Table 1.1.9. Implicit Price Deflators for Gross Domestic Product.

optical character recognition (OCR)—enable staff at the Department to more easily search and retrieve specific content included in your comment for consideration. Anyone who submits a comment (including duplicate comments) should understand and expect that the comment will become a matter of public record and will be posted without change to *https://www.regulations.gov,* including any personal information provided. WHD posts comments gathered and submitted by a third-party organization as a group under a single document ID number on *https://www.regulations.gov.* All comments must be received by 11:59 p.m. on the date indicated for consideration in this NPRM; comments received after the comment period closes will not be considered. Commenters should transmit comments early to ensure timely receipt prior to the close of the comment period. Electronic submission via *https://www.regulations.gov* enables prompt receipt of comments submitted as the Department continues to experience delays in the receipt of mail in our area. For access to the docket to read background documents or comments, go to the Federal eRulemaking Portal at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT:

Amy DeBisschop, Director of the 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 NPRM 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 (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 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. Executive Summary

Section 3(m) of the FLSA allows an employer that satisfies certain requirements to count a limited amount of the tips received by its ''tipped employees'' as a credit toward the employer's Federal minimum wage obligation (known as a ''tip credit''). *See* 29 U.S.C. 203(m)(2)(A). In 2018, Congress passed the CAA, Public Law 115–141, Div. S., Tit. XII, sec. 1201, 132 Stat. 348, 1148–49 (2018), which amended section 3(m). The CAA added a new statutory provision at section 3(m)(2)(B) which expressly prohibits employers from keeping employees' tips ''for any purposes'' regardless of whether the employer claims a tip credit. This includes prohibiting ''managers or supervisors'' from keeping employees' tips. The CAA also amended section 16(e)(2) of the FLSA to give the Department discretion to impose civil money penalties (CMPs) up to $1,100 when employers unlawfully keep employees' tips. On December 30, 2020, the Department issued a final rule that updates the Department's tip regulations to implement the CAA amendments. The 2020 Tip final rule also makes other changes to the Department's regulations, including revising the definition of ''willful'' in the Department's CMP regulations.

In this NPRM, the Department proposes to withdraw and repropose two portions of the 2020 Tip final rule and seeks comment on whether to revise another portion of the 2020 Tip final rule to address the CAA. The Department proposes to withdraw and repropose: (1) The portion of the 2020 Tip final rule incorporating the CAA's new provisions authorizing the assessment of CMPs for violations of section 3(m)(2)(B) of the Act; and (2) the portion of its CMP regulations addressing willful violations. In this NPRM, the Department also seeks comment on whether to revise the portion of the 2020 Tip final rule that addresses the statutory term ''managers or supervisors.'' Finally, the Department asks questions about how it might improve the recordkeeping requirements in the 2020 Tip final rule in a future rulemaking.[1]

This NPRM is related to a second NPRM, published elsewhere in this issue of the **Federal Register**, which proposes to further extend the effective date of three portions of the 2020 Tip final rule in order to complete rulemaking on two of the portions under this NPRM and to consider whether to withdraw and repropose a third portion of the 2020 Tip final rule not addressed in this NPRM, namely, the application of the FLSA's tip credit provision to tipped employees who perform both tipped and non-tipped duties. The second NPRM requests comments on both the delay of the effective date and on the substance of the portions of the rule that are being delayed.

II. Background

A. Tips and Tip Pooling

Section 6(a) of the FLSA generally requires covered employers to pay employees at least the Federal minimum wage, which is currently $7.25 per hour. 29 U.S.C. 206(a). Section 3(m)(2)(A) allows an employer to satisfy a portion of its minimum wage obligation to any ''tipped employee'' by taking a partial credit toward the minimum wage based on tips an employee receives. 29 U.S.C. 203(m)(2)(A). An employer may take a tip credit only if, among other requirements, the tipped employee retains all the tips he or she receives. *Id.* An employer taking a tip credit is, however, allowed to implement a mandatory ''traditional'' tip pool in which tips are shared only among employees who ''customarily and regularly receive tips.'' *Id.*

In 2011, the Department issued regulations interpreting what is now section 3(m)(2)(A) to prohibit employers—regardless of whether the employer takes a tip credit—from using employees' tips other than as a credit against its minimum wage obligation to the employee, or in furtherance of valid traditional tip pools. *See* 76 FR 18832, 29 CFR 531.52 (2011); 29 CFR 531.54 (2011); 29 CFR 531.59 (2011). The Department stated that, although the statutory language did not expressly address the use of an employee's tips when an employer does not take a tip credit and pays a direct cash wage equal to or greater than the minimum wage, the regulations filled a gap in the statutory scheme. *See* 76 FR 18841–42.

Several lawsuits followed that addressed the Department's authority to regulate employers that do not take a tip credit, as it did in the 2011 regulations. In 2016, the Ninth Circuit upheld the validity of the 2011 regulations in *Oregon Rest. & Lodging Ass'n (ORLA)* v. *Perez,* 816 F.3d 1080, 1090 (9th Cir. 2016). The next year, however, the Tenth Circuit issued a conflicting decision, ruling that the 2011 tip regulations were invalid to the extent they regulated employers that pay a direct cash wage of at least the Federal minimum wage and do not take a tip credit. *See Marlow* v. *New Food Guy, Inc.,* 861 F.3d 1157, 1159 (10th Cir. 2017).

[1] Those portions of the 2020 Tip final rule defining ''managers and supervisors'' and creating a new recordkeeping requirement applicable to employers that do not take a tip credit but collect employees' tips will go into effect on April 30, 2021.

On December 5, 2017, the Department published an NPRM proposing to rescind the portions of its 2011 tip regulations that imposed restrictions on employers that pay a direct cash wage of at least the full Federal minimum wage and do not take a tip credit against their minimum wage obligations. *See* 82 FR 57395 (Dec. 5, 2017). The Department's proposal would have allowed these employers to establish nontraditional tip pools that include employees who may contribute to the customers' experience but do not customarily and regularly receive tips, such as dishwashers or cooks. *See, e.g.,* 82 FR 57399. A number of commenters on the 2017 NPRM supported allowing employers to establish nontraditional tip pools. Many commenters, however, expressed concern that under the Department's proposal, an employer could keep an employee's tips for the employer's own use. *See, e.g.,* 84 FR 53959.

On March 23, 2018, Congress enacted the CAA, which amended section 3(m) of the FLSA to prohibit employers from keeping employees' tips ''for any purposes''—''regardless of whether or not the employer takes a tip credit.'' *See* Public Law 115–141, Div. S., Tit. XII, sec. 1201; 29 U.S.C. 203(m)(2)(B). In adding section 3(m)(2)(B) to the FLSA, Congress gave the Department express statutory authority to prevent employers from keeping employees' tips, even when the employer does not take a tip credit and pays the employee a cash wage equal to the full Federal minimum wage. Section 3(m)(2)(B) also prohibits employers from ''allowing managers or supervisors to keep any portion of employees' tips.'' *Id.* The CAA also addressed the portions of the Department's 2011 regulations that restricted tip pooling when employers do not take a tip credit, by providing that those regulations ''shall have no further force or effect until any future action taken by [the Department of Labor].'' *See* CAA, Div. S, Tit. XII, sec. 1201(c).[2] However, the CAA left unchanged section 3(m)'s then-existing text, renumbered as section 3(m)(2)(A), thus preserving the longstanding statutory and regulatory requirements that apply to employers that take a tip credit.

The CAA also amended the penalty provisions in section 16 of the FLSA to incorporate the new statutory prohibition on employers keeping tips. Among other things, the CAA amended section 16(e)(2) to add a civil money penalty (CMP) for violations of section 3(m)(2)(B): ''Any person who violates section 3(m)(2)(B) shall be subject to a civil penalty not to exceed $1,100[3] for each such violation, as the Secretary determines appropriate, in addition to being liable to the employee or employees affected for all tips unlawfully kept, and an additional equal amount as liquidated damages[.]''

Shortly after Congress passed the CAA, the Department issued a Field Assistance Bulletin (FAB) concerning the Wage and Hour Division's (WHD) enforcement of the amendments to section 3(m). *See* FAB No. 2018–3 (Apr. 6, 2018). The Department explained that the CAA had effectively suspended the regulatory restrictions on an employer's ability to require tip pooling when it does not take a tip credit, and that ''given these developments, employers who pay the full FLSA minimum wage are no longer prohibited from allowing employees who are not customarily and regularly tipped—such as cooks and dishwashers—to participate in tip pools.'' *Id.* As a result, the Department explained, such employers may implement mandatory, ''nontraditional'' tip pools in which employees who do not customarily and regularly receive tips, such as cooks and dishwashers, may participate. The FAB also provides that, as ''an enforcement policy, WHD will use the duties test at 29 CFR 541.100(a)(2)–(4) to determine whether an employee is a manager or supervisor,'' and thus cannot ''keep'' another employee's tips under section 3(m)(2)(B). *Id.* The FAB also states that the Department will follow its ''normal procedures'' for FLSA CMPs when enforcing the new tips CMP, and will assess tips CMPs only when it determines that a violation of section 3(m)(2)(B) is repeated or willful. *Id.*

B. ''Willful'' Requirement for CMPs for FLSA Minimum Wage and Overtime Violations

As discussed above, section 16(e)(2) of the FLSA provides for the assessment of CMPs for violations of the minimum wage (section 6), overtime pay (section 7), and, with the enactment of the CAA, tip provisions (section 3(m)(2)(B)) of the FLSA. Section 16(e)(2) authorizes the Department to assess CMPs for minimum wage and overtime pay violations only when the violations are ''repeated or *willful.*'' *See* 29 U.S.C. 216(e)(2) (emphasis added). The Department's regulations at 29 CFR 578.3(c) and 579.2[4] define what violations are willful under the Act. These regulations are intended to implement the Supreme Court's decision in *McLaughlin* v. *Richland Shoe Co.,* 486 U.S. 128, 133 (1988), that a willful violation occurs when the employer knew or showed reckless disregard for whether its conduct was prohibited by the FLSA. These regulations further provide that WHD shall take into account ''[a]ll of the facts and circumstances surrounding the violation'' when determining whether a violation is willful. 29 CFR 578.3(c)(1), 579.2. And these regulations identify two specific circumstances—prior advice from WHD to the employer that the conduct was unlawful and the employer's failure to adequately inquire further into the lawfulness of its conduct when it should have—in which a violation ''shall be deemed'' willful. 29 CFR 578.3(c)(2) & (3), 579.2.

In *Baystate Alternative Staffing, Inc.* v. *Herman,* 163 F.3d 668, 680–81 (1st Cir. 1998), the U.S. Court of Appeals for the First Circuit identified an ''incongruity'' between, on the one hand, the regulatory provisions deeming two specific circumstances to be willful, and on the other hand, ''the *Richland Shoe* standard on which the regulation is based'' and taking into account all of the facts and circumstances. The court urged the Department ''to reconsider'' § 578.3(c)(2) and (3) ''to ensure that they comport with'' *Richland Shoe. Id.* at 681 n.16. In 2016, the U.S. Court of Appeals for the D.C. Circuit addressed these regulations and noted that the Department had not altered them despite being urged to do so by the court in *Baystate. See Rhea Lana, Inc.* v. *Dep't of Labor,* 824 F.3d 1023, 1030–32 (D.C. Cir. 2016).

C. 2020 Tip Final Rule

On December 30, 2020, after considering comments on an NPRM for the 2020 Tip final rule (84 FR 67681), the Department issued a final rule revising the Department's tip regulations to incorporate the CAA amendments. *See* 85 FR 86756. Because the Department was revising its CMP regulations to incorporate the new tips CMP for section 3(m)(2)(B) violations, the 2020 Tip final rule also addresses the ''willful'' portions of the Department's CMP regulations in light of the court of appeals decisions in

[2] In light of the CAA amendments, the Department rescinded its 2017 NPRM on October 8, 2019. *See* 84 FR 53956.

[3] The Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134, sec. 31001(s)) and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Pub. L. 114–74, sec. 701), requires that inflationary adjustments be made annually in these civil money penalties according to a specified formula.

[4] Section 579.2 defines what violations of the FLSA's child labor provisions are willful.

Baystate and *Rhea Lana.* The 2020 Tip final rule was scheduled to go into effect on March 1, 2021, but on February 26, 2021, the Department delayed the 2020 Tip final rule's effective date to April 30, 2021, in order to give the Department additional time to consider issues of law, policy, and fact that warranted additional review.

i. Changes Related to the CAA Amendments to Section 3(m)(2)(B) and Related Recordkeeping Requirements

The 2020 Tip final rule amends the Department's tip pooling regulations at 29 CFR 531.52, 531.54, and 531.59 to implement newly added section 3(m)(2)(B), an expansive provision which prohibits employers—regardless of whether they take a tip credit—from keeping employees' tips for any purposes, including allowing managers and supervisors to keep the tips. The 2020 Tip final rule explains that section 3(m)(2)(B) proscribes all manner of keeping tips, and is so broad as to prohibit an employer from exerting control over employees' tips other than to (1) distribute tips to the employee who received them, (2) require employees to share tips with other eligible employees, or, (3) where the employer facilitates tip pooling by collecting and redistributing employees' tips, to distribute tips to employees in a tip pool. The 2020 Tip final rule further provides that any employer that collects tips to facilitate a mandatory tip pool must fully redistribute the tips, no less often than when it pays wages, to avoid ''keep[ing]'' the tips in violation of section 3(m)(2)(B).

Further, while the Department observed in the 2020 Tip final rule that it was unlikely to occur, and difficult to enforce, an instance where an employer keeps tips by reducing the wages of workers who receive them can also be a violation of section 3(m)(2)(B) and the broad scope of the prohibition against keeping tips. *See* 85 FR 86766, 86777. To the extent that the 2020 Tip final rule can be read to suggest that an employer can never violate 3(m)(2)(B) by using one employee's tips to offset the wages of another employee, the Department does not agree. For example, if an employer hires a non-tipped employee at $12 an hour, institutes a nontraditional tip pool in which that employee will receive $2 an hour from the pool, and then informs the non-tipped employee that it will pay her only $10 per hour on account of the tips she is now receiving from the tipped employees, this evidence that the employer is reducing the employee's wages and supplementing them with another employee's tips can demonstrate an unlawful ''keeping'' under section 3(m)(2)(B).[5]

The 2020 Tip final rule also addresses who is a manager or supervisor, and therefore may not keep employees' tips under section 3(m)(2)(B). The rule defines a ''manager or supervisor,'' as an individual who meets the duties test at § 541.100(a)(2)–(4) or § 541.101. The rule specifies, however, that such a manager or supervisor may keep tips that he or she receives directly from customers based on the service that he or she directly provides.

Consistent with the CAA amendments, the 2020 Tip final rule also removes the portions of the Department's 2011 regulations that imposed restrictions on employers that do not take a tip credit. In addition, the 2020 Tip final rule amends 29 CFR 531.54 to explicitly state that an employer that pays tipped employees the full minimum wage and does not take a tip credit may impose a mandatory tip pooling arrangement that includes dishwashers, cooks, or other employees who are not employed in an occupation in which employees customarily and regularly receive tips, as long as that arrangement does not include any employer, supervisor, or manager. The 2020 Tip final rule also incorporates a new recordkeeping requirement for employers that administer nontraditional tip pools. These portions of the 2020 Tip final rule—addressing the CAA's changes to tips and tip pooling in section 3(m) and related recordkeeping requirements—will go into effect on April 30, 2021.

ii. Changes to CMP Regulations

The 2020 Tip final rule also makes changes to the Department's CMP regulations at 29 CFR parts 578, 579, and 580. In a separate NPRM published elsewhere in this issue of the **Federal Register**, the Department has proposed to delay the effective date of these portions of the 2020 Tip final rule until December 30, 2021, to allow the Department to complete this rulemaking before those discrete portions of the 2020 Tip final rule go into effect. The 2020 Tip final rule updates the Department's FLSA CMP regulations to add references to the new CMP for violations of 3(m)(2)(B). The 2020 Tip final rule also specifies that the Department may assess CMPs only for ''repeated or willful'' violations of section 3(m)(2)(B), although the statute does not include this limitation. The 2020 Tip final rule also amends the Department's CMP regulations on willful violations (specifically, 29 CFR 578.3(c)(2) & (3) and 579.2) to address the appellate court decisions that have, for example, ''urge[d]'' the Department to reconsider those regulations to ensure their consistency with the Supreme Court's interpretation of the meaning of ''willful'' in the FLSA.[6]

III. Need for Rulemaking

On February 26, 2021 the Department delayed the effective date of the 2020 Tip final rule to provide the Department additional opportunity to review and consider the questions of law, policy, and fact raised by the rule, as contemplated by the Regulatory Freeze Memorandum and OMB Memorandum M–21–14. 86 FR 11632. Among other issues, the Department sought to consider whether the 2020 Tip final rule properly implements the CAA Amendments to section 3(m) of the FLSA, which prohibit employers from keeping tips for any purpose and whether the final rule otherwise effectuates the CAA amendments to the FLSA, including the statutory provision for CMPs for violations of section 3(m)(2)(B) of the Act. Additionally, on January 19, 2021, Attorneys General from eight states and the District of Columbia filed a complaint for declaratory and injunctive relief in the United States District Court for the Eastern District of Pennsylvania, in which they argued that the Department violated the Administrative Procedure Act in promulgating the 2020 Tip final rule.[7] The complaint argues that the 2020 Tip final rule makes several changes to the Department's regulations

[5] The 2020 Tip final rule discusses whether it would be a violation of section 3(m)(2)(B) if employers reduced the wages of back-of-house employees in response to including them in a nontraditional tip pool, and acknowledged that it would be ''difficult'' to ''distinguish between lawful reductions to compensation and unlawful 'keeping' of 'tips received by its employees.' '' The 2020 Tip final rule did not say whether such a practice would violate section 3(m)(2)(B). 85 FR 86766. This discussion originated from an acknowledgement in the economic impact analysis of possible employer responses to the rule, and was not intended to serve as an endorsement of the practice.

[6] Unrelated to the CAA amendments, the 2020 Tip final rule also amends the Department's regulations to reflect agency guidance explaining that an employer may take a tip credit for time that an employee in a tipped occupation spends performing related, non-tipped duties contemporaneously with tipped duties, or for a reasonable time immediately before or after performing the tipped duties. The 2020 Tip final rule also addresses which non-tipped duties are related to a tip-producing occupation. The Department has also proposed to delay the effective date of this portion of the 2020 Tip final rule, in addition to those parts of the final rule addressing CMPs, until December 31, 2020. The Department has requested comments on these issues in a second NPRM published in this issue of the **Federal Register** and does not address these issues here.

[7] *Commonwealth of Pennsylvania et al.* v. *Scalia et al.,* No. 2:21–cv–00258 (E.D. Pa., Jan. 19, 2021).

that are contrary to the FLSA and the CAA, including the 2020 Tip final rule's revisions to portions of its CMP regulations on willful violations, and the rule's imposition of a willfulness requirement for CMPs for section 3(m)(2)(B) violations. The complaint also asserts that the 2020 Tip final rule's provisions on managers and supervisors improperly prevent certain lower-paid managers and supervisors who perform tipped work from receiving tips. Delaying the effective date of the 2020 Tip final rule gave the Department the opportunity to review and consider the rule in light of the issues raised by that complaint.

Several commenters responded to the Department's February 5, 2021 proposal to delay the effective date of the 2020 Tip final rule and requesting comments on the merits of the rule, urging the Department to reconsider the 2020 Tip final rule's revisions to portions of its CMP regulations on willful violations and incorporation of the CAA's language regarding CMPs for section 3(m)(2)(B) violations into the Department's regulations. *See* 86 FR 11632.[8] These commenters also stated that the Department should consider the issues of law raised in the *Pennsylvania* v. *Scalia* complaint.

In light of the comments and upon review and reconsideration of the questions of law, policy, and fact raised by the 2020 Tip final rule, the Department now believes that it is appropriate to revisit a few portions of the final rule. Specifically, the Department is concerned that the 2020 Tip final rule inappropriately circumscribed the Department's discretion to assess CMPs for violations of 3(m)(2)(B), by restricting those CMPs to only ''repeated'' or ''willful'' violations, notwithstanding that the statute does not limit CMPs related to tips in such a way. Instead, the CAA gives the Department authority to assess such CMPs ''as the Secretary determines appropriate.'' In addition, the Department believes that further modifications to the 2020 Tip final rule's revisions to its CMP regulations on willful violations may be necessary to align these regulations with Supreme Court and appellate court decisions; in particular, the Department believes that it may be necessary to restore guidance regarding when an employer's violation may show reckless disregard of the Act's requirements. The Department is therefore proposing to withdraw and repropose the two CMP portions of the 2020 Tip final rule and, in a second NPRM, has proposed to further delay the effective date of these portions of the 2020 Tip final rule to allow for this rulemaking.

The Department is also considering whether to revise language in the 2020 Tip final rule regarding ''managers or supervisors'' whom section 3(m)(2)(B) prohibits from keeping employees' tips. The Department is considering whether the 2020 Tip final rule's language regarding managers or supervisors could be revised to better address the fact that some managers and supervisors perform a substantial amount of tipped work. The Department is also considering whether this language could be revised to provide additional flexibility for employers to allow managers and supervisors who meet the duties test in 29 CFR 541.100(a)(2)–(4) or 29 CFR 541.101 and perform tipped work to contribute to employer-mandated tip pools, but not receive other employees' tips from such tip pools.

IV. Proposed Regulatory Revisions

A. Civil Money Penalties for Violations of Section 3(m)(2)(B)

Section 16(e) of the FLSA, 29 U.S.C. 216(e), establishes CMPs for certain violations of the Act. The CAA amended FLSA section 16(e)(2) to add new penalty language for employers who violate section 3(m)(2)(B) by ''keep[ing]'' employees' tips. The new CMP provision states that: ''Any person who violates section 3(m)(2)(B) shall be subject to a civil penalty not to exceed $1,100[9] for each such violation, as the Secretary determines appropriate, in addition to being liable to the employee or employees affected for all tips unlawfully kept . . .'' Unlike the statutory provisions in section 16(e)(2) regarding CMPs for minimum wage and overtime violations, the statute does not limit the assessment of CMPs to repeated or willful violations of section 3(m)(2)(B). Instead, the new penalty language subjects persons who violate 3(m)(2)(B) to civil penalties ''as the Secretary determines appropriate.''

Shortly after the passage of the CAA, the Department issued FAB No. 2018–3 (Apr. 6, 2018), explaining that the Department would ''follow its normal procedures,'' in enforcing the new CMPs ''including by determining whether the violation is repeated or willful.'' The Department's 2020 Tip final rule adopted this guidance. The 2020 Tip final rule incorporates CMPs into the Department's existing CMP regulations at 29 CFR parts 578, 579, and 580; applies the same considerations for determining the amount of a CMP for a violation of 3(m)(2)(B) as the Department uses for determining the amount of CMPs for minimum wage and overtime violations; and adopts for CMPs for violations of 3(m)(2)(B) the same longstanding rules and procedures already in place for CMPs for other FLSA violations. In addition, the 2020 Tip final rule would codify in regulation the Department's current enforcement policy of assessing CMPs for section 3(m)(2)(B) violations only after determining that a violation is repeated or willful. The Department explained in the 2020 Tip final rule that applying the same rules and procedures for CMPs for violations of 3(m)(2)(B) as the Department applies for CMPs for other FLSA violations created consistent enforcement procedures. *See* 85 FR 86773.

In response to the Department's proposal to extend the effective date of the 2020 Tip final rule, several commenters asked the Department to revisit language in the rule limiting the Department's ability to assess CMPs for section 3(m)(2)(B) violations to only repeat or willful violations. These commenters asserted that, because section 16(e)(2) specifically limits minimum wage and overtime CMPs to repeated and willful violations, but does not specifically limit the assessment of tip CMPs, the statute evinces Congress' intent that the assessment of tip CMPs is not predicated on a repeated or willful violation. *See, e.g.,* National Employment Law Project (NELP); National Women's Law Center; *see also* State Attorney Generals.

Although the 2020 Tip final rule acknowledged the Department's discretion to assess CMPs for violations of section 3(m)(2)(B), the 2020 Tip final rule circumscribed this discretion by limiting CMPs for violations of section 3(m)(2)(B) to only repeated or willful violations. Upon reevaluating this issue in light of the statutory language, however, the Department is concerned that it is inappropriate to circumscribe its discretion through regulation. Accordingly, the Department proposes to withdraw the CMP language for violations of 3(m)(2)(B) from the 2020 Tip final rule and adopt regulatory language in 29 CFR 578.3(a)–(b), 578.4, 579.1, 580.2, 580.3, and 580.12, and 580.18(b)(3) so that the Department is not limited in its assessment of CMPs to only repeated and willful violations of section 3(m)(2)(B). This approach would

[8] Two commenters opposed delaying the effective date of the 2020 Tip final rule. 86 FR 11632.

[9] The CMP amount in the final rule was adjusted to $1,162 for inflation, as required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134, sec. 31001(s)) and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Pub. L. 114–74, sec. 701).

preserve the Department's full discretion to assess CMPs for violations of 3(m)(2)(B), consistent with the statutory language which gives the Department authority to assess such CMPs ''as the Secretary determines appropriate.''

The Department is reproposing language in §§ 578.4, 579.1, 580.2, 580.3, and 580.12 that would, similarly to the language in the 2020 Tip final rule, adopt the same rules, procedures, and amount considerations for tip CMPs, as the Department applies for other FLSA CMPs.[10] The Department believes that adopting these same rules, procedures, and considerations will promote the goals of consistency and familiarity that the Department emphasized in the 2020 Tip final rule.

B. Civil Money Penalties for Willful Violations of the Fair Labor Standards Act

The Department proposes to revise portions of the Department's CMP regulations regarding when a violation of section 6 (minimum wage) or section 7 (overtime) of the FLSA is ''willful,'' and thus subject to a CMP under section 16(e). Regarding how it determines whether an FLSA violation is willful for purposes of assessing CMPs, the Department proposes to withdraw and repropose with a modification the language at 29 CFR 578.3(c)(2) and 29 CFR 579.2 addressing when an employer's violation is knowing, and further proposes to reinsert language at 29 CFR 578.3(c)(3) and 29 CFR 579.2 to address the meaning of reckless disregard. These proposals will address appellate court decisions regarding these regulations and provide guidance on circumstances where employers' conduct may constitute reckless disregard.

Sections 578.3(c) and 579.2 address what violations are willful under the Act. As previously explained,[11] the Department's definition of a ''willful'' violation in §§ 578.3(c) and 579.2 is based on *McLaughlin* v. *Richland Shoe Co.,* 486 U.S. 128, 133 (1988), which held that a violation is willful if the employer ''knew or showed reckless disregard'' for whether its conduct was prohibited by the FLSA. Sections 578.3(c)(1) and 579.2 incorporate this holding and state that ''[a]ll of the facts and circumstances surrounding the violation shall be taken into account in determining whether a violation was willful.'' The 2020 Tip final rule makes no changes to this language,[12] and the Department proposes none here.

For many years, the Department's CMP regulations in §§ 578.3(c)(2) and 579.2 provided that ''an employer's conduct shall be deemed knowing, among other situations, if the employer received advice from a responsible official of [WHD] to the effect that the conduct in question is not lawful.'' Sections 578.3(c)(3) and 579.2 stated that ''an employer's conduct shall be deemed to be in reckless disregard of the requirements of the Act, among other situations, if the employer should have inquired further into whether its conduct was in compliance with the Act, and failed to make adequate further inquiry.'' In the NPRM for the 2020 Tip final rule, the Department discussed concerns with this ''shall be deemed'' language that two appellate courts had identified. *See* 84 FR 53964–65 (discussing *Rhea Lana, Inc.* v. *Dep't of Labor,* 824 F.3d 1023, 1030–32 (D.C. Cir. 2016), and *Baystate Alt. Staffing, Inc.* v. *Herman,* 163 F.3d 668, 680–81 (1st Cir. 1998)). Those courts noted the inconsistency between the regulation's language, on the one hand, that conduct ''shall be deemed knowing'' if the employer was previously advised by WHD that the conduct was unlawful, and its language, on the other hand, derived from *Richland Shoe,* that WHD shall take into account ''[a]ll of the facts and circumstances surrounding the violation'' when determining willfulness. *See id.* The Department explained in the NPRM for the 2020 Tip final rule that it does evaluate all of the facts and circumstances surrounding a violation when litigating willfulness and that, although an employer's receipt of advice from WHD that its conduct was unlawful can be sufficient to prove willfulness, it would not necessarily be so (notwithstanding the regulatory language that appears to be to the contrary). *See* 84 FR 53965. In light of the appellate courts' opinions and the Department's acknowledgement of how it litigates willfulness, the NPRM for the 2020 Tip final rule proposed to revise §§ 578.3(c)(2)–(3) and 579.2 to clarify that, in considering all of the facts and circumstances, an employer's receipt of advice from WHD that its conduct is unlawful and its failure to inquire further regarding the legality of its conduct are each ''a relevant fact and circumstance'' in determining willfulness. *See* 84 FR 53978.

After considering comments received, the 2020 Tip final rule revises § 578.3(c)(2) and the corresponding language in § 579.2 to state that, in considering all of the facts and circumstances, an employer's receipt of advice from WHD that its conduct was unlawful ''can be sufficient'' to show that the violation is willful but is ''not automatically dispositive.'' *See* 85 FR 86774. The 2020 Tip final rule explains that this revision addressed concerns raised by commenters that one fact should not automatically result in a violation being willful but that an employer's receipt of advice from WHD that its conduct was unlawful can be sufficient for a violation to be willful. *See id.* The 2020 Tip final rule further explains that an employer's receipt of advice from WHD that its conduct is unlawful is a relevant, and may be a determining, factor regarding that employer's willfulness, but the law also requires examining all facts and circumstances surrounding the violation. *See id.*

In addition, the 2020 Tip final rule deletes § 578.3(c)(3) and the corresponding language in § 579.2 addressing the meaning of reckless disregard. The 2020 Tip final rule explains that, unlike § 578.3(c)(2), § 578.3(c)(3) does not just identify a fact and address how that fact impacts a willfulness finding; instead, it addresses a scenario—should have inquired further but did not do so adequately—that is tantamount to reckless disregard. *See* 85 FR 86774 (citing *Davila* v. *Menendez,* 717 F.3d 1179, 1185 (11th Cir. 2013)). According to the 2020 Tip final rule, revising § 578.3(c)(3) in the same manner as § 578.3(c)(2) ''did not seem helpful,'' and retaining § 578.3(c)(3) without modifying it would not resolve the concerns raised by the appellate decisions discussed above. *Id.* It further explained that, ''[a]mong other situations, proof that an employer should have inquired further into whether its conduct was in compliance with the Act and failed to make adequate further inquiry is only one indicium of reckless disregard.'' *Id.*

Having considered the issues further, the Department continues to believe that revisions to § 578.3(c)(2) and the corresponding language in § 579.2 are warranted for all of the reasons described above and in the 2020 Tip final rule, but that a modification is needed in order to clarify that multiple circumstances, not just the circumstance identified, can be sufficient to show that a violation was knowing and thus willful. Accordingly, the Department proposes here to withdraw and repropose § 578.3(c)(2) and the

[10] The Department is also proposing to revise § 580.18(b)(3) to eliminate the reference in that regulation to willful violations of section 3(m)(2)(B), which was a technical error since the CAA Amendments did not provide for criminal penalties for violations of section 3(m)(2)(B). Therefore, the Department is proposing to withdraw the change in the regulation made by the 2020 Tip final rule and revert back to the prior language of § 580.18.

[11] *See* 85 FR 86773; 84 FR 53964.

[12] *See* 85 FR 86773.

corresponding language in § 579.2 to state that ''the employer's receipt of advice from a responsible official of the Wage and Hour Division to the effect that the conduct in question is not lawful, among other situations, can be sufficient to show that the employer's conduct is knowing, but is not automatically dispositive.'' These revisions would resolve the tensions identified within § 578.3(c) and between § 578.3(c)(2) and *Richland Shoe* and would comport more closely with how the Department litigates willfulness. The Department proposes to add ''among other situations'' to these sections, restoring language that was in § 578.3(c)(2) and the corresponding language in § 579.2 prior to the 2020 tip final rule, to make it clear, consistent with considering all of the facts and circumstances, that evidence other than the employer's receipt of advice from WHD that its conduct was unlawful can be sufficient to show that the violation was knowing and thus willful.

The Department additionally proposes to reinsert § 578.3(c)(3) and corresponding language in § 579.2 addressing the meaning of reckless disregard. Those proposed provisions state that ''reckless disregard of the requirements of the Act means, among other situations, that the employer should have inquired further into whether its conduct was in compliance with the Act and failed to make adequate further inquiry.'' Upon further consideration, the Department believes that it necessary to provide an explanation of what ''reckless disregard'' means rather than deleting § 578.3(c)(3) and the corresponding language in § 579.2 altogether. Deleting those provisions could suggest that an employer's failure to make adequate further inquiry into the lawfulness of its conduct when it should have may not constitute reckless disregard. The 2020 Tip final rule stated that the scenario where the employer should have inquired further but did not do so adequately ''is tantamount to reckless disregard,'' [13] but actually deleting § 578.3(c)(3) and the corresponding language in § 579.2 could suggest otherwise. Moreover, by explaining what ''reckless disregard'' means and also removing the ''shall be deemed'' language, the provisions proposed here would resolve the tensions identified within § 578.3(c) and between § 578.3(c)(3) and *Richland Shoe* and would, consistent with considering all of the facts and circumstances, not foreclose consideration of relevant evidence. Finally, including the ''among other situations'' language would indicate that reckless disregard could be proven by showing something other than the employer should have inquired further but did not do so adequately, as § 578.3(c)(3) and the corresponding language in § 579.2 provided prior to the 2020 Tip final rule.

The Department welcomes comments on all aspects of this proposal regarding § 578.3(c)(2) and (3) and the corresponding language in § 579.2.

C. Managers and Supervisors

The 2020 Tip final rule makes several changes to the Department's regulations to address the statutory term ''managers and supervisors.'' These changes will go into effect on April 30, 2021.[14] Section 531.52(b)(2) of the 2020 Tip final rule reiterates the prohibition in section 3(m)(2)(B) that ''[a]n employer may not allow managers and supervisors to keep any portion of an employee's tips, regardless of whether the employer takes a tip credit.'' Consistent with the FAB issued shortly after the passage of the CAA and the Department's NPRM for the 2020 Tip final rule, § 531.52(b)(2) of the 2020 Tip final rule defines managers and supervisors to mean ''any employee whose duties match those of an executive employee as described in § 541.100(a)(2) through (4) or § 541.101 of this chapter.'' See FAB No. 2018–3; 84 FR 53956 (Oct. 8, 2019); 85 FR 86789 (Dec. 30, 2020). Section 531.54(c)(3) and (d) of the 2020 Tip final rule prohibit employers from including such managers and supervisors in mandatory tip pools. The Preamble accompanying the 2020 Tip final rule interprets § 531.54(c)(3) and (d) to preclude managers and supervisors from contributing, as well as receiving, tips from mandatory tip pooling or sharing arrangements. 85 FR 86764.

In the 2020 rulemaking, the Department received comments from parties representing both employers and workers expressing concern that prohibiting managers or supervisors from receiving tips from mandatory tip pools could prevent lower-paid managers or supervisors who perform a substantial amount of service work from keeping tips. The *Pennsylvania* v. *Scalia* complaint also expressed this concern, noting that the 2020 Tip final rule's prohibition against managers or supervisors who meet the executive employee duties test from participating in mandatory tip pools is ''overbroad'' and ''will exclude certain low wage workers from access to tip pools.'' [15] In response to concerns from commenters about managers and supervisors who also perform tipped work, the Department added this language to § 531.52(b)(2) in the 2020 Tip final rule: ''A manager or supervisor may keep tips that he or she receives directly from customers based on the service that he or she directly provides.'' The Department is interested in whether it should make adjustments to this language to better address managers or supervisors who also engage in a substantial amount of tipped work. Although the Department is not proposing specific changes to the regulatory text at this time, the Department invites comment on possible modifications to the language in § 531.52(b)(2) clarifying that managers may keep tips that they receive directly from customers for the service that they directly provide. Specifically, the Department requests comments on the following:

1. How common is it for managers or supervisors who satisfy the duties test to perform tipped work? Please describe when and how this occurs, including how regularly and frequently this occurs. Does the extent to which managers or supervisors perform tipped work vary based on different industries or different types of establishments within an industry? If, in a given establishment, some managers or supervisors perform tipped work and others do not, please describe this arrangement.

2. Prior to the CAA amendments, how common was it for tipped managers or supervisors who satisfy the duties test to participate in tip pools or tip sharing arrangements? Please describe when and how this occurred.

3. Is the language in § 531.52(b)(2) that permits managers and supervisors to keep tips they receive ''directly from customers'' based on the service that they ''directly provide[ ]'' sufficient to allow tipped managers and supervisors to collect all the tips they have earned from their customer service work?

4. How common is it for tips provided to a manager or supervisor to be commingled with tips provided to other tipped employees? Please describe when and how this would occur. Does this vary based on different industries or different types of establishments within in an industry?

[13] *Id.* (citing *Davila,* 717 F.3d at 1185).

[14] These sections were scheduled to go into effect on March 1, 2021, but on February 26, 2021, the Department delayed the 2020 Tip final rule's effective date to April 30, 2021, in order to give the Department additional time to consider issues of law, policy, and fact that warranted additional review, consistent with the January 20, 2021 memorandum from the Assistant to the President and Chief of Staff, titled ''Regulatory Freeze Pending Review.'' *See* 86 FR 7424.

[15] *Commonwealth of Pennsylvania et al.* v. *Scalia et al.,* No. 2:21–cv–00258 (E.D. Pa., Jan. 19, 2021).

5. Should the Department revise the language in § 531.52(b)(2) to clarify that a manager or supervisor may keep their own tips in a scenario in which tips provided to a manager or supervisor are comingled with tips provided to other tipped employees? How would such a regulation accurately identify the manager or supervisor's tips based on the service they provide, without allowing a manager or supervisor to keep ''any portion'' of another employee's tips (which section 3(m)(2)(B) of the Act prohibits)?

The Department also seeks comments on whether it should adjust its tip pooling regulations at § 531.54(c)(3) and (d), to permit managers and supervisors to contribute tips to employer-mandated tip pooling or tip sharing arrangements, provided they do not receive any tips from other employees. As noted above, the preamble accompanying the 2020 Tip final rule interprets § 531.54(c)(3) and (d) to preclude managers and supervisors from *contributing,* as well as *receiving,* tips from mandatory tip pooling or sharing arrangements.[16] In the context of a restaurant employer, for example, this means that the employer may require servers to give a portion of their tips to the bussers, but is prohibited from requiring a manager or supervisor who also waits tables to similarly contribute a portion of their tips to the bussers. In their comment regarding the NPRM for the 2020 Tip final rule, the National Restaurant Association suggested that the Department allow managers or supervisors who receive tips from customers to contribute tips to a mandatory tip pool that includes other non-managerial employees, as long as the manager or supervisor does not receive any monies from such a pool, stating that this outcome is consistent with section 3(m)(2)(B) and would be beneficial to tipped employees. Although the Department is not proposing specific regulatory changes to the references to managers or supervisors in § 531.54(c)(3) and (d) or revising its interpretation of these provisions at this time, the Department is seeking additional information on these provisions for possible consideration of changes in the final rule:

1. Should the Department consider allowing managers and supervisors who receive tips to contribute to, but not collect from, employer-mandated tip pooling or tip sharing arrangements? Specifically, should the Department allow employers to require managers and supervisors to contribute a portion of their tips to mandatory tip pooling or sharing arrangements but maintain the prohibition on managers and supervisors receiving any tips from such pooling or sharing arrangements?[17]

2. If the Department were to allow managers and supervisors to contribute a portion of their tips to employer-mandated tip pools or sharing arrangements but not allow them to receive tips from such pools or sharing arrangements, what are the benefits and challenges of such an approach?

3. Should the Department consider, instead, allowing managers and supervisors who receive tips to contribute to employer-mandated tip pooling or tip sharing arrangements, but receive out of the tip pool no more than what they contributed? Would such an arrangement be feasible for employers to administer while fully ensuring managers and supervisors do not keep other employees' tips?

V. Questions About Recordkeeping Requirements for Enforcing Section 3(m)(2)(B)

Section 11 of the FLSA gives the Department the authority to ''prescribe by regulation or order'' recordkeeping requirements ''as necessary or appropriate'' to enforce the provisions of the FLSA. 29 U.S.C. 211(c). In the 2020 Tip final rule, the Department adopts new recordkeeping requirements at 29 CFR 516.28(b) that apply to employers who do not take a tip credit, but still collect employees' tips to operate a mandatory tip pool. Section 516.28(b) requires these employers to identify on their payroll records each employee who receives tips, including non-tipped employees who receive tips from a nontraditional tip pool, and to keep records of the weekly or monthly amount of tips received by each employee, as reported by the employee to the employer. These requirements are consistent with some of the requirements for tipped employees that apply to employers who take a tip credit, set forth in § 516.28(a). The new requirements address other changes made by the 2020 Tip final rule, consistent with the CAA, which permit employers who do not take a tip credit to include non-tipped employees in mandatory nontraditional tip pools. These requirements in § 516.28(b) will go into effect on April 30, 2021.[18]

The Department is not considering revising its recordkeeping requirements in this rulemaking. However, the Department is seeking information about whether the recordkeeping requirements in § 516.28 should be revised in a subsequent rulemaking to better facilitate the enforcement of section 3(m)(2)(B), which creates a new cause of action when employers ''keep'' tips, regardless of whether or not the employer takes a tip credit. Based on its enforcement experience, the Department is concerned that because the new regulations do not require that employers account for all tips that are contributed to a mandatory tip pool or tip sharing arrangement, it may be difficult for employees and for the Department to know if the employer is keeping tips. This may be of particular concern when the employer collects and distributes the tips in such an arrangement. As one commenter noted in response to the notice of proposed rulemaking on the delay of the 2020 Tip final rule ''because many tips are not provided in cash, unscrupulous employers have an opportunity to misappropriate a portion of their workers' income; and few employers maintain accurate and complete tip records. . . . .'' *See* NELP.

Specifically, the Department seeks comments on the following issues, with regard to employer-mandated tip pooling or tip sharing arrangements:

1. What records are necessary or appropriate to enforce the new prohibition on employers ''keeping'' tips, particularly when employers mandate tip pooling or tip sharing arrangements?

a. Should the Department require employers to keep a record of the total contributions to an employer-mandated tip pooling or tip sharing arrangement, in order to ensure that employers are not keeping tips and that all tips are distributed to employees?

b. Should the Department require employers to keep track of the total amount in tips that each employee receives from an employer-mandated tip pooling or tip sharing arrangement, in order to ensure that employers are not

[16] The Department noted that allowing managers and supervisors to participate in tip pools for one purpose (contributing tips) and not for another (receving tips) would create confusion among employers and employees, and could lead to situations where it would be difficult for employers to demonstrate compliance with the prohibition on employees sharing tips with managers and supervisors. 85 FR 86764.

[17] The 2020 Tip final rule determined that this is equivalent to allowing managers or supervisors to keep a portion of the tips received by other employees. *See* 85 FR 86756, 86764.

[18] These requirements were scheduled to go into effect on March 1, 2021, but on February 26, 2021, the Department delayed the 2020 Tip final rule's effective date until April 30, 2021, to give the Department additional time to consider issues of law, policy, and fact that warranted additional review. *See* 86 FR 11632.

keeping tips and that all tips are distributed to employees?

2. How could the Department best structure a recordkeeping requirement to ensure that employers are not keeping tips and that all tips are distributed to employees, while placing the lowest burden possible on employers?

3. If the Department were to require employers to keep track of tips contributed to and/or received from an employer-mandated tip pool, how frequently should employers be required to record this information: Each day, each workweek, each pay period or based on some other timeframe?

4. Whether the Department should require employers to provide employees with notice of the structure of any mandatory tip pooling or tip sharing arrangement (such as the frequency of distribution and the method for distribution/sharing of tips among employees)?

5. Whether record-keeping requirements, if any, should be different for employers who collect and distribute tips for an employer-mandated tip pool than for employers who mandate tip sharing arrangements but do not collect tips to distribute (*e.g.,* an employer who requires a tipped employee to ''tip out'' another tipped or non-tipped employee).

6. Are there other ways that the Department can ensure that employees, and not employers, keep tips?

In addition to these specific questions, the Department also has more general questions about tip pooling that may be helpful to its future considerations of enforcement of the obligations of section 3(m)(2)(B):

1. What kind of employees typically participate in mandatory tip pooling arrangements and in what industries are these arrangements most common?

2. Are mandatory tip pooling or voluntary ''tip out'' arrangements more commonly used?

VI. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) and its attendant regulations require an agency to consider its need for any information collections, their practical utility, as well as the impact of paperwork and other information collection burdens imposed on the public, and how to minimize those burdens. The PRA typically requires an agency to provide notice and seek public comments on any proposed collection of information contained in a proposed rule. The Department notes that the new recordkeeping burdens introduced by the 2020 Tip final rule were submitted to the Office of Management and Budget (OMB) as part of the NPRM published in the **Federal Register** October 8, 2019 (84 FR 53956) and again with the 2020 Tip final rule on December 30, 2020 (85 FR 86756). The OMB issued a notice of action approving the recordkeeping requirements and burdens associated with the 2020 Tip final rule on February 24, 2021. The recordkeeping provisions from that final rule are going into effect. This NPRM does not contain an additional collection of information subject to OMB approval under the PRA. The Department invites public comment on this determination.

VII. Executive Order 12866, Regulatory Planning and Review; and Executive Order 13563, Improved Regulation and Regulatory Review

A. Introduction

Under Executive Order 12866, OMB's Office of Information and Regulatory Affairs (OIRA) determines whether a regulatory action is significant and, therefore, subject to the requirements of the Executive Order and OMB review.[19] Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as a regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities (also referred to as economically significant); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive order. OIRA has determined that this proposed rule is not economically significant under section 3(f) of Executive Order 12866.

Executive Order 13563 directs agencies to, among other things, propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; that it is tailored to impose the least burden on society, consistent with obtaining the regulatory objectives; and that, in choosing among alternative regulatory approaches, the agency has selected those approaches that maximize net benefits. Executive Order 13563 recognizes that some costs and benefits are difficult to quantify and provides that, when appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts. The analysis below outlines the impacts that the Department anticipates may result from this proposed rule and was prepared pursuant to the above-mentioned Executive orders.

B. Background

In this NPRM, the Department proposes to withdraw and repropose the portion of the 2020 Tip final rule incorporating the CAA's new provisions authorizing the assessment of CMPs for violations of section 3(m)(2)(B) of the Act. The Department also proposes to withdraw and repropose additional portions of its CMP regulations addressing willful violations. Because these proposed changes would only apply when an employer violates the FLSA, the Department does not believe that they will have an impact on costs or transfers. The other provisions codifying the CAA amendments were already discussed and quantified in the 2020 Tip final rule, and so have not been quantified again here. The only costs quantified here are the rule familiarization costs associated with reviewing the proposed rule. The Department qualitatively discusses possible benefits associated with this proposed rule. The Department welcomes any comments and data on additional costs or possible benefits associated with this proposed rule.

C. Costs

1. Rule Familiarization Costs

Regulatory familiarization costs represent direct costs to businesses associated with reviewing the new regulation. It is not clear whether regulatory familiarization costs are a function of the number of establishments or the number of firms.[20] Presumably, the headquarters of a firm will conduct the regulatory review for businesses with multiple locations, and may also require these locations to familiarize themselves with the regulation at the establishment level. To avoid underestimating the costs of this proposed rule, the Department uses both the number of establishments and the

[19] *See* 58 FR 51735, 51741 (Oct. 4, 1993).

[20] An establishment is a single economic unit that produces goods or services. Establishments are typically at one physical location and engaged in one, or predominantly one, type of economic activity. An establishment is in contrast to a firm, or a company, which is a business and may consist of one or more establishments.

number of firms to estimate a potential range for regulatory familiarization costs. The lower bound of the range is calculated assuming that one specialist per firm will review the rule, and the upper bound of the range assumes one specialist per establishment.

The most recent data on private sector entities at the time this NPRM was drafted are from the 2017 Statistics of U.S. Businesses (SUSB).[21] The Department limited this analysis to a few industries that were acknowledged to have tipped workers in the 2020 Tip final rule. These industries are classified under the North American Industry Classification System (NAICS) as 713210 (Casinos), 721110 (Hotels and Motels), 722410 (Drinking Places (Alcoholic Beverages)), 722511 (Full-service Restaurants), 722513 (Limited Service Restaurants), and 722515 (Snack and Nonalcoholic Beverage Bars). The Department understands that there may be entities in other industries with tipped workers who may review this rule, and welcomes data and information on other industries that should be included in this analysis. See Table 1 for a list of the number of firms and establishments in each of these industries.

Table 1. Firms and Establishments in Tipped Industries

Industry	Firms	Establishments
NAICS 713210 (Casinos)	221	292
NAICS 721110 (Hotels and Motels)	42,795	53,869
NAICS 722410 (Drinking Places (Alcoholic Beverages))	39,323	40,156
NAICS 722511 (Full-Service Restaurants)	217,111	250,871
NAICS 722513 (Limited Service Restaurants)	157,353	251,000
NAICS 722515 (Snack and Nonalcoholic Beverage Bars)	47,112	65,010
Total	503,915	661,198

Source: Statistics of U.S. Businesses 2017

The Department believes 15 minutes per entity, on average, to be an appropriate review time for this proposed rule, because most of the information related to the CAA amendments that employers would have to familiarize themselves with was already captured in the 2020 Tip final rule. The changes in this proposed rule are small, and some are consistent with the Department's existing enforcement. This review time represents an average of employers who will spend less than 15 minutes reviewing, and others who will spend more time.

The Department's analysis assumes that the proposed rescission would be reviewed by Compensation, Benefits, and Job Analysis Specialists (SOC 13–1141) or employees of similar status and comparable pay. The median hourly wage for these workers was $31.04 per hour in 2019, the most recent year of data available.[22] The Department also assumes that benefits are paid at a rate of 46 percent[23] and overhead costs are paid at a rate of 17 percent of the base wage, resulting in a fully loaded hourly rate of $50.60.

The Department estimates that the lower bound of regulatory familiarization cost range would be $6,374,525 (503,915 firms × $50.60 × 0.25 hours), and the upper bound, $8,364,155 (661,198 establishments × $50.60 × 0.25 hours). The Department estimates that all regulatory familiarization costs would occur in Year 1.

Additionally, the Department estimated average annualized costs of this proposed rescission over 10 years. Over 10 years, it would have an average annual cost of $0.8 million to $1.1 million, calculated at a 7 percent discount rate ($0.7 million to $0.9 million calculated at a 3 percent discount rate). All costs are in 2019 dollars.

D. Benefits

This NPRM proposes to revise portions of the Department's CMP regulations regarding when a violation of section 6 (minimum wage) or section 7 (overtime) of the FLSA is ''willful,'' and thus subject to a CMP under section 16(e). As discussed above, these portions of the Department's regulations are based on *McLaughlin* v. *Richland Shoe Co.,* 486 U.S. 128, 133 (1988), which held that a violation is willful if the employer ''knew or showed reckless disregard.'' This NPRM proposes to modify the CMP regulations to clarify that multiple circumstances can be sufficient to show a knowing violation of section 6 or 7. The Department also proposes to reinsert language in the CMP regulations to address the meaning of reckless disregard. The Department believes that these proposed revisions will better align its CMP regulations with how it actually litigates willfulness and make clearer to the regulated community when a violation is knowing or in reckless disregard and thus willful. This increased clarity will enable employers to better understand when they may be subject to a CMP for violating the FLSA's minimum wage or overtime requirements, which may enhance the penalty's deterrent effect.

This NPRM also proposes to replace regulatory language in its CMP regulations so that the Department is not limited in its assessment of tip CMPs to only repeated and willful violations of section 3(m)(2)(B). This change is consistent with the text of section 16(e) of the FLSA, which provides that ''[a]ny person who violates section 3(m)(2)(B) shall be subject to a civil penalty . . . for each such violation, as the Secretary determines appropriate.'' 29 U.S.C. 216(e). The Department believes that this change, by ensuring that the Department has the ability to impose CMPs for violations of section 3(m)(2)(B) when it deems appropriate, can help improve the enforcement of the statute, potentially discourage more employers from violating the FLSA, and better ensure that employees keep the tips they receive.

[21] Statistics of U.S. Businesses 2017, *https://www.census.gov/data/tables/2017/econ/susb/2017-susb-annual.html,* 2017 SUSB Annual Data Tables by Establishment Industry.

[22] Occupational Employment and Wages, May 2019, *https://www.bls.gov/oes/current/oes131141.htm.*

[23] The benefits-earnings ratio is derived from the Bureau of Labor Statistics' Employer Costs for Employee Compensation data using variables CMU1020000000000D and CMU1030000000000D.

VIII. Regulatory Flexibility Act (RFA) Analysis

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121 (1996), requires Federal agencies engaged in rulemaking to consider the impact of their proposals on small entities, consider alternatives to minimize that impact, and solicit public comment on their analyses. The RFA requires the assessment of the impact of a regulation on a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions. Accordingly, the Department examined this proposed rule to determine whether it would have a significant economic impact on a substantial number of small entities. The most recent data on private sector entities at the time this NPRM was drafted are from the 2017 Statistics of U.S. Businesses (SUSB).[24] The Department limited this analysis to a few industries that were acknowledged to have tipped workers in the 2020 Tip final rule. These industries are classified under the North American Industry Classification System (NAICS) as 713210 (Casinos), 721110 (Hotels and Motels), 722410 (Drinking Places (Alcoholic Beverages)), 722511 (Full-service Restaurants), 722513 (Limited Service Restaurants), and 722515 (Snack and Nonalcoholic Beverage Bars). The SUSB reports that these industries have 503,915 private firms and 661,198 private establishments. Of these, 501,322 firms and 554,088 establishments have fewer than 500 employees.

The per-entity cost for small business employers is the regulatory familiarization cost of $12.65, or the fully loaded mean hourly wage of a Compensation, Benefits, and Job Analysis Specialist ($50.60) multiplied by ¼ hour (fifteen minutes). Because this cost is minimal for small business entities, and well below one percent of their gross annual revenues, which is typically at least $100,000 per year for the smallest businesses, the Department certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. The Department welcomes any comments and data on this Regulatory Flexibility Act Analysis, including the costs and benefits of this proposed rule on small entities.

[24] Statistics of U.S. Businesses 2017, *https://www.census.gov/data/tables/2017/econ/susb/2017-susb-annual.html,* 2016 SUSB Annual Data Tables by Establishment Industry.

IX. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (UMRA)[25] requires agencies to prepare a written statement for rules with a Federal mandate that may result in increased expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, of $165 million ($100 million in 1995 dollars adjusted for inflation) or more in at least one year.[26] This statement must: (1) Identify the authorizing legislation; (2) present the estimated costs and benefits of the rule and, to the extent that such estimates are feasible and relevant, its estimated effects on the national economy; (3) summarize and evaluate state, local, and tribal government input; and (4) identify reasonable alternatives and select, or explain the non-selection, of the least costly, most cost-effective, or least burdensome alternative. This proposed rule is not expected to result in increased expenditures by the private sector or by state, local, and tribal governments of $165 million or more in any one year.

X. Executive Order 13132, Federalism

The Department has (1) reviewed this proposed rescission in accordance with Executive Order 13132 regarding federalism and (2) determined that it does not have federalism implications. The proposed rule would not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

XI. Executive Order 13175, Indian Tribal Governments

This proposed rule would not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

List of Subjects

29 CFR Part 516

Minimum wages, Reporting and recordkeeping requirements, Wages.

29 CFR Part 531

Wages.

[25] *See* 2 U.S.C. 1501.

[26] Calculated using growth in the Gross Domestic Product deflator from 1995 to 2019. Bureau of Economic Analysis. Table 1.1.9. Implicit Price Deflators for Gross Domestic Product.

29 CFR Part 578

Penalties, Wages.

29 CFR Part 579

Child labor, Penalties.

29 CFR Part 580

Administrative practice and procedure, Child labor, Penalties, Wages.

For the reasons set forth above, the Department proposes to amend title 29, parts 578, 579, and 580 of the Code of Federal Regulations as follows:

PART 578—TIP RETENTION, MINIMUM WAGE, AND OVERTIME VIOLATIONS—CIVIL MONEY PENALTIES

■ 1. The authority citation for part 578 is revised to read as follows:

Authority: 29 U.S.C. 216(e), as amended by sec. 9, Pub. L. 101–157, 103 Stat. 938, sec. 3103, Pub. L. 101–508, 104 Stat. 1388–29, sec. 302(a), Pub. L. 110–233, 122 Stat. 920, and sec. 1201, Div. S., Tit. XII, Pub. L. 115–141, 132 Stat. 348; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note), as amended by sec. 31001(s), Pub. L. 104–134, 110 Stat. 1321–358, 1321–373, and sec. 701, Pub. L. 114–74, 129 Stat 584.

■ 2. The heading of part 578 is revised to read as set forth above.

■ 3. Revise § 578.3 to read as follows:

§ 578.3 What types of violations may result in a penalty being assessed?

(a) *In general.* (1) A penalty of up to $1,162 per violation may be assessed against any person who violates section 3(m)(2)(B) of the Act.

(2) A penalty of up to $2,074 per violation may be assessed against any person who repeatedly or willfully violates section 6 (minimum wage) or section 7 (overtime) of the Act. The amount of the penalties stated in paragraphs (a)(1) and (2) of this section will be determined by applying the criteria in § 578.4.

(b) *Repeated violations.* An employer's violation of section 6 or section 7 of the Act shall be deemed to be ''repeated'' for purposes of this section:

(1) Where the employer has previously violated section 6 or section 7 of the Act, provided the employer has previously received notice, through a responsible official of the Wage and Hour Division or otherwise authoritatively, that the employer allegedly was in violation of the provisions of the Act; or

(2) Where a court or other tribunal has made a finding that an employer has previously violated section 6 or section 7 of the Act, unless an appeal therefrom

which has been timely filed is pending before a court or other tribunal with jurisdiction to hear the appeal, or unless the finding has been set aside or reversed by such appellate tribunal.

(c) *Willful violations.* (1) An employer's violation of section 6 or section 7 of the Act shall be deemed to be ''willful'' for purposes of this section where the employer knew that its conduct was prohibited by the Act or showed reckless disregard for the requirements of the Act. All of the facts and circumstances surrounding the violation shall be taken into account in determining whether a violation was willful.

(2) For purposes of this section, the employer's receipt of advice from a responsible official of the Wage and Hour Division to the effect that the conduct in question is not lawful, among other situations, can be sufficient to show that the employer's conduct is knowing, but is not automatically dispositive.

(3) For purposes of this section, reckless disregard of the requirements of the Act means, among other situations, that the employer should have inquired further into whether its conduct was in compliance with the Act and failed to make adequate further inquiry.

■ 4. Revise § 578.4(a) to read as follows:

§ 578.4 Determination of penalty.

(a) In determining the amount of penalty to be assessed for any violation of section 3(m)(2)(B) or repeated or willful violation of section 6 or section 7 of the Act, the Administrator shall consider the seriousness of the violations and the size of the employer's business.

* * * * *

PART 579—CHILD LABOR VIOLATIONS—CIVIL MONEY PENALTIES

■ 5. The authority citation for part 579 is revised to read as follows:

Authority: 29 U.S.C. 203(m), (l), 211, 212, 213(c), 216; Reorg. Plan No. 6 of 1950, 64 Stat. 1263, 5 U.S.C. App; secs. 25, 29, Pub. L. 93–257, 88 Stat. 72, 76; Secretary of Labor's Order No. 01–2014 (Dec. 19, 2014), 79 FR 77527 (Dec. 24, 2014); 28 U.S.C. 2461 Note.

■ 6. Amend § 579.1 by:

■ a. Redesignating paragraph (a)(2) as paragraph (a)(2)(i); and

■ b. Adding paragraph (a)(2)(ii).

The addition reads as follows:

§ 579.1 Purpose and scope.

(a) * * *

(2) * * *

(ii) Any person who violates section 203(m)(2)(B) of the FLSA, relating to the retention of tips, shall be subject to a civil penalty not to exceed $1,162 for each such violation.

* * * * *

■ 7. Amend § 579.2 by revising the definition of ''Willful violations'' to read as follows:

§ 579.2 Definitions.

* * * * *

Willful violations under this section has several components. An employer's violation of section 12 or section 13(c) of the Act relating to child labor or any regulation issued pursuant to such sections, shall be deemed to be willful for purposes of this section where the employer knew that its conduct was prohibited by the Act or showed reckless disregard for the requirements of the Act. All of the facts and circumstances surrounding the violation shall be taken into account in determining whether a violation was willful. In addition, for purposes of this section, the employer's receipt of advice from a responsible official of the Wage and Hour Division to the effect that the conduct in question is not lawful, among other situations, can be sufficient to show that the employer's conduct is knowing, but is not automatically dispositive. For purposes of this section, reckless disregard of the requirements of the Act means, among other situations, that the employer should have inquired further into whether its conduct was in compliance with the Act and failed to make adequate further inquiry.

PART 580—CIVIL MONEY PENALTIES—PROCEDURES FOR ASSESSING AND CONTESTING PENALTIES

■ 8. The authority citation for part 580 continues to read as follows:

Authority: 29 U.S.C. 9a, 203, 209, 211, 212, 213(c), 216; Reorg. Plan No. 6 of 1950, 64 Stat. 1263, 5 U.S.C. App; secs. 25, 29, 88 Stat. 72, 76; Secretary's Order 01–2014 (Dec. 19, 2014), 79 FR 77527 (Dec. 24, 2014); 5 U.S.C. 500, 503, 551, 559; 103 Stat. 938.

■ 9. Revise the first sentence of § 580.2 to read as follows:

§ 580.2 Applicability of procedures and rules.

The procedures and rules contained in this part prescribe the administrative process for assessment of civil money penalties for any violation of the child labor provisions at section 12 of the Act and any regulation thereunder as set forth in part 579 of this chapter, and for assessment of civil money penalties for any violation of the tip retention provisions of section 3(m)(2)(B) or any repeated or willful violation of the minimum wage provisions of section 6 or the overtime provisions of section 7 of the Act or the regulations thereunder set forth in 29 CFR subtitle B, chapter V. * * *

■ 10. Revise the first sentence of § 580.3 to read as follows:

§ 580.3 Written notice of determination required.

Whenever the Administrator determines that there has been a violation by any person of section 12 of the Act relating to child labor or any regulation thereunder as set forth in part 579 of this chapter, or determines that there has been a violation by any person of section 3(m)(2)(B), or determines that there has been a repeated or willful violation by any person of section 6 or section 7 of the Act, and determines that imposition of a civil money penalty for such violation is appropriate, the Administrator shall issue and serve a notice of such penalty on such person in person or by certified mail. * * *

■ 11. Amend § 580.12 by revising the first sentence of paragraph (b) to read as follows:

§ 580.12 Decision and Order of Administrative Law Judge.

* * * * *

(b) The decision of the Administrative Law Judge shall be limited to a determination of whether the respondent has committed a violation of section 12, a violation of section 3(m)(2)(B), or a repeated or willful violation of section 6 or section 7 of the Act, and the appropriateness of the penalty assessed by the Administrator. * * *

* * * * *

■ 12. Amend § 580.18 by revising the third sentence in paragraph (b)(3) to read as follows:

§ 580.18 Collection and recovery of penalty.

* * * * *

(b) * * *

(3) * * * A willful violation of sections 6, 7, or 12 of the Act may subject the offender to the penalties provided in section 16(a) of the Act, enforced by the Department of Justice in criminal proceedings in the United States courts. * * *

Signed this 22nd day of March, 2021.

Jessica Looman,

Principal Deputy Administrator, Wage and Hour Division.

[FR Doc. 2021–06245 Filed 3–23–21; 4:15 pm]

BILLING CODE 4510–27–P

DEPARTMENT OF EDUCATION

34 CFR Chapter II

[DOCKET ID ED–2021–OESE–0037]

Proposed Waiver and Extension of the Project Periods for the Equity Assistance Centers Grant Program

AGENCY: Office of Elementary and Secondary Education (OESE), Department of Education.

ACTION: Proposed waiver and extension of project periods.

SUMMARY: The Secretary proposes to waive the requirements in the Education Department General Administrative Regulations that generally prohibit project periods exceeding five years and project period extensions involving the obligation of additional Federal funds. The proposed waiver and extension would enable four projects under Assistance Listing Number (ALN) 84.004D to receive funding for an additional period, not to exceed September 30, 2022.

DATES: We must receive your comments on or before April 26, 2021.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov*, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''FAQ.''
- *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments, address them to Ed Vitelli, U.S. Department of Education, 400 Maryland Avenue SW, Room 3E106, Washington, DC 20202.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: 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:

Invitation to Comment: We invite you to submit comments regarding this proposed waiver and extension. To ensure that your comments have maximum effect in developing the final waiver and extension, we urge you to identify clearly the specific grantee or grantees (listed in the table under the *Background* section) that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from these proposed waivers and extensions. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this proposed waiver and extension of the project period by accessing *Regulations.gov*. Due to the current COVID–19 public health emergency, the Department buildings are not open to the public. However, upon reopening, you may also inspect the comments in person at 400 Maryland Avenue SW, Room 3E106, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern Time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this proposed waiver and extension. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Background

On July 18, 2016, the Department of Education (Department) published in the **Federal Register** (81 FR 46820) a notice inviting applications for four projects for fiscal year (FY) 2016 under the Equity Assistance Centers (EAC) program, authorized under title IV of the Civil Rights Act of 1964, 42 U.S.C. 2000c–2000c–2, 2000c–5.

The purpose of the EAC projects is to 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, 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. All four projects provide technical assistance (including training) in all four of the desegregation assistance areas: race, sex, national origin, and religion. A table listing the FY 2016 EAC projects follows.

FY 2016 awards under ALN 84.004D	Project information
S004D160012	Mid-Atlantic Equity Consortium, Bethesda, MD. Project: Center for Education Equity.
S004D160005	Intercultural Development Research Association, San Antonio, TX. Project: IDRA Equity Assistance Center South.
S004D160011	Indiana University, Indianapolis, IN. Project: Midwest and Plains Equity Assistance Center.
S004D160004	Metropolitan State University of Denver, Denver, CO. Project: Western Educational Equity Assistance Center (WEEAC).

The EACs' project periods started on October 1, 2016, and will end on September 30, 2021.

Waivers and Extensions

The Department proposes to extend the four EAC projects to ensure the continuity of services provided by the projects to vulnerable populations, schools, and school districts across the country as the effects of the COVID–19 pandemic unfold, and as learning recovery and school reentry efforts intensify over the course of the current and subsequent school years.

The Department also proposes to extend the four EAC projects to ensure that the next EAC grant competition is, to the extent statutorily permitted, aligned with the Biden Administration's policy directives, including, for example, the Executive orders and memorandum included in the table below.

Title of policy directive	Date signed by President Biden
Executive Order 13985: Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.	January 20, 2021.
Executive Order 13988: Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation.	January 20, 2021.
Memorandum: Condemning and Combating Racism, Xenophobia, and Intolerance Against Asian Americans and Pacific Islanders in the United States.	January 26, 2021.
Executive Order 14012: Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans.	February 2, 2021.

These policy directives instruct the Federal Government to pursue a comprehensive approach to advancing equity for all, to prevent and combat discrimination on the basis of gender identity or sexual orientation, to ensure that laws and policies encourage full participation by immigrants, including refugees, in our civic life, to ensure that the Federal Government eliminates sources of fear and other barriers that prevent immigrants from accessing government services available to them, and to combat xenophobia and intolerance against Asian Americans and Pacific Islanders.

For these reasons, the Department believes it is in the best interest of the public to extend the current EAC project periods for one year. Correspondingly, the Secretary proposes to waive the requirements in 34 CFR 75.250, which prohibit project periods exceeding five years, as well as the requirements in 34 CFR 75.261(a) and (c)(2), which permit the extension of a project period only if the extension does not involve the obligation of additional Federal funds. The waiver will permit the Department to issue a FY 2021 continuation award to each of the four currently funded EAC projects.

Any activities carried out under these continuation awards must be consistent with the scope and objectives of the grantees' applications as approved in the FY 2016 competition. The requirements for continuation awards are set forth in 34 CFR 75.253.

Regulatory Flexibility Act Certification

The Secretary certifies that the proposed waiver and extension of the project period would not have a significant economic impact on a substantial number of small entities. The only entities that would be affected by the proposed waiver and extension of the project period are the current grantees.

The Secretary certifies that the proposed waiver and extension would not have a significant economic impact on these entities, because the extension of an existing project period imposes minimal compliance costs, and the activities required to support the additional year of funding would not impose additional regulatory burdens or require unnecessary Federal supervision.

Paperwork Reduction Act of 1995

This notice of proposed waiver and extension of the project period does not contain any information collection requirements.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance. This document provides early notification of our specific plans and actions for this program.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

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.

Ruth Ryder,

Deputy Assistant Secretary for Policy and Programs, Office of Elementary and Secondary Education.

[FR Doc. 2021–06117 Filed 3–24–21; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

34 CFR Chapter III

[Docket ID ED–2021–OSERS–0018]

Proposed Priorities—Technical Assistance and Dissemination To Improve Services and Results for Children With Disabilities and Technical Assistance on State Data Collection—National Assessment Center

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Proposed priorities.

SUMMARY: The Department of Education (Department) proposes two funding priorities for a National Assessment Center under the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities program and under the Technical Assistance on State Data Collection program, Assistance Listing Number 84.326G. The Department may use these priorities for competitions in fiscal year (FY) 2021 and later years. We take this action to focus attention on an identified need to address national, State, and local assessment issues related to students with disabilities.

DATES: We must receive your comments on or before June 8, 2021.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by email or those submitted after the comment period. Please submit your comments only one time, in order to ensure that we do not receive duplicate copies. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov*, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''Help.''
- *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about the proposed priorities, address them to David Egnor, U.S. Department of Education, 400 Maryland Avenue SW, Room 5163, Potomac Center Plaza, Washington, DC 20202–5076.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: David Egnor, U.S. Department of Education, 400 Maryland Avenue SW, Room 5163, Potomac Center Plaza, Washington, DC 20202–5076. Telephone: (202) 245–7334. Email: *David.Egnor@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding Proposed Priority 2, including: (1) The program requirements under Proposed Priority 2; and (2) the application and administrative requirements under the common elements section of Proposed Priority 1 and Proposed Priority 2, but only as the requirements apply to Proposed Priority 2.[1] To ensure that your comments have maximum effect in developing the final priorities, we urge you to clearly identify the specific topic that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from the proposed priorities. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about the proposed priorities by accessing *Regulations.gov.* Due to the novel coronavirus 2019 (COVID–19) pandemic, the Department buildings are currently not open. However, upon reopening, you may also inspect the comments in person in Room 5163, 550 12th Street SW, Potomac Center Plaza, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern Time, Monday through Friday of each week except Federal holidays. Please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for the proposed priorities. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Purpose of Program: The purpose of the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities program is to promote academic achievement and to improve results for children with disabilities by providing technical assistance (TA), supporting model demonstration projects, disseminating useful information, and implementing activities that are supported by scientifically based research. The purpose of the Technical Assistance on State Data Collection program is to improve the capacity of States to meet the IDEA data collection and reporting requirements. In addition, the Consolidated Appropriations Act, 2021, gives the Secretary authority to use funds reserved under section 611(c) to administer and carry out other services and activities to improve data collection, coordination, quality, and use under Parts B and C of the IDEA.

Program Authority: 20 U.S.C. 1411, 1416, 1463, and 1481; and the Consolidated Appropriations Act, 2021, Div. H, Title III of Public Law 116–260, 134 Stat. 1182.

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

Applicable Program Regulations: 34 CFR 300.702.

Proposed Priorities

This notice contains two proposed priorities. In accordance with 34 CFR 75.105(b)(2)(v), Proposed Priority 1 and Proposed Priority 2 are from allowable activities specified or otherwise authorized in the Individuals with Disabilities Education Act (IDEA) (see sections 663 and 681(d) of the IDEA, 20 U.S.C. 1463 and 1481(d)). In addition, Proposed Priority 2 is from allowable activities in sections 611(c) and 616(i) of the IDEA (20 U.S.C. 1411(c) and 1416(i)) and the Consolidated Appropriations Act, 2021, Div. H, Title III of Public Law 116–260, 134 Stat. 1182.

Proposed Priority 1: Technical Assistance and Dissemination To Improve Services and Results for Children With Disabilities—National Assessment Center

Background: Section 612(a)(16) of the IDEA requires that all students with disabilities are included in all general State and districtwide assessments, including assessments described under section 1111 of the Elementary and Secondary Education Act of 1965, as amended (ESEA), with appropriate accommodations and alternate assessments where necessary and as indicated in their respective individualized education programs. In accordance with Federal law, there are several ways for students with disabilities to participate appropriately in State and districtwide assessments: General assessments without accommodations, general assessments

[1] Under section 681(d) of the Individuals with Disabilities Education Act (IDEA), the Secretary may, without regard to rulemaking, fund activities under Proposed Priority 1.

with accommodations, and alternate assessments that are based on alternate academic achievement standards for students with the most significant cognitive disabilities with or without accommodations as necessary.

Despite the progress State educational agencies (SEAs) and local educational agencies (LEAs) have made in including students with disabilities in assessments and accountability systems, SEAs and LEAs continue to face challenges, such as (1) integrating data from dissimilar tests (*e.g.,* general without accommodations, general with accommodations, alternate) into a single accountability system; (2) developing consistent SEA and LEA policies on assessment accommodations that provide maximum accessibility while maintaining test reliability and validity; (3) analyzing and using diagnostic, interim,[2] and summative assessment data to improve instruction, learning, and accountability for students with disabilities; and (4) addressing test security, accessibility, technical support, and other challenges associated with transitioning from traditional paper-and-pencil assessments to digitally-based assessments (DBAs), including DBAs that can be delivered via distance education and other remote service delivery models of instruction.

Furthermore, one of the most complex challenges faced by SEAs and LEAs is developing and administering English language proficiency (ELP) assessments to students who are both English learners (ELs) and students with disabilities (U.S. Department of Education, 2014). Properly identifying these students is also a significant challenge if their disabilities are masked by their limited English proficiency, or vice versa. Improper identification may lead to inappropriate instruction, assessments, and accommodations for these students. Linguistic and cultural biases may also affect the validity of assessments for ELs with disabilities.

Finally, the Department notes that in many schools, there may be unnecessary testing or unclear purpose applied to the task of assessing students, including students with disabilities, that consumes too much instructional time and creates undue stress for educators and students. (For more information, see the Department's February 2, 2016, letter to Chief State School Officers available at *www2.ed.gov/admins/lead/account/saa/16-0002signedcsso222016ltr.pdf.*)

These and other complex challenges will continue to arise as States continue to implement, revise, or adopt new challenging academic content standards and develop new, valid, more instructionally useful, and inclusive assessments aligned to these standards. Developing these new assessments has been and will continue to be challenging and time-consuming, and States and LEAs need support in identifying and implementing effective practices for identifying and including children with disabilities in State and districtwide assessments. Moreover, methods for analyzing and effectively using State and districtwide assessment data to improve instruction, learning, and accountability for students with disabilities will continue to need further development, refinement, and technical support.

Proposed Priority: The purpose of this proposed priority is to fund a cooperative agreement to support the establishment and operation of a National Assessment Center (Center) to address national, State, and local assessment issues related to students with disabilities. The Center must achieve, at a minimum, the following expected outcomes to ensure the inclusion of students with disabilities in State and districtwide assessments and accountability systems:

Knowledge Development Outcomes.

(a) Increased body of knowledge on practices supported by evidence to collect, analyze, synthesize, and disseminate relevant information regarding State and districtwide assessments of students with disabilities, including on topics such as—

(1) The inclusion of students with disabilities in accountability systems;

(2) Assessment accommodations;

(3) Alternate assessments;

(4) Universal design of assessments;

(5) Technology-based assessments, including DBAs;

(6) Interim assessments;

(7) Competency-based assessments;

(8) Performance-based assessments;

(9) Methods for analyzing and reporting assessment data (including methods for addressing assessment data interoperability challenges);

(10) Application of growth models in assessment programs;

(11) Uses of diagnostic, interim, and summative assessment data to inform instructional programs for students with disabilities; and

(12) Identifying and assessing ELs with disabilities, including ensuring that all ELs with disabilities receive appropriate accommodations, as needed, on ELP assessments, and that the results of ELP assessments for students with disabilities are validly used in making accountability determinations under the ESEA.

(b) Increased capacity of SEA and LEA personnel to assess SEA and LEA needs, and track SEA and LEA activities and trends, related to including students with disabilities in State and districtwide assessments, including, as appropriate, improving the knowledge and skills of SEA and LEA personnel related to any of the topics listed in paragraph (a) of the *Knowledge Development Outcomes* section of the proposed priority.

Technical Assistance and Dissemination Outcomes.

(a) Increased capacity of SEA and LEA personnel to collect and analyze diagnostic, interim, and summative assessment data on the performance of students with disabilities, including ELs with disabilities.

(b) Increased capacity of SEA and LEA personnel to use diagnostic, interim, and summative assessment data to evaluate and improve educational policies and increase accountability for students with disabilities, including ELs with disabilities.

(c) Increased capacity of LEA personnel to use diagnostic, interim, and summative assessment results in instructional decision-making to improve teaching and learning for students with disabilities, including ELs with disabilities.

(d) Increased awareness of national policymakers regarding how students with disabilities are included in and benefit from current and emerging approaches to State and districtwide assessment, including topics listed in paragraph (a) of the *Knowledge Development Outcomes* section of this priority.

In addition to these programmatic requirements, to be considered for funding under this priority, applicants must meet the application and administrative requirements under *Proposed Priority 1 and Proposed Priority 2 Common Elements.*

Proposed Priority 2: Targeted and Intensive Technical Assistance to States on the Analysis and Use of Diagnostic, Interim, and Summative Assessment Data To Support Implementation of States' Identified Measurable Results

Background: The purpose of this priority is to (1) assist States in the analysis and use of diagnostic, interim, and summative assessment data to support the implementation of States' State-Identified Measurable Results

[2] For the purposes of this priority, the term ''interim assessments'' refer to assessments that are administered several times during a school year to measure progress. Another term that is sometimes used to describe these assessments is ''formative assessments.''

(SIMR) as described in their State Systemic Improvement Plan (SSIP); and (2) support State efforts to provide TA to LEAs in the analysis and use of diagnostic, interim, and summative assessment data to support the implementation of the SIMR, as appropriate.

As detailed in the background section for Proposed Priority 1, research indicates that SEAs and LEAs continue to face challenges in analyzing and using diagnostic, interim, and summative assessment data to improve instruction, learning, and accountability for students with disabilities. SEAs also need assistance analyzing State assessment data submitted as part of the SSIP and the SIMR in accordance with section 616 of IDEA and the Office of Special Education Programs (OSEP) guidance. Beginning in the IDEA Part B Federal fiscal year (FFY) 2013 State Performance Plan/Annual Performance Report (SPP/APR), States were required to provide, as part of Phase I of the SSIP, a statement of the result(s) the State intends to achieve through implementation of the SSIP, which is referred to as the SIMR for Children with Disabilities. States were required to establish ''measurable and rigorous'' targets for their SIMRs for each successive year of the SPP (FFYs 2014 through 2019) and will be required to do so for each year of the next SPP (FFYs 2020 through 2025) as part of their SPP/APR submissions. At least 36 States have focused their SIMRs on improving academic achievement as measured by assessment results for children with disabilities. These States will need assistance in analyzing and using State and districtwide assessment data to promote academic achievement and to improve results for children with disabilities.

Proposed Priority: The purpose of this priority is to (1) assist those States that have a SIMR related to assessment results in analyzing and using diagnostic, interim, and summative assessment data to better achieve the SIMR as described in their IDEA Part B SSIPs; and (2) assist State efforts to provide TA to LEAs in analyzing and using State and districtwide assessment data, for those States that have a SIMR related to assessment, to better achieve the SIMR, as appropriate. The Center must achieve, at a minimum, the following expected outcomes:

(a) Increased capacity of SEA personnel in States that have a SIMR related to assessment results to analyze and use diagnostic, interim, and summative assessment data to better achieve the SIMR as described in the IDEA Part B SSIP, including using diagnostic, interim, and summative assessment data to evaluate and improve educational policy, inform instructional programs, and improve instruction for students with disabilities; and

(b) Increased capacity of SEA personnel to provide TA to LEAs to analyze and use diagnostic, interim, and summative assessment data to improve instruction of students with disabilities and support the implementation of the SIMR.

In addition to these program requirements, to be considered for funding under this priority, applicants must meet the application and administrative requirements under *Proposed Priority 1 and Proposed Priority 2 Common Elements.*

Proposed Priority 1 and Proposed Priority 2 Common Elements

In addition to the program requirements contained in both priorities, to be considered for funding applicants must meet the following application and administrative requirements,[3] which are:

(a) Demonstrate, in the narrative section of the application under ''Significance,'' how the proposed project will—

(1) Address the needs of SEAs and LEAs to analyze and use diagnostic, interim, and summative assessment data in instructional decision-making to improve teaching and learning for students with disabilities. To meet this requirement the applicant must—

(i) Present applicable national, State, and local data demonstrating the needs of SEAs and LEAs to analyze and use diagnostic, interim, and summative assessment data in instructional decision-making to improve teaching and learning for students with disabilities;

(ii) Demonstrate knowledge of current educational issues and policy initiatives related to analyzing and using diagnostic, interim, and summative assessment data in instructional decision-making to improve teaching and learning for students with disabilities; and

(iii) Describe the current level of implementation related to analyzing and using diagnostic, interim, and summative assessment data in instructional decision-making to improve teaching and learning for students with disabilities; and

(2) Improve the analysis and use of diagnostic, interim, and summative assessment data to improve teaching and learning for students with disabilities.

(b) Demonstrate, in the narrative section of the application under ''Quality of project services,'' how the proposed project will—

(1) Ensure equal access and treatment for members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. To meet this requirement, the applicant must describe how it will—

(i) Identify the needs of the intended recipients for TA and information; and

(ii) Ensure that products and services meet the needs of the intended recipients (*e.g.,* by creating materials in formats and languages accessible to the stakeholders served by the intended recipients);

(2) Achieve its goals, objectives, and intended outcomes. To meet this requirement, the applicant must provide—

(i) Measurable intended project outcomes; and

(ii) In Appendix A, the logic model[4] by which the proposed project will achieve its intended outcomes that depicts, at a minimum, the goals, activities, outputs, and intended outcomes of the proposed project;

(3) Use a conceptual framework (and provide a copy in Appendix A) to develop project plans and activities, describing any underlying concepts, assumptions, expectations, beliefs, or theories, as well as the presumed relationships or linkages among these variables, and any empirical support for this framework;

Note: The following websites provide more information on logic models and conceptual frameworks: *www.osepideasthatwork.org/logicModel* and *www.osepideasthatwork.org/resources-grantees/program-areas/ta-ta/tad-project-logic-model-and-conceptual-framework.*

(4) Be based on current research and make use of evidence-based[5] practices (EBPs). To meet this requirement, the applicant must describe—

(i) The current research on the effectiveness of analyzing and using

[3] Paragraph (b)(5)(ii) applies only to Proposed Priority 1. Paragraph (b)(5)(iv) applies only to Proposed Priority 2.

[4] Logic model (also referred to as a theory of action) means a framework that identifies key project components of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes.

[5] For the purposes of this priority, ''evidence-based'' means, at a minimum, evidence that demonstrates a rationale (as defined in 34 CFR 77.1), where a key project component included in the project's logic model is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes.

diagnostic, interim, and summative assessment data in instructional decision-making to improve teaching and learning for students with disabilities; and

(ii) How the proposed project will incorporate current EBPs in the development and delivery of its products and services;

(5) Develop products and provide services that are of high quality and sufficient intensity and duration to achieve the intended outcomes of the proposed project. To address this requirement, the applicant must describe—

(i) How it proposes to identify or develop the knowledge base on analyzing and using diagnostic, interim, and summative assessment data in instructional decision-making to improve teaching and learning for students with disabilities;

(ii) Its proposed approach to universal, general TA,[6] which must identify the intended recipients, including the type and number of recipients, that will receive the products and services under this approach;

(iii) Its proposed approach to targeted, specialized TA,[7] which must identify—

(A) The intended recipients, including the type and number of recipients, that will receive the products and services under this approach; and

(B) Its proposed approach to measure the readiness of potential TA recipients to work with the project, assessing, at a minimum, their current infrastructure, available resources, and ability to build capacity at the local level; and

(iv) Its proposed approach to intensive, sustained TA,[8] which must identify—

(A) The intended recipients, including the type and number of recipients, that will receive the products and services under this approach;

(B) Its proposed approach to measure the readiness of SEA and LEA personnel to work with the project, including their commitment to the initiative, alignment of the initiative to their needs, current infrastructure, available resources, and ability to build capacity at the SEA and LEA levels;

(C) Its proposed plan for assisting SEAs (and LEAs, in conjunction with SEAs) to build or enhance training systems that include professional development based on adult learning principles and coaching;

(D) Its proposed plan for working with appropriate levels of the education system (*e.g.,* SEAs, regional TA providers, LEAs, schools, and families) to ensure that there is communication between each level and that there are systems in place to support the collection, analysis, and use of diagnostic, interim, and summative assessment data in instructional decision-making to improve teaching and learning for students with disabilities; and

(E) Its proposed plan for collaborating and coordinating with Department-funded TA investments, where appropriate, in order to align complementary work and jointly develop and implement products and services to meet the purposes of the priorities;

(6) Develop products and implement services that maximize efficiency. To address this requirement, the applicant must describe—

(i) How the proposed project will use technology to achieve the intended project outcomes;

(ii) With whom the proposed project will collaborate and the intended outcomes of this collaboration; and

(iii) How the proposed project will use non-project resources to achieve the intended project outcomes; and

(7) Develop a dissemination plan that describes how the applicant will systematically distribute information, products, and services to varied intended audiences, using a variety of dissemination strategies, to promote awareness and use of the Center's products and services.

(c) In the narrative section of the application under ''Quality of the project evaluation,'' include an evaluation plan for the project developed in consultation with and implemented by a third-party evaluator.[9] The evaluation plan must—

(1) Articulate formative and summative evaluation questions, including important process and outcome evaluation questions. These questions should be related to the project's proposed logic model required in paragraph (b)(2)(ii) of these *Priority 1 and Priority 2 Common Elements;*

(2) Describe how progress in and fidelity of implementation, as well as project outcomes, will be measured to answer the evaluation questions. Specify the measures and associated instruments or sources for data appropriate to the evaluation questions. Include information regarding reliability and validity of measures where appropriate;

(3) Describe strategies for analyzing data and how data collected as part of this plan will be used to inform and improve service delivery over the course of the project and to refine the proposed logic model and evaluation plan, including subsequent data collection;

(4) Provide a timeline for conducting the evaluation, and include staff assignments for completing the plan. The timeline must indicate that the data will be available annually for the annual performance report (APR) and at the end of Year 2 for the review process described under the heading, *Fourth and Fifth Years of the Project;* and

(5) Dedicate sufficient funds in each budget year to cover the costs of developing or refining the evaluation plan in consultation with a ''third-party'' evaluator, as well as the costs associated with the implementation of the evaluation plan by the third-party evaluator.

(d) Demonstrate, in the narrative section of the application under ''Adequacy of resources and quality of project personnel,'' how—

(1) The proposed project will encourage applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability, as appropriate;

(2) The proposed key project personnel, consultants, and subcontractors have the qualifications

[6] ''Universal, general TA'' means TA and information provided to independent users through their own initiative, resulting in minimal interaction with TA center staff and including one-time, invited or offered conference presentations by TA center staff. This category of TA also includes information or products, such as newsletters, guidebooks, or research syntheses, downloaded from the TA center's website by independent users. Brief communications by TA center staff with recipients, either by telephone or email, are also considered universal, general TA.

[7] ''Targeted, specialized TA'' means TA service based on needs common to multiple recipients and not extensively individualized. A relationship is established between the TA recipient and one or more TA center staff. This category of TA includes one-time, labor-intensive events, such as facilitating strategic planning or hosting regional or national conferences. It can also include episodic, less labor-intensive events that extend over a period of time, such as facilitating a series of conference calls on single or multiple topics that are designed around the needs of the recipients. Facilitating communities of practice can also be considered targeted, specialized TA.

[8] ''Intensive, sustained TA'' means TA services often provided on-site and requiring a stable, ongoing relationship between the TA center staff and the TA recipient. ''TA services'' are defined as negotiated series of activities designed to reach a valued outcome. This category of TA should result in changes to policy, program, practice, or operations that support increased recipient capacity or improved outcomes at one or more systems levels.

[9] A ''third-party'' evaluator is an independent and impartial program evaluator who is contracted by the grantee to conduct an objective evaluation of the project. This evaluator must not have participated in the development or implementation of any project activities, except for the evaluation activities, nor have any financial interest in the outcome of the evaluation.

and experience to carry out the proposed activities and achieve the project's intended outcomes;

(3) The applicant and any key partners have adequate resources to carry out the proposed activities; and

(4) The proposed costs are reasonable in relation to the anticipated results and benefits.

(e) Demonstrate, in the narrative section of the application under ''Quality of the management plan,'' how—

(1) The proposed management plan will ensure that the project's intended outcomes will be achieved on time and within budget. To address this requirement, the applicant must describe—

(i) Clearly defined responsibilities for key project personnel, consultants, and subcontractors, as applicable; and

(ii) Timelines and milestones for accomplishing the project tasks;

(2) Key project personnel and any consultants and subcontractors will be allocated and how these allocations are appropriate and adequate to achieve the project's intended outcomes;

(3) The proposed management plan will ensure that the products and services provided are of high quality, relevant, and useful to recipients; and

(4) The proposed project will benefit from a diversity of perspectives, including those of families, educators, TA providers, researchers, and policy makers, among others, in its development and operation.

(f) Address the following application requirements. The applicant must—

(1) Include, in Appendix A, personnel-loading charts and timelines, as applicable, to illustrate the management plan described in the narrative; [10]

(2) Include, in the budget, attendance at the following:

(i) A one and one-half day kick-off meeting in Washington, DC, or virtually, after receipt of the award, and an annual planning meeting in Washington, DC, or virtually, with the OSEP project officer and other relevant staff during each subsequent year of the project period.

Note: Within 30 days of receipt of the award, a post-award teleconference must be held between the OSEP project officer and the grantee's project director or other authorized representative;

(ii) A two and one-half day project directors' conference in Washington, DC, or virtually, during each year of the project period;

(iii) Two annual two-day trips, or virtually, to attend Department briefings, Department-sponsored conferences, and other meetings, as requested by OSEP; and

(iv) A one-day intensive 3+2 review meeting in Washington, DC, or virtually, during the second year of the project period;

(3) Include, in the budget, a line item for an annual set-aside of 5 percent of the grant amount to support emerging needs that are consistent with the proposed project's intended outcomes, as those needs are identified in consultation with, and approved by, the OSEP project officer. With approval from the OSEP project officer, the project must reallocate any remaining funds from this annual set-aside no later than the end of the third quarter of each budget period;

(4) Maintain a high-quality website, with an easy-to-navigate design, that meets government or industry-recognized standards for accessibility;

(5) Ensure that annual project progress toward meeting project goals is posted on the project website; and

(6) Include, in Appendix A, an assurance to assist OSEP with the transfer of pertinent resources and products and to maintain the continuity of services to States during the transition to a new award at the end of this award period, as appropriate.

Fourth and Fifth Years of the Project: In deciding whether to continue funding the project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a), including—

(a) The recommendations of a 3+2 review team consisting of experts who have experience and knowledge in providing technical assistance to SEA and LEA personnel in including students with disabilities in assessments and accountability systems. This review will be conducted during a one-day intensive meeting that will be held during the last half of the second year of the project period;

(b) The timeliness with which, and how well, the requirements of the negotiated cooperative agreement have been or are being met by the project; and

(c) The quality, relevance, and usefulness of the project's products and services and the extent to which the project's products and services are aligned with the project's objectives and likely to result in the project achieving its intended outcomes.

Under 34 CFR 75.253, the Secretary may reduce continuation awards or discontinue awards in any year of the project period for excessive carryover balances or a failure to make substantial progress. The Department intends to closely monitor unobligated balances and substantial progress under this program and may reduce or discontinue funding accordingly.

Types of Priorities: When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Final Priorities

We will announce the final priorities in a document published in the **Federal Register**. We will determine the final priorities after considering public comment and other information available to the Department. This document does not preclude us from proposing additional priorities, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use these proposed priorities, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Office of Management and Budget (OMB) determines whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an

[10] OSEP has found that a minimum of a three-quarter time equivalency (0.75 FTE) in the role of project director (or divided between a half-time equivalency in the role of the project director and a quarter-time equivalency in the role of a co-project director) is necessary to ensure effective implementation of the management plan and that products and services provided are of high quality, relevant, and useful to recipients.

action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

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

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

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

OMB has determined that this proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this proposed regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing these proposed priorities based on a reasoned determination that their benefits would justify the costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563. In summary, the potential costs associated with these priorities would be minimal, while the potential benefits are significant. The Department believes that this regulatory action does not impose significant costs on eligible entities. Participation in this program is voluntary, and the costs imposed on applicants by this regulatory action will be limited to paperwork burden related to preparing an application. The potential benefits of implementing the program would outweigh the costs incurred by applicants, and the costs of carrying out activities associated with the application will be paid for with program funds. For these reasons, we have determined that the costs of implementation will not be excessively burdensome for eligible applicants, including small entities.

We also have determined that this regulatory action does not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with these Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

In addition, we have considered the potential benefits of this regulatory action and have noted these benefits in the background section of this document.

Paperwork Reduction Act of 1995

The proposed priorities contain information collection requirements that are approved by OMB under OMB control number 1820–0028; the proposed priorities do not affect the currently approved data collection.

Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make the proposed priorities easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections?
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

To send any comments that concern how the Department could make these proposed regulations easier to understand, see the instructions in the **ADDRESSES** section.

Regulatory Flexibility Act Certification: The Secretary certifies that this proposed regulatory action would not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration (SBA) Size Standards define ''small entities'' as for-profit or nonprofit institutions with total annual revenue below $7,000,000 or, if they are institutions controlled by small governmental jurisdictions (that are comprised of cities, counties, towns, townships, villages, school districts, or special districts), with a population of less than 50,000.

The small entities that this proposed regulatory action would affect are local educational agencies (LEAs), including charter schools that operate as LEAs under State law; institutions of higher education; other public agencies; private nonprofit organizations; and freely associated States and outlying areas; Indian Tribes or Tribal organizations; and for-profit organizations. We believe that the costs imposed on an applicant by the proposed priorities would be limited to paperwork burden related to preparing an application and that the benefits of the proposed priorities would outweigh any costs incurred by the applicant.

Participation in the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities program is voluntary. For this reason, the proposed priorities would impose no burden on small entities unless they applied for funding under the program. We expect that in determining whether to apply for Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities program funds, an eligible entity would evaluate the requirements of preparing an application and any associated costs, and weigh them against the benefits likely to be achieved by receiving a Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities program grant. An eligible entity would probably apply only if it determines that the likely benefits exceed the costs of preparing an application.

We believe that the proposed priorities would not impose any additional burden on a small entity applying for a grant than the entity would face in the absence of the proposed action. That is, the length of the applications those entities would submit in the absence of the proposed regulatory action and the time needed to prepare an application would likely be the same.

This proposed regulatory action would not have a significant economic impact on a small entity once it receives a grant because it would be able to meet the costs of compliance using the funds provided under this program. We invite comments from eligible small entities as to whether they believe this proposed regulatory action would have a significant economic impact on them and, if so, request evidence to support that belief.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document 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 Adobe 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. 2021–06264 Filed 3–23–21; 4:15 pm]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2020–0729; FRL–10021–69–Region 5]

Air Plan Approval; Michigan; Part 9 Miscellaneous Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to Michigan's State Implementation Plan (SIP). The submittal, by the Michigan Department of Environment, Great Lakes, and Energy (EGLE) on December 18, 2020, incorporates administrative changes to Michigan's Air Pollution Control Rules, Part 9, ''Emissions Limitations and Prohibitions—Miscellaneous''. This revision will continue with the consolidation of all the adoption by reference materials used by EGLE in other rules in Michigan's SIP into one location in Part 9.

DATES: Comments must be received on or before April 26, 2021.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2020–0729 at *http://www.regulations.gov* or via email to *blakley.pamela@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, 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, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Charles Hatten, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6031, *hatten.charles@epa.gov.* The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID–19.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

I. What did EGLE submit?

On December 18, 2020, EGLE submitted to EPA a request to revise Michigan's Air Pollution Control Rules, Part 9. Specifically, the state requested that we approve a revision to R 336.1902, Adoption of standards by reference. The current SIP-approved version of R 336.1902 includes material that is adopted by reference and is cited by EGLE in other SIP-approved rules. The adopted by reference materials include, but are not limited to, the Code of Federal Regulations, emission test methods, and other technical

documents. On March 30, 2018 (83 FR 30571), EPA approved the consolidation of adopted by reference materials in Part 9, R 336.1902 into the Michigan SIP.

II. EPA's Analysis of EGLE's Submittal

In the December 18, 2020 submission, EGLE revised R 336.1902 to include additional reference materials to maintain consistency between rules contained in the SIP and Michigan's Air Pollution Control Rules. The changes to Part 9 are administrative, revising R 336.1902 to include more adoption by reference material aforementioned by adding the following subrules to R 336.1902: (1)(b)(ii), (1)(b)(vi), (1)(o), (1)(o)(vi), (1)(r) to (u), (2)(d), (3)(b), (4)(g) to (k), (6)(a) to (d), and (10) (See tables 1–14 of EGLE's submission for details). Also, the changes to R 336.1902 reflect the most up-to-date version of the materials adopted by reference currently approved in Michigan's SIP.

Section 110(l) Analysis of the State's Submittal

EPA is proposing to approve the revision to Part 9, as discussed above because it meets all applicable requirements under the Clean Air Act (CAA). Furthermore, EGLE has shown that the revision to Part 9 does not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable CAA requirement, consistent with section 110(l) of the CAA.

Under Section 110(l) of the CAA, EPA shall not approve a SIP revision if it would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171 of the CAA) or any other applicable requirement of the CAA. The proposed SIP revision will not interfere with any applicable CAA requirements based on the technical analysis submitted by EGLE. In Part 9, R 336.1902 contains materials that are adopted by reference and are strictly administrative in nature. Thus, the revision will have no effect on actual or allowable emissions.

III. What action is EPA taking?

EPA is proposing to approve the revision to Part 9 into Michigan's SIP, as submitted on December 18, 2020.

IV. Incorporation by Reference

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference Michigan's Air Pollution Control Rules, Chapter 336, Part 9, R 336.1902 ''Adoption by reference'', effective on November 18, 2018. EPA has made, and will continue to make, these documents generally available through *www.regulations.gov* and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- 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).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: March 22, 2021.

Cheryl Newton,

Acting Regional Administrator, Region 5.

[FR Doc. 2021–06165 Filed 3–24–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2020–0386; FRL–10021–70–Region 5]

Air Plan Approval; Indiana; Monitoring Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to Indiana's State Implementation Plan (SIP) to address changes to its air emissions monitoring rules for Portland cement plants. Indiana revised its rules for Portland cement plants to update the monitoring of particulate matter (PM) emissions to allow the use an additional monitoring method. This additional monitoring option is consistent with EPA's recent revisions to Federal requirements for Portland cement plants.

DATES: Comments must be received on or before April 26, 2021.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2020–0386 at *http://www.regulations.gov,* or via email to *blakley.pamela@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, 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, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Matt Rau, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6524, *rau.matthew@epa.gov.* The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID–19.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

I. Background

On July 24, 2020, the Indiana Department of Environmental Management (IDEM) submitted a request to approve a revision to the Indiana SIP to address changes to the monitoring requirements at 326 IAC 3–5–1 for Portland cement plants. This revision will allow a single monitoring method to demonstrate compliance with various provisions of the SIP. IDEM revised its rule to be consistent with EPA's revision to the National Emission Standards for Hazardous Air Pollutants (NESHAP) governing Portland cement plants.

EPA previously revised 40 part 63, subpart LLL, the NESHAP for the Portland Cement Manufacturing Industry, on September 9, 2010 (75 FR 54969). This revision removed opacity limits for most Portland cement plant units, including for Portland cement plants' kilns and clinker cooler units because it found PM emissions data to be a more accurate measure to monitor compliance with PM emission limits. Under the revised NESHAP, those units were required to monitor emissions with a PM continuous emissions monitoring system (CEMS) instead of a continuous opacity monitoring system (COMS).

On February 12, 2013, EPA again revised the NESHAP, 40 part 63, subpart LLL (78 FR 10006). The revision updated the PM monitoring requirements for Portland cement plants to replace the compliance basis for PM from monitoring with a CEMS to require a PM continuous parametric monitoring system (CPMS). EPA found technical issues with monitoring PM emissions at Portland cement plants with CEMS because of the size and variability of PM generated by a cement kiln. A PM CPMS system responds to changes in PM concentration of the exhaust allowing Portland cement plants to better determine compliance. The NESHAP provides the requirements for establishing the parametric operating limits for subject units and requires sources to conduct an annual test that resets the PM CPMS operating limit and sets the standards for continuous monitoring.

Indiana has revised 326 IAC 3–5–1 to allow Portland cement plants to monitor, with a PM CPMS, its kiln or clinker cooler units as an alternate to COMS. Indiana's 326 IAC 3–5–1, as currently approved into the Indiana SIP for PM, requires monitoring with COMS or PM CEMS, while the 2013 NESHAP requires monitoring with PM CPMS. This revision allows Portland cement plants to meet the monitoring requirements for kiln and clinker cooler units with one monitoring system, PM CPMS. Otherwise, Portland cement plants would have to operate two monitoring systems to satisfy the differing SIP and NESHAP requirements.

II. How has the rule been revised?

Indiana revised 326 IAC 3–5–1 (c) to add 326 IAC 3–5–1 (c)(2) that allows Portland cement plants to monitor with a PM CPMS. That rule sets the requirements for the PM CPMS. Those include satisfying the requirements in 40 part 63, subpart LLL. Thus, Portland cement plants in Indiana will have the option of monitoring with COMS, PM CEMS, or PM CPMS in the revised 326 IAC 3–5–1.

Indiana retained 326 IAC 3–5–1 (c)(1) where the requirements for sources, not limited to Portland cement plants, that monitor with a PM CEMS are found. The remaining revisions to 326 IAC 3–5–1 are administrative revisions such as changing ''shall'' to ''must.''

III. What is EPA's analysis of the revisions?

Indiana provided a Clean Air Act (CAA) 110(l) analysis as a supplement to it submission. CAA Section 110(l) prohibits EPA from approving a SIP revision if that revision would interfere with any applicable requirement concerning attainment, reasonable further progress, or any other CAA requirement. Indiana concluded that the 326 IAC 3–5–1 revision will not result in an increase in emissions or interfere with Indiana's obligations under the CAA. The State concluded that since Portland cement plants are subject to limits under 40 CFR 63, subpart LLL that are at least as stringent as the State rule. Indiana states that the strict PM emission limits and continuous monitoring requirements have rendered the COMS requirements of 326 IAC 3–5 obsolete for Portland cement plants.

EPA concurs with Indiana's CAA 110(l) analysis that the revision does not interfere with any applicable requirement concerning attainment or any other applicable requirement of the CAA because it is simply revising the monitoring requirements. EPA, in 40 CFR 63, subpart LLL, Portland cement plants must use PM CPMS to show compliance with the Federal standard. Indiana's rule required such units to monitor with COMS or request Department permission to alternatively operate a PM CEMS. The revised 326 IAC 3–5–1 adds the option for Portland cement plants to alternatively operate a PM CPMS in accordance with 40 CFR part 63, subpart LLL requirements.

EPA finds that the revised 326 IAC 3–5–1 is consistent with the requirements of 40 part 63, subpart LLL. Indiana's revisions follow the revisions EPA made to the NESHAP.

IV. What action is EPA taking?

EPA is proposing to approve revisions to 326 IAC 3–5–1, continuous monitoring requirements, into the Indiana SIP.

V. Incorporation by Reference

In this action, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference Title 326 of the Indiana Administrative Code Article 3, Rule 5, Section 1 Applicability; continuous monitoring requirements for applicable pollutants, effective April 24, 2020. EPA has made, and will continue to make, these documents generally available through *www.regulations.gov* and at the EPA

Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- 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).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: March 22, 2021.

Cheryl Newton,

Acting Regional Administrator, Region 5.

[FR Doc. 2021–06166 Filed 3–24–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2020–0185; FRL–10021–61–Region 4]

Air Plan Approval; Florida; Maintenance Plan Update for the Hillsborough County Lead Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Florida, through the Florida Department of Environmental Protection (FDEP), on January 23, 2020. The SIP revision seeks to update the attainment emissions inventory and the maintenance demonstration, including the projected future emissions inventories, in the maintenance plan for the Hillsborough County lead maintenance area (hereinafter referred to as the ''Hillsborough Area'' or ''Area'') for the 2008 lead national ambient air quality standards (NAAQS). The SIP revision also seeks to incorporate recent changes to the air construction permit for the EnviroFocus Technologies, LLC (EnviroFocus) facility in the Area that are related to an increase in the refined lead production limit. EPA proposes to find that this SIP revision meets all relevant Clean Air Act (CAA or Act) statutory and regulatory requirements, is consistent with EPA's guidance, and is in accordance with EPA's September 11, 2018, redesignation of the Hillsborough Area from nonattainment to maintenance.

DATES: Comments must be received on or before *April 26, 2021.*

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–RO4–OAR–2020–0185 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: Andres Febres, 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) 562–8966. Mr. Febres can also be reached via electronic mail at *febres-martinez.andres@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On November 12, 2008 (73 FR 66964), EPA promulgated a revised primary and secondary lead NAAQS of 0.15 micrograms per cubic meter (μg/m^3). Under EPA's regulations at 40 CFR part 50, the 2008 lead NAAQS are met when the maximum arithmetic 3-month mean concentration for a 3-year period, as determined in accordance with Appendix R of 40 CFR part 50, is less than or equal to 0.15 μg/m^3. *See* 40 CFR 50.16. Ambient air quality monitoring data for the 3-year period must meet a data completeness requirement.

EPA designated the Hillsborough Area [1] as a nonattainment area for the

[1] The Hillsborough Area is comprised of a portion of Hillsborough County in Florida bounded by a 1.5 km radius centered at Universal Transverse Mercator coordinates 364104 meters East, 30093830 meters North, Zone 17, which surrounds Envirofocus.

2008 lead NAAQS on November 22, 2010 (75 FR 71033), effective December 31, 2010, using 2007–2009 ambient air quality data. This established an attainment date of five years after the December 31, 2010, effective date for the 2008 lead nonattainment designations pursuant to CAA section 172(a)(2)(A). Therefore, the Hillsborough Area's attainment date was December 31, 2015.

On April 16, 2015 (80 FR 20441), EPA published a final rule that approved a SIP revision, comprised of an attainment plan, based on Florida's attainment demonstration for the Hillsborough Area that included the base year emissions inventory requirements, a modeling demonstration of attainment for the 2008 lead NAAQS, reasonably available control measure (RACM) requirements that included reasonably available control technology (RACT), a reasonable further progress (RFP) plan, and CAA section 172(c)(9) contingency measures for the Hillsborough Area.

Subsequently, on September 11, 2018 (83 FR 45836), EPA published a final rule that approved Florida's March 26, 2018, redesignation request and associated SIP revision for the Hillsborough Area. Specifically, EPA took three separate but related final actions regarding the Hillsborough Area: (1) Determined that the Hillsborough Area attained the 2008 lead NAAQS based on complete, quality-assured, and certified ambient monitoring data for the 2014–2016 period, and that the Hillsborough Area continued to attain the standard based on complete, quality-assured, and certified ambient monitoring data for the 2015–2017 period; (2) approved the maintenance plan for the Hillsborough Area and incorporated it into the Florida SIP; and (3) approved Florida's request for redesignation of the Hillsborough Area from nonattainment to attainment for the 2008 lead NAAQS.

II. EPA's Analysis of the State's SIP Revision

On January 23, 2020, FDEP submitted a SIP revision that seeks to update the attainment emissions inventory and the maintenance demonstration, including the projected future emissions inventories, in the maintenance plan for the Area.[2] The SIP revision also seeks to incorporate recent changes to the air construction permit for the EnviroFocus facility that are related to an increase in the refined lead production limit.

A. Changes to the EnviroFocus Construction Permit

As noted above, EPA approved the attainment plan for the Hillsborough Area on April 16, 2015. *See* 80 FR 20441. As part of that approval, EPA incorporated Florida's Air Construction Permit No. 0570057–027–AC for the EnviroFocus facility into the SIP, excluding elements of the permit not specifically related to lead emissions.[3]

On November 6, 2019, FDEP issued Air Construction Permit No. 0570057–037–AC that increases the refined lead production limit for the facility from 150,000 tons per year (tpy) to 200,000 tpy and increases the maximum capacity of the reverb furnace from 262,800 tpy to 338,400 tpy. As part of the January 23, 2020, SIP revision, FDEP requests that EPA incorporate the following four conditions in Section 3 of Permit No. 0570057–037–AC into the SIP thereby replacing conditions in the SIP relating to the lead production and furnace capacity limits from Permit No. 0570057–027–AC: (1) Subsection B, Specific Condition 2; (2) Subsection B, Specific Condition 3a; (3) Subsection C, Specific Condition 1; and (4) Subsection D, Specific Condition 1.[4] All other provisions in permit 0570057–027–AC specifically related to lead emissions remain in the SIP.

These four conditions specify the new maximum refined lead production limit of 200,000 tpy as well as the new maximum reverb furnace capacity of 338,400 tpy. Because the emission control measures remain the same, are federally enforceable, and all EnviroFocus process areas at the facility are completely encapsulated with negative pressure, the only anticipated increases in lead emissions come from the EU036 emissions unit, which encompasses the facility grounds and roadways.[5] This anticipated increase is due to the increased truck traffic that will be needed to reach the newly approved production limit as well as the potential re-entrained dust caused by this traffic. Section II.B, below, goes into detail regarding the effects of these production limit increases on the overall emissions from the EnviroFocus facility and EPA's analysis of these increases.

B. Changes to the Maintenance Plan

(i) Attainment Emissions Inventory

FDEP is proposing to update the attainment emissions inventory in the maintenance plan for the Hillsborough Area to: (1) Correct an error in the original attainment emissions inventory that was part of the March 29, 2018, redesignation request; and (2) update the attainment emissions inventory in order to reflect site-specific emission factors from the EnviroFocus facility.

In its maintenance plan, Florida selected 2014 as the attainment year, as this was the first full year that the Area did not show any monitored violations of the 2008 lead NAAQS. Florida provided an attainment emissions inventory for that year. However, the 2014 lead emissions estimates for unit EU036 (Facility Grounds and Roadways) were incorrectly reported. The reported value was based on an incorrect control efficiency of 50 percent, rather than 94 percent. The correct control efficiency of 94 percent is based on the wet suppression controls used by the EnviroFocus facility and AP–42 calculations. As shown in Table 1 (column 3), below, by using the correct control efficiency, the 2014 lead emissions estimates for unit EU036 are lowered from 0.178 tpy to 0.0213 tpy.[6] [7] Nonetheless, Florida explains that the emissions estimate of 0.0213 tpy (reflecting the correct control efficiency of 94 percent) was used in the inputs for the original modeling that demonstrated attainment and so the attainment modeling results do not change. The error described above is limited solely to the representation of the emissions estimate in the attainment inventory and maintenance demonstration evaluation.

Additionally, in the attainment emissions inventory, Florida used the silt level and silt loading factors from a similar facility in Eagan, Minnesota, to estimate the emissions for EU036 because on-site data was not available at the time. Since then, EnviroFocus has carried out on-site measurements for these two factors, as well as updated

[2] Florida's SIP revision does not seek changes to any other portions of the maintenance plan. Therefore, those portions of the plan will remain in the SIP as approved by EPA in its September 11, 2018 action (83 FR 45836) and are not open for comment.

[3] Florida Air Permit No. 0570057–027–AC is available in the docket for this proposed action.

[4] *See* Florida Air Construction Permit No. 0570057–037–AC, found in Appendix A of Florida's January 23, 2020, SIP revision and included in the docket for this proposed action. See footnotes 12–15 of this notice for the text of each revised permit condition proposed for incorporation into the SIP.

[5] *See* 80 FR 6485 (February 5, 2015) for information on the encapsulation of the facility as part of the attainment plan for the Area. EPA finalized this action on April 16, 2015 at 80 FR 20441.

[6] For its original attainment emissions inventory, Florida used actual emissions obtained from the facility's annual operating report (AOR).

[7] Appendices B and C of Florida's January 23, 2020, SIP revision include calculations to demonstrate the difference in the 2014 emissions for EU036. The SIP revision and all of its appendices are located in the docket for this proposed action.

vehicle weight and truck route distances within the facility. These measured data on the conditions of the soil within the EnviroFocus facility help to more precisely determine the possible emissions caused by truck traffic. Using this data, EnviroFocus determined that the levels of lead near the facility are much lower than those at the Eagan facility. Specifically, silt loading at EnviroFocus was on average about one-third of the amount measured in Eagan, and silt content was about 50 percent lower than at Eagan.

Given the newly obtained site-specific data, and accounting for the correct control efficiency, the emissions estimates for EU036 are lowered to 0.0026 tpy and the facility-wide emissions estimate is lowered to 0.272 tpy as shown in Table 1 (column 7).[8] The value for EU036 is approximately 98 percent below the erroneous emissions estimate of the original emissions inventory and approximately 88 percent below the emissions estimate that reflects the correct control efficiency and non-site specific data from the Eagan facility.

TABLE 1—EU036 EMISSIONS COMPARISON, USING SITE-SPECIFIC AND NON SITE-SPECIFIC DATA, AS WELL AS 50% AND 94% CONTROL EFFICIENCIES

	2014 Lead emissions						
	Non site-specific data (Eagan, MN source)			Site-specific data (EnviroFocus)			
	Original data *	94% Control efficiency		50% Control efficiency		94% Control efficiency	
	Emissions (tpy)	Emissions (tpy)	Reduction [%]	Emissions (tpy)	Reduction [%]	Emissions (tpy)	Reduction [%]
EU036 Emissions	0.178	0.0213	88	0.0218	87.8	0.0026	98.5
Total Emissions Facility-wide	0.447	0.291	34.9	0.291	34.9	0.272	39.2

* Original Data used non site-specific data from the Eagan, MN facility, and a control efficiency of 50%.

EnviroFocus is the only point source of lead emissions within the Hillsborough Area, and since the removal of lead from gasoline in the 1990s, there are no on-road mobile sources that would contribute to lead emissions. EPA proposes to approve the corrected emissions attainment inventory because Florida is effectively correcting a reporting error and because the new value is more representative as it is based on site-specific factors.

(ii) Maintenance Demonstration

In order to demonstrate maintenance through 2029, which is the end of the first 10-year maintenance period, Florida included projected lead emissions for the Hillsborough Area for the years 2023, 2026, and 2029 in the maintenance plan and seeks to revise those projected emissions through its SIP revision. In the original maintenance plan, Florida used an emissions comparison approach to demonstrate maintenance and assumed that emissions would remain equal to the 2014 attainment year level.[9] Due to the increase in permitted production at the facility, Florida's SIP revision contains revised projected emissions for 2023, 2026, and 2029.

Because the emission control measures remain the same, are federally enforceable, and the EnviroFocus facility is completely encapsulated with negative pressure, the only anticipated increase in lead emissions comes from EU036, which encompasses the facility grounds and roadways. This is due to the increased truck traffic needed to reach the newly approved production limit and the potential re-entrained dust caused by this traffic.

As shown in Table 1, the adjusted 2014 emissions inventory, which includes the correct control efficiency of 94 percent and the site-specific data for EnviroFocus, shows that lead emissions for the EU036 unit are 0.0026 tpy. By increasing the truck traffic at the facility, Florida estimates that future emissions for EU036 will be 0.0046 tpy with the new production limit for the facility. The new facility-wide total emissions would be 0.274 tpy, an increase of 0.002 tpy from the corrected 2014 attainment year value of 0.272 tpy.[10] Table 2, below, identifies the 2009 base year emissions included in Florida's attainment plan, the original and corrected attainment year emissions for comparison, as well as the projected emissions for 2023, 2026, and 2029 that account for the new production limit.

TABLE 2—ACTUAL AND PROJECTED ANNUAL LEAD EMISSIONS (tpy) FOR THE HILLSBOROUGH AREA; INCLUDING THE CORRECTED 2014 ATTAINMENT YEAR EMISSIONS

2009 Base year	Original 2014 attainment year	Corrected 2014 attainment year [11]	2023 Interim year	2026 Interim year	2029 Maintenance year
0.588	0.447	0.272	0.274	0.274	0.274

[8] In addition, Table 1 of Florida's January 23, 2020, SIP revision shows the results of on-site samples for the EnviroFocus facility and compares them to results from the Eagan, Minnesota facility. Additionally, Appendix D of Florida's SIP revision includes calculations to demonstrate the difference in the 2014 emissions for EU036 when using site-specific data. These documents can be accessed through the docket for this proposed action.

[9] EPA determined that it was appropriate to use an emissions comparison approach to demonstrate maintenance in the Area because local emissions were the primary contributor to nonattainment. *See* 83 FR 28402 (June 19, 2018) (proposal) and 83 FR 45836 (September 11, 2018) (final). Under this approach, if future projected emissions in an area remain at or below baseline emissions, then the related ambient air quality standards should not be exceeded in the future.

[10] Appendix E of Florida's January 23, 2020, SIP revision includes calculations to demonstrate the emissions increases due to the new production limit at EnviroFocus.

[11] See the discussion in Section II(B)(i) of this notice for details on the corrected 2014 attainment year emissions.

Florida has revised the projected emissions as described previously, and these projections indicate that emissions in the Area will increase slightly from 0.272 tpy to 0.274 tpy, a difference of less than 1 percent, which is due to the increased potential emissions from EU036. As EU036 represents the only unit which will have an emissions increase as a result of the production increase, the revised projections (in Table 2) are correct and representative of new conditions, and it is therefore acceptable to hold these projected values the same throughout the maintenance period.

Although emissions have increased slightly due to the corrected attainment year value, this increase is negligible and therefore not enough to cause a violation of the standard throughout the maintenance period. This is further supported by the fact that the modeling used in the EPA-approved attainment demonstration showed attainment using the erroneous emissions estimate of 0.291 tpy discussed in section II.B.(*i*), which is higher than the updated 0.274 tpy projected value, and the modeled controls are still permanent and enforceable. The attainment demonstration modeled emissions that already accounted for the corrected control efficiency of 94 percent but did not yet reflect the site-specific data for silt loading and silt content in the EnviroFocus facility. Therefore, the projected future emissions for the Hillsborough Area will remain below the emissions used to demonstrate attainment and future maintenance (through 2029) when the Area was redesignated to attainment.

For these reasons, EPA believes that the Hillsborough Area will continue to maintain the lead standard at least through the year 2029 and that the increase in the production limit for the EnviroFocus facility will not interfere with any applicable requirement concerning attainment, RFP, or any other applicable requirement of the CAA.

III. Incorporation by Reference

In this document, EPA is proposing to include in a final rule, regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference into Florida's SIP Air Construction Permit No. 0570057–27–AC issued by FDEP to EnviroFocus with an effective date of December 14, 2012, except for the following: (1) Conditions not specifically related to lead emissions, (2) Section 3, Subsection B, Specific Condition 3, (3) Section 3, Subsection B, Specific Condition 10, (4) Section 3, Subsection C, Specific Condition 5, and (5) Section 3, Subsection G, Specific Condition 5. EPA is also proposing to incorporate by reference into Florida's SIP the following conditions from Air Construction Permit No. 0570057–37–AC, issued by FDEP to EnviroFocus with an effective date of November 6, 2019: (1) Section 3, Subsection B, Specific Condition 2;[12] (2) Section 3, Subsection B, Specific Condition 3a;[13] (3) Section 3, Subsection C, Specific Condition 1;[14] and (4) Section 3, Subsection D, Specific Condition 1.[15]

EPA has made, and will continue to make, the State Implementation Plan generally available through *www.regulations.gov* and at EPA Region 4 office (please contact the person identified in the ''For Further Information Contact'' section of this preamble for more information).

IV. Proposed Action

EPA is proposing to approve changes regarding the Hillsborough Area as presented in Florida's January 23, 2020, SIP revision. The proposed changes include corrections to the attainment emissions inventory and the maintenance demonstration, including the projected future emissions inventories, in the maintenance plan for the Area. The SIP revision also includes recent changes to the construction permit for the EnviroFocus facility that authorize an increase in the refined lead production limit at the facility.

EPA proposes to find that the changes to the SIP will not interfere with any applicable requirement concerning attainment, RFP, or any other applicable requirement of the CAA. EPA therefore proposes to incorporate the aforementioned changes to the maintenance plan and the facility's permit into the Florida SIP.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *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 action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- 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

[12] This provision states: ''*Lead Production:* The maximum refined lead production from the EFT facility shall not exceed 200,000 tons in any consecutive twelve-month period. [Application No. 0570057–037–AC and Rule 62–210.200 (PTE), F.A.C.]''

[13] This provision states: ''*Furnace Capacities:* Any equipment or any other changes authorized as part of this permit, shall not result in any capacity increase of the reverb or blast furnaces. The reverb furnace shall still be limited to a maximum charge rate of 960 tons per day (TPD) with a maximum capacity of 338,400 tons in any twelve-month consecutive period. The blast furnace shall still have a maximum charge rate of 180 TPD with a maximum capacity of 65,700 tons in any twelve-month consecutive period. [Application No. 0570057–037–AC; Rules 62–4.070(3) and 62–210.200(PTE), F.A.C.]''

[14] This provision states: ''*Lead Production:* The maximum refined lead produced from the EFT facility shall not exceed 200,00 tons in any consecutive twelve-month period. [Application No. 0570057–037 and Rule 62–210.200(PTE), F.A.C.]''

[15] This provision states: ''*Production:* The maximum refined lead produced from the enclosed facility shall not exceed 200,000 tons any consecutive twelve-month period. [Application No. 0570057–037–AC and Rule 62.210.200(PTE), F.A.C.]''

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, Lead, Reporting and recordkeeping requirements.

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

Dated: March 16, 2021.

John Blevins,

Acting Regional Administrator, Region 4.

[FR Doc. 2021–06082 Filed 3–24–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2021–0006; FRL–10021–72–Region 1]

Air Plan Approval; Maine; Removal of Reliance on Reformulated Gasoline in the Southern Counties of Maine

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Maine on August 20, 2020. The Maine Department of Environmental Protection (Maine DEP) submission is in support of the State's separate petition requesting that EPA remove the federal reformulated gasoline (RFG) requirements for York, Cumberland, Sagadahoc, Androscoggin, Kennebec, Knox and Lincoln Counties (hereinafter referred to as the ''southern Maine counties''). This action proposes to incorporate into the Maine SIP, Maine's statute, which repealed the State's requirement for the sale of RFG in the southern Maine counties effective November 1, 2020. Maine voluntarily opted into the federal RFG program in 2015. In order to remove the federal RFG requirements from the Maine SIP, Maine is required to complete a noninterference demonstration evaluating whether removing the RFG requirements in the southern Maine counties interferes with the requirements of the Clean Air Act (CAA or Act). EPA is proposing to approve this SIP revision and the corresponding noninterference demonstration. EPA has determined that the revision is consistent with the applicable provisions of the CAA. At this time, EPA is not proposing to remove the requirement for the sale of federal RFG in the applicable southern Maine counties as that is the subject of a separate petition to the EPA Administrator submitted on August 20, 2020, requesting opt-out of the federal RFG program in those counties. The Administrator intends to act on that petition in the near future. This action is being taken under the Clean Air Act.

DATES: Written comments must be received on or before April 26, 2021.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OAR–2021–0006 at *https://www.regulations.gov,* or via email to *townsend.elizabeth@epa.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the ''For Further Information Contact'' section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* Publicly available docket materials are available at *https://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID–19.

FOR FURTHER INFORMATION CONTACT: Elizabeth Townsend, Air Quality Branch, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square—Suite 100, (Mail code 05–2), Boston, MA 02109–3912, tel. 617–918–1614, email *townsend.elizabeth@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

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I. Background and Purpose

On August 20, 2020, the Maine Department of Environmental Protection (Maine DEP) submitted a revision to its SIP to opt-out of the federal RFG requirements in York, Cumberland, Sagadahoc, Androscoggin, Kennebec, Knox and Lincoln Counties (hereinafter referred to as the ''southern Maine counties'').[1] On December 23, 2020, Maine DEP provided an email clarifying the changes that the State was requesting to the Maine SIP. Pursuant to Maine DEP's December 23, 2020 email, EPA is proposing to approve into the Maine SIP Maine's revisions to C.M.R. ch. 119 *Motor Vehicle Fuel Volatility Limits* that remove the State's requirement for the sale of RFG in the southern Maine counties and concurrently adopting Maine statute at 38 M.R.S. § 585–N as amended by Public Law 2019, c. 55, § 1, which repealed the State's requirement for the sale of RFG in the southern Maine counties effective November 1, 2020. Maine voluntarily opted-in to the federal RFG program in 2015. In order to remove the federal RFG requirements

[1] Pursuant to 40 CFR 1090.290(d), the Governor must submit a petition to the EPA Administrator requesting removal of any opt-in areas from the federal RFG program. The petition must include certain specified information and any additional information requested by the Administrator. As fully described in section III below, if RFG is relied upon as a control measure in any approved SIP or plan revision, the federal RFG program opt-out regulations require that a SIP revision must be submitted. Maine's SIP includes Chapter 119 Motor Vehicle Fuel Volatility Limits; as a result, Maine submitted this SIP revision. The decision on whether to grant the optout petition pursuant to 40 CFR 1090.290(d) is at the discretion of the Administrator and will be made through a separate action.

from the Maine SIP, Maine is required to complete a noninterference demonstration evaluating whether removing the RFG requirements in the southern Maine counties interferes with the requirements of the Clean Air Act (CAA or Act).

To make this noninterference demonstration, Maine completed a technical analysis, including modeling, to estimate the change in emissions that would result from removing RFG from the southern Maine counties. In the noninterference demonstration, Maine evaluated NO_X and VOC emissions inventories from point, non-point (area), and on-road and non-road mobile sources, expressed as tons per summer day for the southern Maine counties plus Waldo and Hancock counties.[2] Emissions data were based on several factors including level of industrial activity, population, and vehicle miles traveled for a typical summer day, and have been prepared according to EPA requirements as described within our May, 2017 guidance entitled, ''Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations''.[3] Maine completed a technical analysis of NO_X and VOC emissions for 2014/2015, 2017, 2019, and 2023. The 2014/2015 inventory year was mixed, with non-point data only available from 2014, and point, on-road and non-road data available for 2015. For 2014/2015, 2017 and 2019, the emissions inventories included the emissions impacts for federal RFG requirements for the southern Maine counties. A second emissions inventory for 2019 and the emissions inventory for 2023 were prepared to model the emission impacts from the use of conventional gasoline in all nine counties. Separate emissions inventories for 2019 were prepared, one with RFG and one with conventional gasoline, to clearly show the expected emissions impacts from removing the requirement for the sale of RFG in the southern Maine counties. The noninterference demonstration then examined the emissions trends in all source sectors, both in aggregate and on a county by county basis, to determine if removing the federal RFG requirements for the southern Maine counties would interfere with attainment or maintenance of the NAAQS for ozone, or any other applicable requirement of the CAA including the NAAQS for PM, SO_2, NO_2, CO, or Pb, or their related precursors. EPA proposes to find that the State has demonstrated that removing the federal RFG requirements in the southern Maine counties will not interfere with attainment or maintenance of any national ambient air quality standards (NAAQS or standard) or with any other applicable requirement of the CAA. EPA's detailed evaluation of Maine's noninterference demonstration can be found in section V.

On August 20, 2020, Maine DEP also submitted a petition to the EPA Administrator requesting to opt-out of the federal RFG program in the southern Maine counties and, as stated above, this SIP revision is submitted in support of that petition (particularly the requirements of 40 CFR 1090.290(d)(1)(iii)–(iv).[3] Maine's opt-out petition will be acted on by the Administrator in a separate action and EPA will notify the State, in writing, of its decision as required by 40 CFR 1090.290(d). If approved in that separate action, the action will establish the effective date of the opt-out, which cannot be less than 90 days from the effective date of the approval of the SIP revision. EPA will also publish a notice in the **Federal Register** to notify the public of the effective date of any opt-out approval as required by 40 CFR 1090.290(d)(4).

II. What is the background for the southern Maine counties?

In 1979, under section 109 of the CAA, EPA established primary and secondary NAAQS for ozone at 0.12 parts per million (ppm), averaged over a 1-hour period. 44 FR 8202 (February 8, 1979). Pursuant to the 1990 CAA amendments York, Cumberland, Sagadahoc, Androscoggin, Kennebec, Knox and Lincoln Counties were designated as ''moderate'' nonattainment, while Waldo and Hancock counties were designated as ''marginal'' nonattainment for ozone on November 6, 1991 for the 1-hour ozone NAAQS (56 FR 56694).

On July 18, 1997, EPA revised the primary and secondary NAAQS for ozone to set the acceptable level of ozone in the ambient air at 0.08 ppm, averaged over an 8-hour period. 62 FR 38856 (July 18, 1997). The EPA set the 8-hour ozone NAAQS based on scientific evidence demonstrating that ozone causes adverse health effects at lower concentrations and over longer periods of time than was understood when the pre-existing 1-hour ozone NAAQS was set. EPA determined that the 8-hour standard would be more protective of human health, especially for children and adults who are active outdoors, and individuals with a preexisting respiratory disease, such as asthma.

Following promulgation of a new or revised NAAQS, EPA is required by the CAA to designate areas throughout the nation as attaining or not attaining the NAAQS. On April 15, 2004, EPA designated the ''Portland area'' and the ''Midcoast area'' as nonattainment for the 1997 ozone NAAQS, and the designations became effective on June 15, 2004.[4 5]

On August 3, 2006, Maine DEP submitted to EPA a request to redesignate the Portland and Midcoast nonattainment areas to attainment for the 1997 ozone NAAQS. This submittal included a plan to provide for maintenance of the 1997 ozone NAAQS in the Portland and Midcoast nonattainment areas through 2016 as a revision to the Maine SIP. EPA approved maintenance plans for the Portland and Midcoast nonattainment areas and the State's request to redesignate the Portland and Midcoast nonattainment areas to attainment for the 1997 ozone NAAQS on December 11, 2006 (71 FR 71489). Subsequently, EPA approved limited maintenance plans for the Portland and Midcoast areas on October 14, 2020 (85 FR 64969). The entire state of Maine was designated as attainment/unclassifiable for both the 2008 and 2015 ozone standards. 77 FR 30088 (May 21, 2012), 82 FR 54232 (November 16, 2017).

State gasoline regulations are intended to assist areas in meeting local air quality requirements. As part of Maine's ozone control strategy for the 1-hour ozone standard, Maine voluntarily opted into the RFG program in 1991 and began selling RFG in the southern seven counties in January of 1995. Maine petitioned the EPA in October 1998 to allow the state to opt out of the RFG program based on the risk to ground water posed by methyl tertiary-butyl ether (MTBE). EPA approved the petition provided several conditions were met, including implementing a replacement gasoline program that achieved reductions of volatile organic compounds (VOCs), that were equivalent to emission reductions achieved using RFG. In response, the Maine Board of Environmental Protection adopted amendments to Chapter 119, Motor Vehicle Fuel Volatility Limit, which required 7.8 pounds per square inch (psi) Reid Vapor Pressure (RVP) gasoline in the southern

[2] Emissions from Waldo and Hancock counties were included in the emissions inventories for the noninterference demonstration because those counties also fall within the Portland and Midcoast Maintenance Areas.

[3] A copy of the opt-out petition is included in the docket.

seven counties from May 1st to September 15th of each year. Having met the conditions, the effective date for withdrawal from the RFG program was March 10, 1999. In May 2001, the Maine DEP submitted a waiver of preemption request for 7.8 psi RVP gasoline to be adopted into its SIP under section 211(c) of the CAA. With the waiver of preemption granted by EPA, the requirement for 7.8 psi RVP gasoline became effective on April 5, 2002 (67 FR 10099).

The 7.8 psi RVP gasoline that Maine adopted is a listed ''boutique'' fuel by EPA as set out in the **Federal Register** in December 2006 (71 FR 78192). In 2015, Maine decided to remove the 7.8 psi RVP gasoline requirement from its SIP due to limited supply, and with MTBE no longer being added to RFG, opted back into the federal RFG program as an alternative ozone control strategy. Subsequently, EPA approved the removal of the State's regulation that established the 7.8 psi RVP standard on July 19, 2017 (82 FR 33012) and the requirement for 7.8 psi RVP ceased to be in Maine's SIP. In addition, EPA approved the State's request to opt into RFG on February 6, 2015 with an effective date of June 1, 2015 for retailers and wholesale purchaser-consumers (80 FR 6658).

III. What is the history of the reformulated gasoline requirement?

The 1990 amendments to the CAA designed the RFG program to reduce ozone levels in the largest metropolitan areas in the country with the worst ground-level ozone or smog problems by reducing vehicle emissions of compounds that form ozone, specifically VOC. The 1990 CAA amendments, specifically section 211(k)(5), directed EPA to issue regulations that specify how gasoline can be ''reformulated'' so as to result in significant reductions in vehicle emissions of ozone-forming and toxic air pollutants relative to the 1990 baseline fuel, and to require the use of such reformulated gasoline in certain ''covered areas.'' The Act defined certain nonattainment areas as ''covered areas'' which are required to use RFG and provided other areas with an ability to ''opt-in'' to the federal RFG program.[4] Of relevance here is CAA section 211(k)(6), which provides that upon application of the Governor of a State, the Administrator shall apply the prohibition contained in section 211(k)(5) for areas to ''opt-in'' to the federal RFG program.

In 2013, the State of Maine enacted Public Law 2013 c.221 calling for the use of RFG in southern Maine counties beginning May 1, 2014. On July 23, 2013, the Governor of Maine formally requested, pursuant to CAA section 211(k)(6)(B), that the EPA extend the requirement for the sale of RFG to these counties beginning on May 1, 2014. The Maine legislature subsequently postponed the requirement for the sale of RFG in these counties until June 1, 2015.

EPA first published regulations for the federal RFG program on February 16, 1994 (59 FR 7716). These regulations constituted Phase I of a two-phase nationwide program.[5] The federal RFG regulations also contain provisions, at 40 CFR 1090.290(d), establishing criteria and procedures for opting out of the program for those states that had previously voluntarily opted into the program (''opt-out provisions''). For example, the opt-out provisions require that a governor, or his or her authorized representative, submit an opt-out petition to the Administrator of the Agency. The opt-out petition must include certain information, including a description of how, if at all, reformulated gasoline has been relied upon as a control measure in any state or local implementation plan or in any proposed plan that is pending before EPA. This would include, for example, attainment as well as maintenance plans. The petition must also include an explanation of whether the state is intending to submit a revision to an approved or pending plan that does not use RFG as a control measure, and a description of alternative air quality measures, if any, that will replace the use of RFG; a description of the current status of any proposed revision to an approved or pending plan that uses RFG; and a projected schedule for the plan revision submission. See 40 CFR 1090.290(d)(1)(iii)–(iv).

As previously noted, on August 20, 2020, Maine submitted a petition to the EPA Administrator requesting to opt-out of the federal RFG program in the southern Maine counties and, as stated above, this SIP revision is submitted in support of that petition (particularly the requirements of 40 CFR 1090.290(d)(1)(iii)–(iv)).[6] Maine's opt-out petition will be acted on by the Administrator in a separate action, and, if approved, that separate action will establish the effective date of the opt-out, which cannot be less than 90 days from the effective date of the approval of the SIP revision that is the subject of today's approval. EPA will also publish a notice in the **Federal Register** to notify the public of the effective date of any opt-out approval.

IV. What are the section 110(l) requirements?

The use of RFG in Maine was not mandated by the CAA; however, to support Maine's requested SIP revision to remove the federal RFG requirements in the southern Maine counties, the State must demonstrate that the requested change will satisfy section 110(l) of the CAA. Section 110(l) requires that a revision to the SIP not interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of the Act. Maine submitted a noninterference demonstration with this SIP revision and EPA proposes to find that the analysis demonstrates noninterference based on an evaluation of current air quality monitoring data and the information provided in the noninterference demonstration.

EPA evaluates each section 110(l) noninterference demonstration on a case-by-case basis considering the circumstances of each SIP revision. EPA interprets section 110(l) as applying to all NAAQS that are in effect, including those that have been promulgated but for which EPA has not yet made designations. The degree of analysis focused on any particular NAAQS in a noninterference demonstration varies depending on the nature of the emissions associated with the proposed SIP revision. EPA's section 110(l) analysis of the noninterference demonstration included as part of Maine's August 20, 2020, SIP revision is provided below.

V. What is EPA's analysis of Maine's submittal?

a. Overall Preliminary Conclusions Regarding Maine's Noninterference Analyses

The RFG program is designed to reduce ozone levels and air toxics in

[4] CAA section 211(k)(5) prohibits the sale of conventional gasoline (*i.e.,* gasoline that the EPA has not certified as reformulated) in certain ozone nonattainment areas beginning January 1, 1995. CAA section 211(k)(10)(D) defines the areas initially covered by the federal RFG program as ozone nonattainment areas having a 1980 population in excess of 250,000 and having the nine highest ozone design values during the period 1987 through 1989. In addition, under CAA section 211(k)(10)(D), any area reclassified as a severe ozone nonattainment area under CAA section 181(b) is also included in the federal RFG program effective one year after the effective date of the reclassification.

[5] A current listing of the RFG requirements for states can be found on EPA's website at: *https://www.epa.gov/gasoline-standards.*

[6] A copy of the opt-out petition is included in the docket.

areas that are required to implement the program and in areas that opted into the program. RFG gasoline reduces motor vehicle emissions of the ozone precursors, NO_X and VOC (mainly VOC), through fuel reformulation. On August 20, 2020, Maine DEP submitted a SIP revision along with a corresponding noninterference demonstration to support Maine's separate petition to opt-out of the RFG requirements for York, Cumberland, Kennebec, Androscoggin, Knox, Lincoln, and Sagadahoc counties, referred to in this notice as the southern Maine counties. This noninterference demonstration includes an evaluation of the impact that removing RFG from these counties would have on the area's ability to attain or maintain the NAAQS for ozone, or any other applicable requirement of the CAA including the NAAQS for PM, SO_2, NO_2, CO, or Pb, or their related precursors in the southern Maine counties.[7]

Maine DEP's noninterference analysis utilized NO_X and VOC emissions inventories from point and non-point (area) sources and EPA's MOVES2014a emission modeling system for on-road and non-road mobile sources, expressed as tons per summer day. Emissions data are based on several factors including level of industrial activity, population, and vehicle miles traveled for a typical summer day, and were prepared according to EPA requirements. As directed by EPA, Maine completed a technical analysis of NO_X and VOC emissions for 2014/2015, 2017, 2019, and 2023. The 2014/2015 inventory year was mixed, with non-point data only available from 2014, and point, on-road and non-road data available for 2015. Given the incremental overall change in emissions that typically occurs from one year to the next for the non-point sector, where emission estimates are made using surrogates for activity levels such as changes in population or economic activity, the use of a different inventory base year for this sector (2014) should be reasonably consistent with the 2015 based emission estimates for the other inventory sectors.

Point sources include industrial, electric generation, commercial/institutional and large residential facilities. Facilities licensed to emit above certain threshold values submit annual activity and emissions data to Maine DEP's point source database using continuous emissions monitoring systems (CEMS) data, stack test data, or AP–42 or other appropriate emission factors. These submissions are then verified by Maine DEP. Maine point source data (as submitted to EPA) were used for the 2014 and 2017 point source emissions demonstration. Point source emissions data for 2023 were obtained from the Mid-Atlantic Regional Air Management Association (MARAMA) modeled inventories, downloaded from the Emissions Modeling Framework (EMF). Emissions for 2019 were estimated for point sources using a linear interpolation of 2014, 2015, 2016, 2017, and 2018 Maine point source data along with 2023 MARAMA model data.[8] Seasonal adjustment factors were used to adjust annual point source data to tons per typical summer data. Per EPA guidance, the ten highest point source emitters for NO_X and VOCs were determined. Maine DEP reached out to these facilities to obtain seasonal adjustment factors. Where unavailable, such as for a facility no longer in operating status, monthly data for June, July, and August provided by the facility were summed and divided by 92 days. For those facilities not ranking as a top ten emitter for any of the inventory years studied, annual NO_X and VOC emissions were divided by 365 to estimate tons per typical summer day. Linear interpolations for 2019 emissions were completed on a per facility basis for those ranked as top ten emitters and as a group for those not ranking as a top ten emitter.

The non-point (or area) source emissions inventory consists of gasoline distribution sources, stationary area source fuel use, stationary area source solvent use, bioprocess sources, catastrophic/accidental releases, solid waste incineration, and other stationary area sources. EPA's National Emissions Inventory Version 2 (NEIv2) data for 2014 was used for the non-point components of the 2014/2015 inventory, MARAMA data downloaded from the EMF was used for the 2017 and 2023 non-point source emissions data, and 2019 data was generated through a linear interpolation of the 2014, 2017, and 2023 data. Seasonal adjustment factors by non-point source classification code (SCC), where available, were used to convert emissions in tons per year to tons per typical summer day. If no seasonal adjustment factor was available, annual emissions were divided by 365. The technical analysis was completed both with and without biogenic emissions data.

The mobile source emissions inventory contains two sub-categories: On-road and non-road. On-road mobile sources include cars, trucks, and buses. Non-road mobile sources include recreational equipment, farm equipment, residential lawn/garden equipment, and industrial/commercial construction off-road engines. Maine used EPA's Motor Vehicle Emissions Simulator (MOVES) to develop its annual emissions inventories according to EPA's guidance for on-road and non-road mobile sources using MOVES version 2014a and the NON-ROAD2008 model within MOVES2014a for the non-road sources. On-road and non-road emissions estimates were generated for 2015, 2017, 2019, and 2023 inventory years. All data was generated in tons per typical summer day.

MOVES mobile sources emissions were generated for 2015 and 2017 assuming RFG use in the southern seven counties (York, Cumberland, Kennebec, Androscoggin, Knox, Lincoln, and Sagadahoc) and conventional gasoline use in Waldo and Hancock counties. Mobile sources emissions estimates of NO_X and VOCs were generated using MOVES2014a assuming RFG for 2019 in the southern seven counties and conventional gasoline in Waldo and Hancock counties, as well as with conventional gasoline statewide for 2019 and 2023. Emissions estimates for 2019 were generated two ways, with and without RFG, for comparison.

The fuel formulations for the gasoline compilations that best represented local conditions were selected from MOVES2014a default database.[9] Maine currently uses reformulated or conventional gasoline blended with 10% ethanol (E-10). Limits applied to RVP in the fuel formulations are used as control measures to regulate emissions. Effective June 1, 2015 a retailer who sells gasoline in York, Cumberland, Sagadahoc, Androscoggin, Kennebec, Knox, or Lincoln County may sell only RFG year-round. Conventional gasoline may be sold in all other counties in the State.

For this modeling demonstration, Maine selected fuel formulations that represent fuels that are currently sold in those counties encompassing the Portland and Midcoast Maintenance Areas. Terminals are required to report to Maine DEP on a quarterly basis the amounts of fuel sold with several fuel properties, including RVP. Weighted averages for each of the fuel properties

[7] The six NAAQS for which EPA establishes health and welfare-based standards are carbon monoxide (CO), lead (Pb), nitrogen dioxide (NO_2), ozone, particulate matter (PM), and sulfur dioxide (SO_2). RFG requirements do not have an impact on actual or modeled lead emissions.

[8] Information on the Mid Atlantic Regional Air Management Association, Inc. (MARAMA) 2011 inventory and projections for 2017 and 2023 emissions inventories scan be found at *https://marama.org/*.

[9] movesdb20161117.

were compiled and matched to an existing fuel formulation in the MOVES2014a default table. The regulatory limit for RVP for Hancock and Waldo County is 9.0 psi. The formulation chosen for the remaining counties is 7.0 psi based upon the reports obtained from the terminals. For this modeling demonstration, 7.0 psi RVP represents the required RFG VOC emissions performance standard, and 9.0 psi RVP represents conventional gasoline.

As summarized in Tables 1 and 2, the combined emissions inventories and MOVES model results project that the overall downward trend of VOC and NO_X emissions is not significantly disrupted by removing the federal RFG requirements from the southern Maine counties. The technical analysis of VOC emissions for all source categories demonstrates a continuous decline from 2015 to 2023 both with and without the required use of RFG in the southern Maine counties (Table 1). The decrease from 75.66 tons per typical summer day in 2014/2015 to 49.89 in 2023 represents a 34% decrease in VOCs (excluding biogenic emissions) over the demonstration period. There is a slight difference in the 2019 data comparison (RFG versus conventional gasoline) of VOCs excluding biogenic emissions. This difference of 0.5 tons per typical summer day (a 0.9% difference) is the result of differences in the mobile emissions generated with the MOVES model for 2019, one run assuming RFG in the southern seven counties, and the second for the same year assuming conventional gasoline in all nine modeled counties. Even with this slight increase for the single 2019 modeled year, the data show a decline in emissions between each modelled inventory year.

The technical analysis of NO_X emissions for all source categories demonstrates a continuous decline from 2014/2015 to 2023 both with and without the required use of RFG in the southern Maine counties (Table 2). The decrease from 91.55 tons per typical summer day in 2014/2015 to 55.44 in 2023 represents a 39% decrease in NO_X emissions over the demonstration period. There is a slight difference in the 2019 data comparison (RFG versus conventional gasoline). This difference of 0.1 tons per typical summer day (a 0.1% difference) is the result of differences in the on-road emissions generated with the MOVES model for 2019, one run assuming RFG in the southern seven counties, and the second for the same year assuming conventional gasoline in all nine modeled counties. Even with this slight increase for the single 2019 modeled year, the data show a decline in emissions between each modelled inventory year.

TABLE 1—VOC EMISSIONS (ALL DATA CATEGORIES WITHOUT BIOGENIC EMISSIONS)—SHOWN IN TONS PER SUMMER DAY

[TSD]

County	7.0 psi RVP (RFG)			9.0 psi RVP (conv. gasoline)	
	2015	2017	2019	2019	2023
Androscoggin	8.13	5.55	5.76	5.79	5.07
Cumberland	22.05	17.62	17.23	17.34	15.81
Hancock	6.19	4.49	4.50	4.50	3.61
Kennebec	10.29	6.93	6.92	6.99	5.82
Knox	4.48	3.70	3.55	3.63	3.26
Lincoln	3.39	2.79	2.60	2.68	2.37
Sagadahoc	4.13	2.61	2.76	2.82	2.31
Waldo	3.05	2.33	2.40	2.40	2.07
York	13.95	11.11	10.62	10.69	9.58
Total [10]	75.66	57.13	56.36	56.86	49.89

TABLE 2—NO_X EMISSIONS (ALL DATA CATEGORIES)—SHOWN IN TONS PER SUMMER DAY

[TSD]

County	7.0 psi RVP (RFG)			9.0 psi RVP (conv. gasoline)	
	2015	2017	2019	2019	2023
Androscoggin	7.88	5.81	5.57	5.58	4.86
Cumberland	29.18	26.00	22.50	22.52	18.69
Hancock	7.67	5.35	5.20	5.20	3.87
Kennebec	10.93	8.41	7.40	7.41	5.92
Knox	7.43	6.27	6.53	6.53	6.48
Lincoln	2.94	2.57	2.27	2.27	1.96
Sagadahoc	4.12	3.01	2.80	2.84	2.27
Waldo	3.24	2.98	2.63	2.63	2.27
York	18.16	13.70	11.90	11.91	9.12
Total	91.55	74.10	66.80	66.90	55.44

[10] The totals in the columns for all tables in this notice may differ slightly from the submittal due to how the decimal places were truncated.

The emissions categories impacted by the removal of the RFG requirements for the southern Maine counties are the mobile source on-road and non-road. The MOVES modeling for these sectors show a steady decline in on-road emissions of VOC with and without the use of RFG in the southern Maine counties (Table 3), from 21.39 tons per summer day in 2015 to 10.99 in 2023, a 49% decrease in on-road VOC emissions over the demonstration period. There was a difference in the 2019 modeled data, with the conventional gasoline scenario resulting in emissions that were 0.1 tons per typical summer day less than the scenario assuming RFG use in the southern Maine counties. The MOVES model results show a steady decline in non-road emissions of VOC with and without the use of RFG in the southern Maine counties (Table 4). From 19.81 tons per summer day in 2015 to 15.61 in 2023, there was a 21% decrease in VOC emissions over the demonstration period. There was a slight difference of 0.58 tons per typical summer day in the 2019 modeled data scenario assuming RFG in the southern Maine counties compared to the scenario assuming conventional gasoline statewide, with the conventional gasoline scenario showing a 3.5% increase in emissions.

TABLE 3—ON-ROAD VOC EMISSIONS—SHOWN IN TONS PER SUMMER DAY

[TSD]

County	7.0 psi RVP (RFG)			9.0 psi RVP (conv. gasoline)	
	2015	2017	2019	2019	2023
Androscoggin	2.18	1.68	1.41	1.41	1.11
Cumberland	6.21	4.79	4.03	3.98	3.18
Hancock	1.37	1.05	0.88	0.88	0.69
Kennebec	3.13	2.43	2.05	2.05	1.62
Knox	0.85	0.66	0.55	0.55	0.43
Lincoln	0.82	0.63	0.53	0.53	0.41
Sagadahoc	0.89	0.68	0.58	0.57	0.45
Waldo	0.86	0.67	0.56	0.56	0.44
York	5.08	3.96	3.36	3.32	2.66
Total	21.39	16.55	13.93	13.84	10.99

TABLE 4—NON-ROAD VOC EMISSIONS—SHOWN IN TONS PER SUMMER DAY

[TSD]

County	7.0 psi RVP (RFG)			9.0 psi RVP (conv. gasoline)	
	2015	2017	2019	2019	2023
Androscoggin	1.05	0.94	0.87	0.90	0.85
Cumberland	5.99	5.47	5.11	5.26	5.00
Hancock	2.60	2.23	2.19	2.19	1.82
Kennebec	2.14	1.89	1.70	1.77	1.61
Knox	1.51	1.34	1.20	1.28	1.12
Lincoln	1.64	1.47	1.34	1.42	1.30
Sagadahoc	0.77	0.68	0.61	0.67	0.60
Waldo	0.71	0.62	0.67	0.67	0.59
York	3.40	3.05	2.79	2.90	2.72
Total	19.81	17.69	16.49	17.07	15.61

The MOVES modeling for the mobile source on-road and non-road sectors also show a steady decline in on-road emissions of NO_X with and without the use of RFG in the southern Maine counties (Table 5), from 52.17 tons per summer day in 2015 to 22.64 in 2023, a 57% decrease in on-road NO_X emissions over the demonstration period. There was a slight difference in the 2019 modeled data, with the conventional gasoline scenario resulting in emissions that were 0.1 tons per typical summer day greater (a 0.31 percent increase) than the scenario assuming RFG use in the southern Maine counties. For the non-road sector, the MOVES model results show a steady decline in non-road emissions of NO_X with and without the use of RFG in the southern Maine counties (Table 6). From 11.52 tons per summer day in 2015 to 8.08 in 2023, there was a 30% decrease in NO_X emissions over the demonstration period. There was no difference in the 2019 modeled data scenario assuming RFG in the southern Maine counties and the scenario assuming conventional gasoline statewide.

TABLE 5—ON-ROAD NO_X EMISSIONS—SHOWN IN TONS PER SUMMER DAY

[TSD]

County	7.0 psi RVP (RFG)			9.0 psi RVP (conv. gasoline)	
	2015	2017	2019	2019	2023
Androscoggin	4.17	3.03	2.39	2.40	1.63
Cumberland	15.80	12.00	9.67	9.70	6.91
Hancock	2.98	2.16	1.68	1.68	1.09
Kennebec	8.11	6.20	5.08	5.09	3.72
Knox	1.53	1.11	0.86	0.86	0.56
Lincoln	1.64	1.19	0.92	0.93	0.60
Sagadahoc	2.66	2.02	1.63	1.67	1.17
Waldo	1.68	1.22	0.95	0.95	0.62
York	13.60	10.48	8.60	8.62	6.35
Total	52.17	39.40	31.79	31.89	22.64

TABLE 6—NON-ROAD NO_X EMISSIONS—SHOWN IN TONS PER SUMMER DAY

[TSD]

County	7.0 psi RVP (RFG)			9.0 psi RVP (conv. gasoline)	
	2015	2017	2019	2019	2023
Androscoggin	0.94	0.81	0.71	0.71	0.60
Cumberland	3.71	3.28	2.96	2.96	2.56
Hancock	1.09	0.99	1.07	1.07	0.95
Kennebec	1.14	1.00	0.90	0.90	0.76
Knox	0.95	0.86	0.79	0.79	0.69
Lincoln	0.64	0.59	0.55	0.55	0.49
Sagadahoc	0.53	0.46	0.41	0.41	0.36
Waldo	0.63	0.54	0.50	0.50	0.41
York	1.90	1.66	1.48	1.48	1.26
Total	11.52	10.19	9.37	9.37	8.08

The point and area VOC and NO_X inventories are not impacted by the removal of the federal RFG requirements from the southern Maine counties.[11]

b. Noninterference Analysis for the Ozone NAAQS

Under the Clean Air Act Amendments of 1990, southern Maine counties were divided into three separate ozone nonattainment areas under the 1-hour ozone standard: The Portland area which is comprised of York, Cumberland and Sagadahoc Counties; the Lewiston-Auburn area which is comprised of Androscoggin and Kennebec counties; and the Knox and Lincoln County area. Maine DEP opted the southern Maine counties into the federal RFG requirements for high ozone season gasoline to help bring the area into attainment for the 1-hour ozone NAAQS. As explained in section II of this notice, the use of MTBE in RFG at that time led to concerns over groundwater contamination, and therefore the State petitioned EPA, and EPA approved, to replace the RFG requirements with a low-RVP fuel program with an effective date of April 5, 2002 (67 FR 10099).). In 2015, Maine decided to remove the 7.8 psi RVP gasoline requirement from its SIP due to limited supply, and with MTBE no longer being added to RFG, opted back into the federal RFG program as an alternative ozone control strategy. Subsequently, EPA approved the removal of the State's regulation that established the 7.8 psi RVP standard on July 19, 2017 (82 FR 33012) and the requirement for 7.8 psi RVP ceased to be in Maine's SIP. In addition, EPA approved the State's request to opt into RFG on February 6, 2015 with an effective date of June 1, 2015 for retailers and wholesale purchaser-consumers (80 FR 6658). This sequence of fuel programs has contributed to the lowering of VOC and NO_X emissions in the southern Maine counties. Implementation of other federal control measures such as Tier 3 Motor Vehicle Emissions and Fuel Standards,[12] Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements,[13] Control of Emissions of Air Pollution From Nonroad Diesel Engines and Fuel [14] and Control of Emissions From Nonroad Spark-Ignition Engines and Equipment [15] along with fleet turnover, further reduced NO_X and VOC emissions in the area. As a result, the nonattainment areas within the southern Maine counties were redesignated to attainment for the 1-hour ozone NAAQS and the 1997 8-hour ozone NAAQS. The southern Maine counties are continuing to meet the 1-hour ozone NAAQS and the 1997 8-hour ozone NAAQS, even though these NAAQS have been revoked,[16] and the entire State of Maine was designated as attainment/unclassifiable for both the 2008 and 2015 ozone standards. (77 FR 30088; May 21, 2012) (82 FR 54232; November 16, 2017). The trend in

[11] Please reference Maine's full noninterference demonstration titled ''Revisions to the State Implementation Plan (SIP): Noninterference Demonstration for the Removal of Reformulated Gasoline (RFG) Requirement, 2020'' available in the docket for this action.

[12] 79 FR 23414.

[13] 66 FR 5002.

[14] 69 FR 38958.

[15] 73 FR 59034.

[16] 70 FR 44470 and 80 FR 12264, respectively.

monitoring levels for ozone for the ozone monitors in the southern Maine counties is shown in Table 7, with the current monitoring levels for the Androscoggin, Cumberland, Kennebec, Knox, and York monitors for the period of 2017–2019 being 0.057 ppm, 0.064 ppm, 0.060 ppm, 0.061 ppm, 0.064 ppm, respectively. These 3-year design values are below the 8-hour ozone standard of 0.070 ppm. In addition, quality controlled and quality assured ozone data that are available in EPA's Air Quality System (AQS), but not yet certified for 2018–2020 show that the Southern Maine counties continue to meet the 2008 8-hour ozone NAAQS. The preliminary design value for 2018–2020 data in Kennebec County is not listed due to the data completeness requirement not being met for the monitor. The data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90%, and no single year has less than 75% data completeness as determined in Appendix I of 40 CFR part 50.

TABLE 7—MONITORING LEVEL CONCENTRATIONS FOR THE SOUTHERN MAINE COUNTIES

[ppm] [17]

County	Site ID	4th Highest 8-hour ozone value (ppm)			3-Year design values (ppm)		
		2017	2018	2019	2016–2018	2017–2019	2018–2020 (preliminary)
Androscoggin	23–001–0014	0.062	0.059	0.050	0.059	0.057	0.053
Cumberland	23–005–2003	0.064	0.067	0.062	0.062	0.064	0.062
Kennebec	23–011–2005	0.067	0.060	0.054	0.066	0.060	n/a
Knox	23–013–0004	0.062	0.064	0.059	0.063	0.061	0.060
York	23–031–2002	0.062	0.068	0.064	0.066	0.064	0.064

EPA also evaluated the potential increase in the VOC and NO_X precursor emissions and whether it is reasonable to conclude that the requested removal of the RFG requirements in southern Maine counties during the high ozone season would cause the area to violate any ozone NAAQS. Table 7 shows that there is an overall downward trend in ozone concentrations in the southern Maine counties. This decline can be attributed to federal and state programs in addition to those mentioned above that have led to significant emissions reductions in ozone precursors, such as the federal interstate transport rule known as the Cross State Air Pollution Rule (CSAPR), and state implemented reasonably available control technology (RACT) for stationary sources of VOCs including both major sources and sources for which EPA has issued a control technique guideline (CTG). EPA last approved a CTG into Maine's state implementation plan on August 7, 2019.[18] Given the results of Maine's emissions analysis, the downward trend in precursor emissions, and the current ozone concentrations in the southern Maine counties as seen in Table 2, EPA concludes that removing reliance on RFG requirements in York, Cumberland, Kennebec, Androscoggin, Knox, Lincoln, and Sagadahoc counties will not interfere with Maine's ability to maintain the 2008 and 2015 8-hour ozone NAAQS.

Based on the continued downward trend of ozone levels, as supported by the preliminary design values for Maine monitoring sites shown in Table 7, EPA proposes to find that removing reliance on RFG requirements in York, Cumberland, Sagadahoc, Androscoggin, Kennebec, Knox, and Lincoln Counties will not interfere with Maine's ability to continue attaining the 2015 ozone NAAQS in the southern Maine counties area.

c. Noninterference Analysis for the Carbon Monoxide NAAQS

EPA initially established NAAQS for CO on April 30, 1971 (36 FR 8186). The standards were set at 9 ppm as an 8-hour average and 35 ppm as a 1-hour average, neither to be exceeded more than once per year. On November 6, 1971 (56 FR 56694), EPA designated areas for the 8-hour CO NAAQS. The southern Maine counties have never been designated nonattainment for any CO NAAQS. EPA retained the 1-hour and 8-hour CO NAAQS on August 31, 2011, and Maine has continued to maintain compliance with the NAAQS due to non-RFG federal control measures put in place. In 2019, Maine operated three CO monitors, including one in Cumberland County. The 2018–2019 8-hr design value for the Cumberland County monitor is 0.9 ppm. The 2018–2019 1-hr design value for the Cumberland County monitor is 1.2 ppm. Both of these values are significantly below the respective standards of 9 ppm and 35 ppm. RFG requirements will have little to no impacts on CO emissions because, as mentioned earlier, the RFG program was developed to address emissions of the ozone precursors, NO_X and VOC. As a result, EPA proposes to find that removing reliance on RFG in York, Cumberland, Sagadahoc, Androscoggin, Kennebec, Knox, and Lincoln Counties will not interfere with Maine's ability to continue attaining the CO NAAQS.

d. Noninterference Analysis for the Particulate Matter NAAQS

The main precursor pollutants for $PM_{2.5}$ are NO_X, SO_2, VOC, and ammonia. As mentioned above, the federal RFG requirements result in emissions benefits for VOC, NO_X and air toxics. EPA first established NAAQS for PM in 1971, based on the original Air Quality Criteria Document (AQCD).[19] [20] Over the course of several years, EPA has reviewed and revised the $PM_{2.5}$ NAAQS a number of times. On July 16, 1997, EPA established an annual $PM_{2.5}$ NAAQS of 15.0 micrograms per cubic meter (μg/m^3), based on a 3-year average of annual mean $PM_{2.5}$ concentrations, and a 24-hour $PM_{2.5}$ NAAQS of 65 μg/m^3, based on a 3-year average of the 98th percentile of 24-hour concentrations. EPA retained the primary annual PM_{10} standard and revised the form of the primary 24-hour PM_{10} standard to be based on the 99th percentile of 24-hour PM_{10} concentrations at each monitor in an area. See 62 FR 36852 (July 18, 1997). On December 22, 2000, EPA removed

[17] This table includes monitor information for all ozone monitors located in the southern Maine counties, or the highest monitor if more than one monitor is located per county. No ozone monitors are located in either Lincoln or Sagadahoc counties.

[18] 84 FR 38558.

the vacated 1997 PM_{10} standards, and the pre-existing 1987 PM_{10} standards remained in place.[19] On September 21, 2006, EPA retained the 1997 Annual $PM_{2.5}$ NAAQS of 15.0 μg/m³ but revised the 24-hour $PM_{2.5}$ NAAQS to 35 μg/m³, based again on a 3-year average of the 98th percentile of 24-hour concentrations. See 71 FR 61144 (October 17, 2006). The 1997 Primary Annual $PM_{2.5}$ NAAQS has been revoked for all purposes effective October 24, 2016 (81 FR 58010) in all areas that were designated as attainment for that NAAQS and in all areas that were initially designated as nonattainment areas and have been redesignated to attainment with an approved CAA section 175A maintenance plan. On December 14, 2012, EPA retained the 2006 24-hour $PM_{2.5}$ NAAQS of 35 μg/m³ but revised the annual primary $PM_{2.5}$ NAAQS to 12.0 μg/m³, based again on a 3-year average of annual mean $PM_{2.5}$ concentrations. EPA retained the existing primary 24-hour PM_{10} standard, with its level of 150 μg/m³ and its one-expected-exceedance form on average over three years. *See* 78 FR 3086 (January 15, 2013).

The southern Maine counties have never been designated nonattainment for any PM NAAQS. In 2019, Maine operated five $PM_{2.5}$ monitors, including one in Cumberland County and one in Androscoggin County. The annual mean design values for $PM_{2.5}$ for Cumberland and Androscoggin counties 2017–2019 are 7.5 μg/m³ and 6.0 μg/m³, respectively. Both of these values are below the annual $PM_{2.5}$ standard of 12.0 μg/m³. The design values for the 24-hour $PM_{2.5}$ NAAQS for Cumberland and Androscoggin counties in 2017–2019 are 17 μg/m³ and 15 μg/m³, respectively. Both of these values are significantly below the 24-hour $PM_{2.5}$ standard of 35 μg/m³. Maine operated nine PM_{10} monitors in 2019, including two in Cumberland County, and one in Androscoggin County. There were no average estimated exceedances of the 24-hour PM_{10} standard of 150 μg/m³ for monitors in the southern Maine counties in 2019. Opting out of the RFG requirements in the southern Maine counties will have little to no impact on the precursor emissions as indicated by the decline in VOC and NO_X emissions in Tables 1 and 2 above. Based on this information, the monitoring data, and the current attainment status of all Maine counties, EPA proposes to find that removing reliance on RFG requirements in York, Cumberland, Sagadahoc, Androscoggin, Kennebec, Knox, and Lincoln Counties will not interfere with Maine's ability to maintain the 2012 $PM_{2.5}$ NAAQS.

e. Noninterference Analysis for the 2010 NO_2 NAAQS

The annual NO_2 NAAQS was established in 1971, and EPA retained the NO_2 standards on February 9, 2010 (75 FR 6474). All of the counties in Maine were designated unclassifiable/attainment for the 2010 NO_2 NAAQS on February 17, 2012 (77 FR 9532). There are both primary and secondary standards for NO_2. The primary NAAQS is an annual arithmetic mean that must not exceed 53 parts per billion (ppb). A 3-year average of the 98th percentile of daily maximum 1-hr averages must not exceed 100 ppb. The secondary standard is an annual arithmetic mean that must not exceed 53 ppb. In 2019, Maine operated three NO_2 monitors, including one in Cumberland County, and one in Kennebec County. The 2017–2019 1-hr average design value for the Cumberland County NO_2 monitor is 40 ppb, with an annual mean of 6.96 ppb. The 1-hr average design value for Kennebec County in 2017–2019 is 27 ppb, with an annual mean of 2.8 ppb. Both of these values are significantly below the respective standards of 100 ppb and 53 ppb. Based on the technical analysis in Maine's August 20, 2020 noninterference demonstration, as shown in Table 2, there is a reduction in NO_X emissions from 2014/2015 to the 2023 ''out year'' from 91.55 tons per typical summer day (tsd) to 55.44 tsd, representing a 39% decrease in NO_X emissions. As mentioned above and shown in Table 5, in the on-road NO_X emissions analysis submitted by Maine, there is a 0.1% increase in emissions for the modeled year 2019. Even with the slight increase for the single 2019 modeled year, the data show a decline in emissions between each modelled inventory year.

Based on the amount of NO_X reductions, the use of pollution control devices on power plants, industrial boilers, fleet turnover, and other federal control measures for motor vehicles, EPA proposes to find that removing reliance on RFG requirements in York, Cumberland, Sagadahoc, Androscoggin, Kennebec, Knox, and Lincoln Counties will not interfere with Maine's ability to continue attaining the 2010 NO_2 NAAQS in the southern Maine counties area.

f. Noninterference Analysis for the SO_2 NAAQS

On June 22, 2010 (75 FR 35520), EPA revised the SO_2 standard. There are both primary and secondary standards for SO_2. The primary SO_2 NAAQS is a 3-year average of the 99th percentile of the daily maximum 1-hour concentration not to exceed 75 ppb. The secondary standard is a 3-hour concentration not to exceed 0.5 ppm more than once per year. In 2019, Maine operated four SO_2 monitors, including one in Cumberland County, and one in Kennebec County. Both Cumberland and Kennebec County SO_2 monitors have a 2016–2019 design value of 5 ppb for the 1-hour SO_2 NAAQS. Based on the monitoring data, EPA proposes to find that removing reliance on RFG requirements in York, Cumberland, Sagadahoc, Androscoggin, Kennebec, Knox, and Lincoln Counties will not interfere with Maine's ability to maintain the SO_2 NAAQS because both RFG and conventional gasoline are subject to the same sulfur limit which was established in the Tier 3 vehicle emission and fuel standards final rule. (*See* 79 FR 23414, April 28, 2014.)

g. Noninterference Analysis for the Pb NAAQS

In the atmosphere, lead (Pb) is emitted as particles, mainly from smelters, ore and metal processing facilities, waste incinerators, public utilities and lead-acid manufacturers. Since tetraethyl lead was removed from motor vehicle fuel, the ambient levels of lead in Maine dropped significantly and concentrations are currently at or below minimum detection limits for most Pb monitors. On November 12, 2008 (73 FR 66964), EPA revised the primary Pb standard to a rolling 3 month average of 0.15 μg/m³ and revised the secondary standard to be identical in all respects to the revised primary standard. On December 27, 2010 (75 FR 81126). EPA published a final rule revising Pb monitoring requirements that require lead monitoring at NCore sites in large urban areas (identified as Core Based Statistical Areas, or CBSA) with a population of 500,000 people or more.[20] The Bar Harbor NCore site is designated as a rural site, so there is no requirement for Pb monitoring in Maine. On October 18, 2016 (81 FR 71906), EPA retained the primary and secondary standards for Pb. As such, EPA proposes to find that removing reliance on RFG in York, Cumberland, Sagadahoc, Androscoggin, Kennebec, Knox, and Lincoln Counties

[19] 65 FR 80776.

[20] The NCore network that formally began in January 2011, is a subset of the state and local air monitoring stations network that is intended to meet multiple monitoring objectives (*e.g.,* long-term trends analysis, model evaluation, health and ecosystem studies, as well as NAAQS compliance). The complete NCore network consists of 63 urban and 15 rural stations, with each state containing at least one NCore station; 46 of the states plus Washington, DC and Puerto Rico have at least one urban station.

will not interefere with Maine's ability to continue attaining the Pb NAAQS.

VI. Proposed Action

EPA is proposing to approve Maine's revision to its SIP and corresponding noninterference determination, submitted on August 20, 2020, in support of Maine's separate petition to opt-out of the federal RFG requirements for in York, Cumberland, Kennebec, Androscoggin, Knox, Lincoln, and Sagadahoc counties. Specifically, EPA proposes to find that this change in removing reliance on the federal RFG requirements for the southern Maine counties will not interfere with attainment or maintenance of the NAAQS or with any other applicable requirement of the CAA. Maine's August 20, 2020, SIP revision updates the Maine C.M.R. ch. 119 Motor Vehicle Fuel Volatility Limits that is approved into Maine's SIP and adopts Maine statute at 38 M.R.S. § 585–N as amended by Public Law 2019, c. 55, § 1 to reflect Maine's request to opt out of the federal RFG requirements. EPA is proposing to find that Maine's August 20, 2020, SIP revision is consistent with the applicable provisions of the CAA, including section 110(l). In this action, EPA is not acting on the State's opt-out petition to the EPA Administrator to remove the federal RFG requirement for York, Cumberland, Kennebec, Androscoggin, Knox, Lincoln, and Sagadahoc counties. Any decision by the Administrator on the opt-out petition would occur in a separate action. EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to this proposed rule by following the instructions listed in the **ADDRESSES** section of this **Federal Register**.

VII. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference into Maine's SIP Maine's revisions to C.M.R. ch. 119 *Motor Vehicle Fuel Volatility Limits* that remove the State's requirement for the sale of RFG in the southern Maine counties and concurrently adopting Maine statute at 38 M.R.S. § 585–N as amended by Public Law 2019, c. 55, § 1, which repealed the State's requirement for the sale of RFG in the southern Maine counties effective November 1, 2020, as discussed in section I. The EPA has made, and will continue to make, these documents generally available through *https://www.regulations.gov* and at the EPA Region 1 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VIII. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this 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 Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 17, 2021.

Deborah Szaro,

Acting Regional Administrator, EPA Region 1.

[FR Doc. 2021–05939 Filed 3–24–21; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 21–72; RM–11888; DA 21–271; FR ID 17578]

Television Broadcasting Green Bay, Wisconsin

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Video Division has before it a petition for rulemaking filed November 27, 2020 (Petition) by WULK Licensee, LLC (Licensee), the licensee of WULK–TV (FOX), channel 12, Green Bay, Wisconsin. The Licensee requests the substitution of channel 18 for channel 12 at Green Bay, Wisconsin the digital television (DTV) Table of Allotments.

DATES: Comments must be filed on or before April 26, 2021 and reply comments on or before May 10, 2021.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 45 L Street NE, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Paul A. Cicelski, Esq., Lerman Senter PLLC, 2001 L Street NW, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Joyce Bernstein, Media Bureau, at (202) 418–1647 or Joyce *Bernstein@fcc.gov.*

SUPPLEMENTARY INFORMATION: In support of its channel substitution request, the Licensee states that the Commission has recognized that VHF channels have certain propagation characteristics which may cause reception issues for some viewers, and that the reception of VHF signals require larger antennas relative to UHF channels. According to the Licensee, WLUK–TV has received numerous complaints from viewers unable to receive its signal and the Licensee's channel substitution proposal will result in more effective building penetration for indoor antenna reception and greatly improve the Station's ability to provide ATSC 3.0 service to homes, vehicles, and portable devices. The Licensee further states that it will continue to serve all of the population located within the licensed channel 12 contour and that three other FOX-affiliated stations provide a signal to portions of the licensed channel 12 facility. We believe that the Licensee's channel substitution proposal warrants consideration. Channel 18 can be substituted for channel 12 at Green Bay, Wisconsin as proposed, in compliance with the principal community coverage requirements of the Commission's rules at coordinates 44–24–32.0 N and 87–59–31.0 W. In addition, we find that this channel change meets the technical requirements set forth in our regulations.

This is a synopsis of the Commission's *Notice of Proposed Rulemaking,* MB Docket No. 21–72; RM–11888; DA 21–271, adopted March 4, 2021, and released March 4, 2021. The full text of this document is available for download at *https://www.fcc.gov/edocs.* To request materials in accessible formats (braille, large print, computer diskettes, or audio recordings), please send an email to *FCC504@fcc.gov* or call the Consumer & Government Affairs Bureau at (202) 418–0530 (VOICE), (202) 418–0432 (TTY).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed 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). Provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, do not apply to this proceeding.

Members of the public should note that all *ex parte* contacts are prohibited from the time a notice of proposed rulemaking is issued to the time the matter is no longer subject to Commission consideration or court review, *see* 47 CFR 1.1208. There are, however, exceptions to this prohibition, which can be found in § 1.1204(a) of the Commission's rules, 47 CFR 1.1204(a).

See §§ 1.415 and 1.420 of the Commission's rules for information regarding the proper filing procedures for comments, 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Thomas Horan,

Chief of Staff, Media Bureau.

Proposed Rule

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICE

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, and 339.

■ 2. In § 73.622 (i) amend the Post-Transition Table of DTV Allotments under Wisconsin by revising the entry for Green Bay to read as follows:

§ 73.622 Digital television table of allotments.

* * * * *

(i) * * *

Community	Channel No.
* * * * *	
Wisconsin	
* * * * *	
Green Bay	18, 23, 39, 41, *42
* * * * *	

[FR Doc. 2021–06155 Filed 3–24–21; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 21–70; RM–11886; DA 21–267; FR ID 17577]

Television Broadcasting Albany, Georgia

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Video Division has before it a petition for rulemaking filed November 27, 2020 (Petition) by WFXL Licensee, LLC (Licensee), the licensee of WFXL (FOX), channel 12, Albany, Georgia (Station). The Licensee requests the substitution of channel 29 for channel 12 at Albany, Georgia in the digital television (DTV) Table of Allotments.

DATES: Comments must be filed on or before April 26, 2021 and reply comments on or before May 10, 2021.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 45 L Street NE, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Paul A. Cicelski, Esq., Lerman Senter PLLC, 2001 L Street NW, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Joyce Bernstein, Media Bureau, at (202) 418–1647 or *JoyceBernstein@fcc.gov.*

SUPPLEMENTARY INFORMATION: In support of its channel substitution request, the Licensee states that the Commission has recognized that VHF channels have certain propagation characteristics which may cause reception issues for some viewers, and that the reception of VHF signals require larger antennas relative to UHF channels. According to the Licensee, WFXL has received numerous complaints from viewers unable to receive its signal and the Licensee's channel substitution proposal will result in more effective building penetration for indoor antenna reception and greatly improve the Station's ability to provide ATSC 3.0 service to homes, vehicles, and portable devices. The Licensee further states that it will continue to serve all of the population located within the licensed channel 12 contour and that three other FOX-affiliated stations provide a signal to portions of the licensed channel 12 facility. We believe that the Licensee's channel substitution proposal warrants consideration. Channel 29 can be substituted for channel 12 at Albany, Georgia as proposed, in compliance

with the principal community coverage requirements of the Commission's rules at coordinates 31–19–53.0 N and 85–51–43.0 W. In addition, we find that this channel change meets the technical requirements set forth in our regulations.

This is a synopsis of the Commission's *Notice of Proposed Rulemaking,* MB Docket No. 21–70; RM–11886; DA 21–267, adopted March 4, 2021, and released March 4, 2021. The full text of this document is available for download at *https://www.fcc.gov/edocs.* To request materials in accessible formats (braille, large print, computer diskettes, or audio recordings), please send an email to *FCC504@fcc.gov* or call the Consumer & Government Affairs Bureau at (202) 418–0530 (VOICE), (202) 418–0432 (TTY).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed 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). Provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, do not apply to this proceeding.

Members of the public should note that all *ex parte* contacts are prohibited from the time a notice of proposed rulemaking is issued to the time the matter is no longer subject to Commission consideration or court review, *see* 47 CFR 1.1208. There are, however, exceptions to this prohibition, which can be found in § 1.1204(a) of the Commission's rules, 47 CFR 1.1204(a). See §§ 1.415 and 1.420 of the Commission's rules for information regarding the proper filing procedures for comments, 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Thomas Horan,

Chief of Staff, Media Bureau.

Proposed Rule

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICE

■ 1. The authority citation for part 73 is revised to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, and 339.

■ 2. In § 73.622, amend paragraph (i) by revising the Post-Transition Table of DTV Allotments under Georgia the entry for Albany to read as follows:

§ 73.622 Digital television table of allotments.

* * * * *

(i) * * *

Community	Channel No.
* * * * *	
Georgia	
* * * * *	
Albany	10, 29
* * * * *	

[FR Doc. 2021–05990 Filed 3–24–21; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 74

[MB Docket No. 15–146; GN Docket No. 12–268; Report No. 3169; FRS 17596]

Petition for Reconsideration of Action in Proceedings

AGENCY: Federal Communications Commission.

ACTION: Petition for Reconsideration.

SUMMARY: Petition for Reconsideration (Petition) has been filed in the Commission's proceeding by Michael Lazarus, on behalf Sennheiser Electronic Corporation and Catherine Wang, on behalf of Shure Incorporated.

DATES: Oppositions to the Petition must be filed on or before April 9, 2021. Replies to an opposition must be filed on or before April 19, 2021.

ADDRESSES: Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Shaun Maher, Media Bureau, (202) 418–2324.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document, Report No. 3169, released March 17, 2021. The full text of the Petition can be accessed online via the Commission's Electronic Comment Filing System at: *http://apps.fcc.gov/ecfs/.* The Commission will not send a Congressional Review Act (CRA) submission to Congress or the Government Accountability Office pursuant to the CRA, 5 U.S.C. 801(a)(1)(A), because no rules are being adopted by the Commission.

Subject: Amendment of Parts 15, 73 and 74 of the Commission's Rules to Provide for the Preservation of One Vacant Channel in the UHF Television Band For Use By White Spaces Devices and Wireless Microphones, published 86 FR 9297, February 12, 2021, in MB Docket No 15–146. This document is being published pursuant to 47 CFR 1.429(e). *See also* 47 CFR 1.4(b)(1) and 1.429(f), (g).

Number of Petitions Filed: 2.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2021–06099 Filed 3–24–21; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R1–ES–2020–0079; FF09E22000 FXES11130900000 212]

RIN 1018–BE02

Endangered and Threatened Wildlife and Plants; Reclassification of the Hawaiian Stilt From Endangered to Threatened With a Section 4(d) Rule

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to reclassify (downlist) the Hawaiian stilt (*Himantopus mexicanus knudseni*) from endangered to threatened under the Endangered Species Act of 1973, as amended (Act). After a review of the best available scientific and commercial information, we find that the subspecies' status has improved such that it is not currently in danger of extinction throughout all or a significant portion of its range, but that it is still likely to become so in the foreseeable future. We also propose a rule under section 4(d) of the Act that provides for the conservation of the Hawaiian stilt. Additionally, we also recognize the name ''aeo'' as an alternative common name.

DATES: We will accept comments received or postmarked on or before May 24, 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 public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by May 10, 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–R1–ES–2020–0079, 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–R1–ES–2020–0079, 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 *Public Comments,* Information Requested, below, for more information).

Availability of supporting materials: This proposed rule and supporting documents, including the 5-year review and the Recovery Plan, are available at *https://www.fws.gov/Pacificislands/* and at *http://www.regulations.gov* under Docket No. FWS–R1–ES–2020–0079.

FOR FURTHER INFORMATION CONTACT: Katherine Mullett, Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Room 3–122, Honolulu, HI 96850; telephone 808–792–9400. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why We Need To Publish a Rule

Under the Act, a species may warrant reclassification from endangered to threatened if it no longer meets the definition of endangered (in danger of extinction). The Hawaiian stilt is listed as endangered, and we are proposing to reclassify (downlist) the Hawaiian stilt as threatened because we have determined is it not currently in danger of extinction. Reclassifying a species can only be completed by issuing a rulemaking.

What This Document Does

This rule proposes to downlist the Hawaiian stilt from endangered to threatened on the Federal List of Endangered and Threatened Wildlife, based on the species' current status, which has been improved through implementation of conservation actions. In addition, we propose in this rule to prohibit certain activities in relation to the species under section 4(d) of the Act.

The Basis for Our Action

Under the Act, we may determine that a species is an endangered species or a threatened species because of any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We may reclassify a species if the best available commercial and scientific data indicate the species no longer meets the applicable definition in the Act. For the reasons discussed below, we have determined that the Hawaiian stilt is no longer in danger of extinction and, therefore, does not meet the definition of an endangered species, but is still affected by the following current and ongoing threats to the extent that the species meets the definition of a threatened species under the Act:

- Habitat degradation, destruction, and modification due to urban development, altered ground and surface water, nonnative plants, and coastal inundation and groundwater flooding due to sea level rise;
- Predation by nonnative animals such as mongooses, black rats, feral cats, feral dogs, bullfrogs, black-crowned night herons, cattle egrets, and barn owls, and native animals such as the Hawaiian short-eared owl;
- Disease, primarily botulism caused by the bacterium *Clostridium botulinum* (type C);
- Environmental contaminants resulting from human activities; and
- Stochastic events such as hurricanes, which are anticipated to increase in frequency and intensity.

We Are Proposing To Promulgate a Section 4(d) Rule

In the 4(d) rule, we propose to prohibit all intentional take and most incidental take of the Hawaiian stilt under section 9(a)(1) of the Act with a few specific exceptions to allow incidental take as a means to further the conservation and recovery of the species by providing management flexibilities for our State, Federal, and private partners. Additionally, these exceptions will help to guide Hawaiian stilts away from hazardous habitat and toward habitat managed to meet the species' individual and species-level needs.

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 should remain listed as endangered instead of being reclassified as threatened, or we may conclude that the species no longer warrants listing as either an endangered species or a threatened species. In addition, we may change the parameters of the prohibitions and conservation measures in the 4(d) rule if we conclude it is appropriate in light of comments and new information received. For example, we may expand the incidental-take prohibitions to include prohibiting activities that these proposed regulations would allow if we conclude that additional activities are likely to cause direct injury or mortality to the species. Conversely, we may establish additional exceptions to the incidental-take prohibitions so as to allow activities that this proposed rule would prohibit if we conclude that the activities would not cause direct injury or mortality to the species and will facilitate the conservation and recovery of the species. Such final decisions would be a logical outgrowth of this proposal.

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) Reasons we should or should not reclassify the Hawaiian stilt as a threatened species.

(2) New information on the historical and current status, range, distribution, and population size of the Hawaiian stilt.

(3) New information on the known and potential threats to the Hawaiian stilt, including predation; urban

development, nonnative plants, alterations in surface or ground water; data on avian botulism; contaminants; impacts associated with climate change; or trends in the status and abundance of wetlands used by the subspecies.

(4) New information regarding the life history, ecology, and habitat use of the Hawaiian stilt.

(5) Current or planned activities within the geographic range of the Hawaiian stilt that may have adverse or beneficial impacts on the subspecies.

(6) Information on regulations that are necessary and advisable to provide for the conservation of the Hawaiian stilt and that the Service can consider in developing a 4(d) rule for the subspecies.

(7) Information concerning the extent to which we should include any of the section 9 prohibitions in the 4(d) rule or whether any other forms of take should be excepted from the prohibitions in the 4(d) rule.

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,* under Docket No. FWS–R1–ES–2020–0079.

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 regulation at 50 CFR 424.16(c)(3).

Peer Review

In accordance with our policy, ''Notice of Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities,'' which was published on July 1, 1994 (59 FR 34270) and our August 22, 2016, Director's Memorandum ''Peer Review Process,'' we will seek the expert opinion of at least three appropriate and independent specialists regarding scientific data and interpretations contained in this proposed rule. We will send copies of this proposed rule to the peer reviewers immediately following publication in the **Federal Register**. We will ensure that the opinions of peer reviewers are objective and unbiased by following the guidelines set forth in the Director's Memo, which updates and clarifies Service policy on peer review (U.S. Fish and Wildlife Service 2016a). The purpose of such review is to ensure that our decisions are based on scientifically sound data, assumptions, and analysis. Accordingly, our final decision may differ from this proposal.

Previous Federal Actions

The Hawaiian stilt was listed as an endangered species under the Act on October 13, 1970 (35 FR 16047). A recovery plan for four Hawaiian waterbirds, including the Hawaiian stilt, was issued in 1978 (U.S. Fish and Wildlife Service (USFWS) 1978, entire), and the first revision of this plan was issued in 1985. The final Recovery Plan for Hawaiian Waterbirds, Second Revision (Service 2011, entire), was made publicly available January 19, 2012 (77 FR 2753). We completed the most recent 5-year review of the subspecies in March 2020, in which we recommended downlisting the Hawaiian stilt (Service 2020, entire). This document serves as our proposed rule to reclassify the Hawaiian stilt from endangered to threatened based on the recommendation in our 2020 5-year review.

Proposed Reclassification Determination

Background

A thorough review of the biological information on Hawaiian stilts including taxonomy, life history, ecology, and conservation activities, as well as threats facing the subspecies or its habitat is presented in our recent Hawaiian stilt 5-year review (USFWS 2020, entire) and the Recovery Plan for Hawaiian Waterbirds (USFWS 2011, entire), which are available at *http://www.regulations.gov* under Docket No. FWS–R1–ES–2020–0079. The following is a summary of the best available information on Hawaiian stilts. Please refer to the 2020 5-year review and 2011 recovery plan for additional discussion and background information.

Taxonomy and Species Description

The Hawaiian stilt (*Himantopus mexicanus knudseni*) is a waterbird endemic to the Hawaiian Islands (Stejneger 1887, entire). Another commonly accepted name for the Hawaiian stilt is the aeo (from a Hawaiian name for the bird and word for stilts). The Hawaiian stilt is widely recognized as a subspecies of the black-necked stilt *Himantopus mexicanus* (American Ornithology Union (AOU) 1998). It is black and white with long, pink legs (Bryan 1901, p. 26; Shallenberger 1977, p. 24), is slender in appearance, and grows to about 16 inches (in) (40 centimeters (cm)) in height. Plumage is black on the back, and white on the front and underside of the bird. Juveniles have a brownish back, and more extensive white on the cheeks and forehead than adults. Chicks are well camouflaged in a downy plumage that is tan with black speckling (Coleman 1981, pp. 33, 35, 86–87). The Hawaiian stilt is a long-lived vertebrate, as the life span of the Hawaiian Stilt can reach at least 30 years (Reed *et al.* 2014, p. 4).

Range, Abundance, and Population Trends

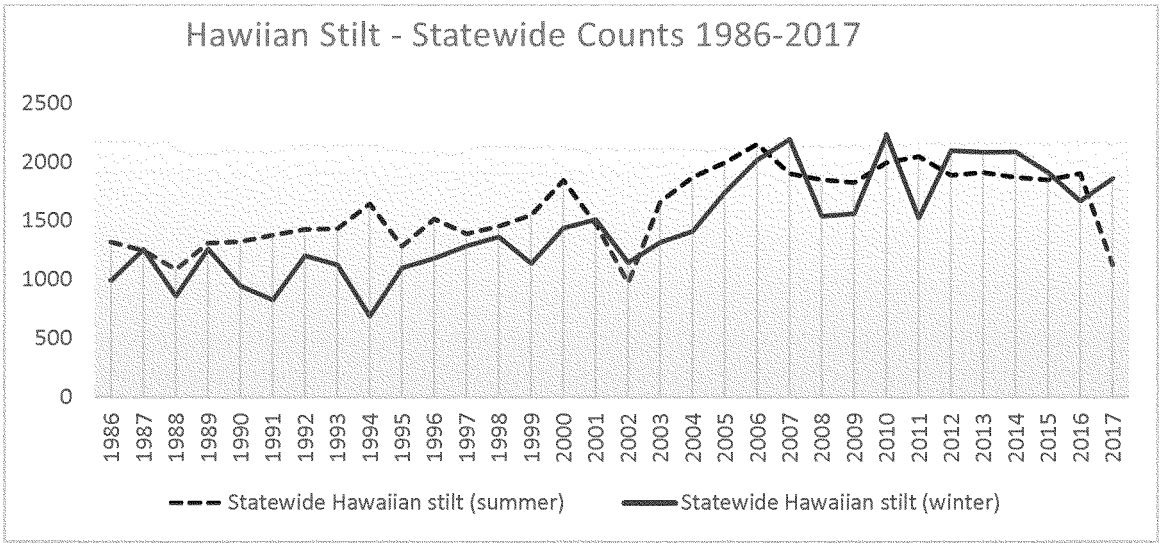
Hawaiian stilts were historically known from all the main Hawaiian Islands (*i.e.,* Niihau, Kauai, Oahu, Maui, Molokai, Lanai, Kahoolawe, and Hawaii) except Lanai (until recently) and Kahoolawe. Hawaiian stilts move between islands, based on observations of sudden large increases in numbers at certain sites (from several hundred to a thousand or more), and concomitant

decreases at other sites, including certain wetlands over the years (Engilis and Pratt 1993, pp. 142, 156, 148; Banko 1988, p. 6). Hawaiian stilts began colonizing the island of Lanai following developments during the 1980s, including construction of a water treatment plant that provided foraging and breeding habitat (Engilis and Pratt 1993, p. 147; Pyle and Pyle 2017, unpaginated). The subspecies consists of one single population dispersed across the main Hawaiian Islands (except Kahoolawe), and individuals move freely between wetlands both within and between islands (Munro 1944, pp. 59–60; Telfer and Burr 1979, p. 8; Coleman 1981, pp. 7–8; Reed *et al.* 1998a, pp. 36, 38; Reed *et al.* 1998b, pp. 791–796; Battista 2008, p. 2; Nishimoto 2014, p. 3; Paxton and Kawasaki 2015, *in litt.;* Dibben-Young 2017, *in litt.*). Hawaiian stilts disperse readily, exploit seasonally flooded wetlands, and readily colonize newly restored or created habitats (van Rees *et al.* 2020, p. 3). The population naturally fluctuates according to climatic and hydrologic conditions (Banko 1988, pp. 2–7; Engilis and Pratt 1993, pp. 145, 147; Reed *et al.* 1998b, pp. 791–797). Because the subspecies consists of one large population, any discussion regarding the subspecies' needs (below) also addresses the population's needs.

The Hawaii Department of Land and Natural Resources, Division of Forestry and Wildlife (DOFAW) conducts a biannual waterbird population census (count), and those data offer the best available information to assess trend and abundance of the subspecies (DOFAW 2020). Data were available from 1986 through 2017 for our analysis. The DOFAW surveys take place Statewide on a single day in the winter and a single day in the summer to try to avoid counting the same birds twice. Niihau is no longer included in the counts as it is a privately owned island that has not been surveyed since 1999; this island shares birds seasonally with Kauai (Engilis and Pratt 1993, p. 156). However, periodic low numbers on Kauai are often due to Hawaiian stilts moving to Niihau, particularly in years with increased precipitation (Laut, 2020, *pers. comm.*).

Winter and summer surveys for Hawaiian stilts show a fluctuating population, which generally increased from 1987 to 2004 and since then has been roughly stable at 1,500 to 2,000 individuals. Years where counts surpassed 2,000 individuals have been followed in the subsequent year by a decrease of 300 to 700 birds (DOFAW 2020).

Figure 1. Statewide census counts for Hawaiian stilt 1986–2017 (Source: DOFAW 2020).



Variability in population count numbers can be partially explained by variation in reproductive success (Engilis and Pratt 1993, p. 155) and predation. Summer counts are generally more variable than winter counts due to the variability in hatch-year bird survival (Reed and Oring 1993, pp. 1, 57; Reed *et al.* 2011b, p. 475). Given that the Hawaiian stilt is conspicuous and most wetlands are surveyed during the Statewide waterbird surveys, the data provide a fairly reliable index of overall population abundance and indicate that the population continues to be stable or increasing with short-term fluctuations (Reed *et al.* 2011b, pp. 475–476, 478–479; USFWS 2011, p. iv; DOFAW 2020). Using indices to monitor abundance can make detecting changes in populations difficult, potentially masking declines (Staples 2005, p. 1909). We recognize this limitation but conclude the use of this data represents the best available information to ascertain status, trends, and abundance of this subspecies.

Habitat and Life History Requirements

The Hawaiian stilt primarily occurs from sea level up to 656 feet (ft) (200 meters (m)) in elevation, in natural and human-made lowland coastal wetlands (Perkins 1903, p. 452; Shallenberger 1977, pp. 23–25; Coleman 1981, pp. 8–18; Griffin *et al.* 1989, p. 1169; Engilis and Pratt 1993, pp. 155–156; Evans *et al.* 1994, p. 6; USFWS 2005, p. 31; USFWS 2011, pp. 50–60). However, Hawaiian stilts are not restricted to lowland coastal wetlands as they have been observed at slightly higher elevations and outside of the coastal wetlands, such as foothill impoundments, reservoirs, and other wetlands (USFWS 2005, pp. 28–29; Kawasaki *et al.* 2020, p. 431). Hawaiian stilts use areas of sparse, low-growing (up to 18 in (46 cm) tall) perennial vegetation or exposed tidal flats for nesting and breeding, and sometimes foraging (Smith and Polhemus 2003, p. 61; United States Department of Agriculture–Natural Resources Conservation Service (USDA–NRCS) 2009, p. 5 and Appendix B; Gee

2007, pp. 70–71; Reed *et al.* 2011a, pp. 3, 4). The most common foraging depth for adults appears to be 5 in (13 cm) or less below the surface of the water (Ohashi and Burr 1977, p. 3; Smith and Polhemus 2003, pp. 60–61; Gee 2007, p. 62; Reed *et al.* 2011a, pp. 3–4). Shallow water (approximately 2–3 in (7.6 cm)) and wet mudflats are particularly important for foraging chicks (Morin 1998, p. 11; USDA–NRCS 2009, p. 4; Reed *et al.* 2011a, p. 4; Reed 2017, *in litt.*).

Hawaiian stilts typically begin breeding at age two (Reed *et al.* 1998a, p. 36). Nests are simple scrapes on the ground (Coleman 1981, p. 53; Smith and Polhemus 2003, p. 61; Gee 2007, p. 98). Pairs usually lay three to four eggs that are incubated for approximately 24 days (Coleman 1981, p. 56; Chang 1990, p. 43). Chicks are precocial, leaving the nest within 24 hours of hatching. After the last chick hatches, parents lead their brood to shallow feeding areas (Coleman 1981, p. 77). Chicks fledge approximately 28 days post-hatching (Reed *et al.* 1999, p. 478), and young may remain with both parents for several months after hatching (Coleman 1981, pp. 83–84). Parents are extremely aggressive toward unrelated young (Robinson *et al.* 1999, pp. 11–13).

During the nesting season, incubating pairs move between their nest site and a foraging area (USFWS 2011, p. 60). Foraging areas may be directly adjacent to the nest site or quite a distance away (Coleman 1981, p. 77; Engilis and Pratt 1993, pp. 155–156; Reed and Oring 1993, p. 57). Food availability is at least one factor that drives foraging at greater distances from the nest site (Reed and Oring 1993, p. 57). Adults with 3-day-old chicks have been observed foraging 0.3 mile (mi) (1.5 kilometer (km)) from the nest site (Reed and Oring 1993, p. 57). Within a few hours of the last chick hatching, parents lead their brood to shallow feeding areas that may be the same feeding areas used by the adults during incubation (Coleman 1981, p. 77).

Hawaiian stilts are opportunistic feeders. They eat a wide variety of invertebrates and other aquatic organisms found in shallow water and mudflats (Perkins 1903, p. 452; Shallenberger 1977, pp. 23–25; Robinson *et al.* 1999, pp. 8–9; USFWS 2011, p. 58). They also sometimes forage in grasslands adjacent to wetlands. Managed wetlands with desirable water depth are common foraging sites (Underwood *et al.* 2013, p. 6). Hawaiian stilts move intraisland and interisland as they exploit food resources (Engilis and Pratt 1993, pp. 155–156).

We consider the specific breeding and rearing conditions described above as necessary for both individual and subspecies needs. The Hawaiian stilt is considered a conservation-reliant subspecies (Reed *et al.* 2012, p. 888; Underwood *et al.* 2013, p. 1), which means that it will require active management into perpetuity because of our inability to eliminate the dominant threats (Scott *et al.* 2005, pp. 383–389; Scott *et al.* 2010, pp. 92–93: Goble *et al.* 2012, pp. 869–872). It is also considered conservation-reliant because it relies almost solely upon managed wetlands for successful nesting and breeding (Reed *et al.* 2012, p. 888; Underwood *et al.* 2013, p. 1). The accepted management regime for creating and maintaining optimal Hawaiian stilt breeding and rearing habitat has three major components: Control of invasive introduced plant species; manipulation of water levels to mimic natural hydrological processes and benefit life-history needs; and control of predators (USFWS 2011, pp. 163–169; Underwood *et al.* 2014, p. 32 and supporting references). More information on the subspecies' management dependency is presented in the Summary of Biological Status and Threats, below.

Recovery Criteria

Section 4(f) of the Act directs us to develop and implement recovery plans for the conservation and survival of endangered and threatened species unless we determine that such a plan will not promote the conservation of the species. Recovery plans must, to the maximum extent practicable, include ''objective, measurable criteria which, when met, would result in a determination, in accordance with the provisions [of section 4 of the Act], that the species be removed from the list.''

Recovery plans provide a roadmap for us and our partners on methods of enhancing conservation and minimizing threats to listed species, as well as measurable criteria against which to evaluate progress towards recovery and assess the species' likely future condition. However, they are not regulatory documents and do not substitute for the determinations and promulgation of regulations required under section 4(a)(1) of the Act. A decision to revise the status of a species, or to delist a species, is ultimately based on an analysis of the best scientific and commercial data available to determine whether a species is no longer an endangered species or a threatened species, regardless of whether that information differs from the recovery plan.

There are many paths to accomplishing recovery of a species, and recovery may be achieved without all of the criteria in a recovery plan being fully met. For example, one or more criteria may be exceeded while other criteria may not yet be accomplished.

In that instance, we may determine that the threats are minimized sufficiently and that the species is robust enough that it no longer meets the definition of an endangered species or a threatened species. In other cases, we may discover new recovery opportunities after having finalized the recovery plan. Parties seeking to conserve the species may use these opportunities instead of methods identified in the recovery plan. Likewise, we may learn new information about the species after we finalize the recovery plan. The new information may change the extent to which existing criteria are appropriate for identifying recovery of the species. The recovery of a species is a dynamic process requiring adaptive management that may, or may not, follow all of the guidance provided in a recovery plan.

For the purposes of this discussion, we assess the progress of Hawaiian stilt recovery relative to recovery targets in the second revision of the Recovery Plan for Hawaiian Waterbirds (Service 2011, entire). The 2011 revision included more specific recovery recommendations for Hawaiian stilt and modified population target levels. In developing recovery criteria for the Hawaiian stilt, we used a 1998 population viability analysis (PVA) for the subspecies (see Reed *et al.* 1998a, entire) as the basis for population target levels. For recovery criteria for the Hawaiian stilt, we also assessed and categorized wetlands on each island into core and supporting wetlands. Core wetlands provide habitat essential for the larger populations of Hawaiian waterbirds that comprise the bulk of the numbers prescribed for recovery. Supporting wetlands are additional areas that provide habitat important for smaller populations or provide habitat needed seasonally by segments of the population during part of their life cycle. Wetlands identified as ''protected'' (whether core, supporting, or neither) are those considered secure from development. In general, protected wetlands are National Wildlife Refuges (NWR), State-owned wildlife sanctuaries, or mitigation wetlands, where the primary purpose of management is wildlife conservation or does not conflict with the goal of wildlife conservation. The core and supporting wetlands identified in the

2011 recovery plan are the sites on each island that provide the greatest potential for recovery of Hawaiian stilts (USFWS 2011, p. 114; USFWS 2020 pp. 2–3).

The overall goal for recovery of the Hawaiian stilt is to restore and maintain multiple self-sustaining populations within the subspecies' historical range (Service 2011, p. 120). The plan provides four criteria for reclassifying the Hawaiian stilt from endangered to threatened status and two additional criteria for delisting the subspecies. We describe and assess the recovery criteria as they relate to evaluating the status of the Hawaiian stilt below.

Criterion 1 for Downlisting

Criterion 1 states that all core wetlands on the island groups of Kauai-Niihau, Oahu, Maui-Molokai, and Hawaii are protected and managed in accordance with the management practices outlined in the recovery plan (Service 2011, pp. 124, 126, 163–165). The plan states that it is crucial for wetlands at these sites to be secure from conversion to non-wetland condition and to have sufficient enduring management to recover Hawaii's waterbirds.

Currently, of the recovery plan's 17 identified core wetlands, 14 are protected from development and have some predator and habitat management activities in place. Only 3 lack protection from development and predator and habitat management (see Table 1, below).

TABLE 1—STATUS AND CHARACTERISTICS OF CORE WETLANDS IDENTIFIED FOR RECOVERY OF THE HAWAIIAN STILT

Wetland name/location	Island	Hectares (acres)	Core or supporting	Protected [1]	Managed	Responsibility [2]
Kaloko-Honokohau, National Historic Park.	Hawaii	22 (55)	Core	X	predators and habitat	NPS.
Loko Waka Ponds	Hawaii	10 (24.5)	Core			Private.
Hanalei NWR	Kauai	371 (917)	Core	X	predators and habitat	USFWS.
Huleia NWR	Kauai	98 (241)	Core	X	predators and habitat	USFWS.
Lumahai Valley Wetlands	Kauai	51 (125)	Core			Private.
Mana Plains Forest Reserve (formerly Kawaiele Wild Bird Sanctuary).	Kauai	14 (35)	Core	X	predators and habitat	DOFAW.
Kanaha Pond Wildlife Sanctuary	Maui	59 (145)	Core	X	predators and habitat	DOFAW.
Kealia Pond NWR	Maui	280 (692)	Core	X	predators and habitat	USFWS.
Kakahaia NWR	Molokai	18 (45)	Core	X	predators and habitat	USFWS.
Ohiapilo Pond Bird Sanctuary	Molokai	10 (25)	Core	X	predators and habitat	County.
Playa Lakes (wetland complex)	Niihau	769 (1,900)	Core			Private.
Hamakua Marsh Waterbird Sanctuary	Oahu	35.6 (88)	Core	X	predators and habitat	DOFAW/DU.
James Campbell NWR, Kii and Punamano Units.	Oahu	66 (164)	Core	X	predators and habitat	USFWS.
Kawainui Marsh	Oahu	304 (750)	Core	X	predators and habitat	DOFAW.
Marine Core Base Hawaii, Nuupia Ponds	Oahu	196 (483)	Core	X	predators and habitat	MCBH.
Pearl Harbor NWR, Honouliuli and Waiawa Units.	Oahu	25 (61)	Core	X	predators and habitat	USFWS.
Pouhala Marsh Waterbird Sanctuary	Oahu	28 (78)	Core	X	predators and habitat	DOFAW.

Legend:
[1] Protected refers to wetland areas that are secure from development.
[2] Responsibility: DOFAW = Hawaii Division of Forestry and Wildlife; DU = Ducks Unlimited; MCBH = Marine Corps Base Hawaii; NPS = National Park Service; USFWS = U.S. Fish and Wildlife Service; USN = U.S. Navy; County = County Government; State = State Government entity; Private = private landowner(s).

Although we conclude that this criterion has not been completely met, we have made substantial progress toward meeting it, and the ongoing management on core wetlands has contributed toward the stabilization of the Hawaiian stilt population and helped to further the recovery of the subspecies.

Criterion 2 for Downlisting

Criterion 2 states that at least 50 percent of the supporting wetlands on the islands of Kauai, Oahu, Maui-Molokai-Lanai, and Hawaii are protected and managed in accordance with the management practices outlined in the recovery plan. The plan states that protection and management of these wetlands is required to recover Hawaii's waterbirds, but there is more flexibility with regard to which sites must be managed, as it is possible that other sites may fulfill the same needs as those identified.

The recovery plan identified 34 sites as supporting wetlands throughout the State; of these, 15 are protected, 11 have predator or habitat management or both, but only 7 of the 34 supporting wetlands are in protective status and have some form of management (Table 2). Therefore, we conclude that this criterion has been partially met.

TABLE 2—SUPPORTING WETLANDS AND CHARACTERISTICS IDENTIFIED FOR RECOVERY OF THE HAWAIIAN STILT

Wetland name/location	Island	Hectares (acres)	Core or supporting	Protected [1]	Managed	Responsibility [2]
Kealakehe (Kona) Sewage Treatment Plant.	Hawaii	12 (30)	Supporting		predators	County.
Keanae Pond (Keaau/Shipman)	Hawaii	2.9 (7.2)	Supporting	X		Private.
Keanakolu Road Stock Ponds (1–5) (Part of Kohala–Mauna Kea Ponds and Streams).	Hawaii	18+ (45+)	Supporting			Private/State.
Opaeula Pond	Hawaii	3 (7.5)	Supporting			Private.
Waiakea Pond	Hawaii	16 (39.5)	Supporting			State/County.
Waimanu Valley	Hawaii	(*)	Supporting			County.
Waipio Valley	Hawaii	(**)	Supporting	X		County.
Hanalei Trader Taro Fields (Hanalei River and Taro fields that are not part of Hanalei NWR).	Kauai	40.4 (100)	Supporting			Private/State.
Hanapepe Salt Ponds	Kauai	20 (50)	Supporting			Private/DOFAW.

TABLE 2—SUPPORTING WETLANDS AND CHARACTERISTICS IDENTIFIED FOR RECOVERY OF THE HAWAIIAN STILT—Continued

Wetland name/location	Island	Hectares (acres)	Core or supporting	Protected [1]	Managed	Responsibility [2]
Mana Base Pond and Wetlands (Part of Mana Plain).	Kauai	81 (200)	Supporting	X	predators and habitat	Private/State.
Opaekaa Marsh	Kauai	20 (50)	Supporting			Private/DOFAW.
Smith's Tropical Paradise	Kauai	1.9 (4.7)	Supporting	X		Private/State.
Wailua River Bottoms	Kauai	20 (50)	Supporting			Private/State.
Waimea River System	Kauai	64 (158)	Supporting			Private/State.
Wainiha Valley River and Taro Fields	Kauai	44 (109)	Supporting			Private/County.
Waita Reservoir	Kauai	151 (373)	Supporting			Private.
Lanai Sewage Treatment Ponds	Lanai	3 (7.4)	Supporting		predators	Private/County.
Keanae Point	Maui	1.5 (3.7)	Supporting	X		State.
Waihee Coastal Dunes and Wetlands (Waihe'e Refuge).	Maui	101 (250)	Supporting	X	predators and habitat	Private.
Kaunakakai Wastewater Reclamation Facility Ponds.	Molokai	1.5 (3.7)	Supporting	X	predators	County.
Kualapu'u Reservoir	Molokai	30 (74)	Supporting	X		State.
Paialoa Fish Ponds	Molokai	2 (5)	Supporting			Private.
Haleiwa Lotus and Taro Fields	Oahu	4.2 (10.6)	Supporting			Private/County.
Haleiwa Waialua Lotus Fields	Oahu	30 (75)	Supporting			Private.
Heeia Marsh	Oahu	162 (400)	Supporting	X	predators and habitat	DOFAW.
Kaelepulu Mitigation Pond (Enchanted Lake).	Oahu	2.2 (5.6)	Supporting	X	predators and habitat	Private.
Kahuku Prawn Farm (Includes Amoriant and Kahuku Aquaculture Farms).	Oahu	41 (100)	Supporting			Private.
Laie Wetlands	Oahu	81 (200)	Supporting	X		Private.
Lualualei RTF, Niulii Ponds	Oahu	16 (40)	Supporting	X	predators and habitat	USN/USFWS.
Paiko Lagoon Wildlife Sanctuary	Oahu	13 (33)	Supporting	X	predators and habitat	DOFAW.
Punahoolapa Marsh	Oahu	41 (100)	Supporting	X		Private.
Turtle Bay, Kuilima Wastewater Treatment Plant.	Oahu	5 (12.4)	Supporting	X		Private.
Ukoa Marsh	Oahu	122 (300)	Supporting		predators and habitat	Private.
Waihee Marsh	Oahu	10 (25)	Supporting		predators and habitat	Private.

Legend:
[1] Protected refers to wetland areas that are secure from development.
[2] Responsibility: HDOFAW = Hawaii Division of Forestry and Wildlife; DU = Ducks Unlimited; MCBH = Marine Corps Base Hawaii; NPS = National Park Service; USFWS = U.S. Fish and Wildlife Service; USN = U.S. Navy; County = County Government; State = State Government entity; Private = Private Landowner(s).
* Large area of intermixed wetland, upland, and agricultural lands where specific habitat areal extent cannot be determined.
** Large area of intermixed wetlands and agricultural lands where specific habitat areal extent cannot be determined.

Criterion 3 for Downlisting

Criterion 3 states that a PVA should be conducted to update the findings of Reed *et al.* (1998a, entire), and the population size necessary for long-term viability of the subspecies should be reassessed; and (2) the Statewide surveyed number of Hawaiian stilts show a stable or increasing trend and has not declined below 2,000 birds (or an alternative target based on the updated PVA) for at least 5 consecutive years. Researchers have produced two PVAs for the subspecies to support and inform the creation of recovery criteria and recovery decisions for the subspecies (Reed *et al.* 1998a, entire; Reed and van Reese 2019, entire). The most recent analysis in 2019, completed with data collected since 1998, incorporated additional peer-reviewed data on adult survival rates and variances in adult or juvenile survival rates (Reed *et al.* 2014, entire); these additional data were not available at the time of the initial modelling effort. The 2019 effort also included data on individual movement patterns for Hawaiian stilt (Reed *et al.* 1998b, entire). The authors of the 2019 PVA stressed that the results are considered preliminary; that said, we find that the results inform the best available information regarding the viability of Hawaiian stilt.

Modeling from the 2019 PVA indicates that the Hawaiian stilt's population growth is affected by density-dependent population dynamics on managed wetlands beginning at approximately 1,000 birds. When population densities are high, the aggressive territorial behavior of adult stilts can lead to violent and occasionally fatal attacks on conspecific chicks and adults, sometimes with extensive chick fatalities as well as the potential for large numbers of nest failures or abandonment. Local adult density has a strong negative correlation with nest success (proportion of nests hatching at least one chick) at Kealia Pond National Wildlife Refuge (NWR) on Maui, where few alternative breeding habitats are available, but no such effect at a refinery pond on Oahu, where many nearby alternative wetlands are available. Therefore, optimizing the distribution of birds during breeding across the landscape (as opposed to concentrating breeding populations on one/few sites) to mitigate the effects of density dependence will benefit the conservation of the subspecies. Additionally, because this density-dependence is closely associated with available managed habitat, increased management (*i.e.,* predator control, water-level, and nonnative plant removal) across the range of the species, in both core and supporting wetlands, will create more suitable breeding habitat and thus increase the carrying capacity. Adequate representation across multiple sites on multiple islands—as illustrative of the approach of managed core and supporting wetlands developed by the recovery team—offers the most effective pathway to recovery of this conservation-reliant subspecies.

The PVA suggests that, under the current management efforts on core and supporting wetlands the Statewide carrying capacity of Hawaiian stilts is below 2,000 individuals. This means that the Hawaiian stilt has reached its equilibrium population size (*i.e.,* the population size the landscape can currently support). Data used in the PVA was collected from sites that are both protected and managed, as well as data from sites that are protected but do

not have management. The vital rates (reproduction and mortality) used in this PVA come from birds almost exclusively from managed sites as there are few to no birds able to successfully breed elsewhere due to the myriad threats present at non-managed sites. If the management practices continue and the environmental conditions of the managed sites are stable over the next 80 years, the rangewide population has no chance of extinction within the 80-year modelling period. This analysis demonstrates that under the current management practices the rangewide population is stable within the limited available managed sites and will continue to be stable as long as these management practices and environmental conditions continue. The three key factors that influence the probability of extinction, in order of importance, are adult mortality, juvenile mortality, and nest failure rate. The PVA predicted a sharp rise in the probability of extinction when adult mortality rates exceeded approximately 24 percent; at approximately 34 percent, the probability of extinction for the stilt approached 80 percent (Reed and van Reese 2019, pp. 24, 30).

The PVA also found that the Hawaiian stilt's viability is sensitive to changes in both annual juvenile mortality rates and nest failure rates. The PVA model indicated that the probability of extinction begins to increase sharply when annual juvenile mortality begins to exceed 40 percent, with almost certain extinction at 79 percent annual juvenile mortality (Reed and van Rees 2019; p. 31). Nest failure rates also influence changes in the model's outcomes on probability of extinction within 80 years (*i.e.,* the likelihood the species will not persist in 80 years). Nest failure rate would need to double, from approximately 19 percent to approximately 40 percent to reach a high probability of extinction within 80 years, with almost certain extinction if nest failure rates reaches 50 percent.

The PVA stresses that the successful reproduction and survival of stilts occurs almost exclusively at protected and managed wetlands and that birds at unmanaged wetlands tend to disappear, and consequently, a loss (or reduction) of management would decrease the species persistence likelihood (Reed and van Reese 2019, p. 36). This insight means in the absence (or reduction) of management at the currently managed sites, the species probability of extinction would substantially increase, and therefore, the species viability would substantially decrease. Further, adult mortality, juvenile mortality, and nest success are not independent factors. For example, if there are fewer adults there are fewer nests, so any reduction in management or habitat quality is likely to impact all life stages of the Hawaiian stilt.

Another potential limitation of the PVA is that changes in the environmental conditions of the protected and managed sites attributed to sea-level rise or other factors was not included as a variable in any of the models included in this PVA. Sea-level rise in particular is already impacting some wetlands in Hawaii (see Summary of Biological Status and Threats, below) (Kane *et al.* 2015, p. 353; Htun *et al.* 2016, pp. 50–51; van Reese and Reed 2018, pp. 2–3; van Reese and Reed 2019, p. 4; van Reese 2020, *pers. comm.*). Over the next several decades, sea-level rise could inundate enough core wetlands (*e.g.,* Kanaha and Kealia on Maui, and almost all wetlands on Molokai) across the islands and result in changes to the species' persistence estimates in the PVA due to changes or loss of available habitat and subsequent increases in mortalities of adults, eggs, or young (Kane *et al.* 2015, p. 353; Htun *et al.* 2016, pp. 50–51; van Reese and Reed 2018, pp. 2–3; Reed and van Rees 2019, p. 4; Harmon 2020, *in litt.;* van Reese 2020, *pers. comm.*).

The insights from the PVA justify the need for long term conservation actions such as managing habitat conditions and controlling predation. The robustness of the populations on core managed wetlands, as well as the effectiveness of management efforts focusing on producing conditions that result in the successful protection of nests, chicks, and adults, are well established. For example, although the Service's NWR units contain only 15 percent of the total coastal plan wetland acreage in the State, they supported between 37 and 47 percent of the total Hawaiian stilt Statewide population using data from 1986 through 2007 (Underwood *et al.* 2013, p. 6). Effective and sustained habitat and predator management produces conditions that result in the successful protection of nests, chicks, and adults, thereby significantly mitigating risk to the subspecies and improving resiliency into the foreseeable future. Long-term commitment towards conservation management actions are essential to continued progress towards recovery. Furthermore, additional and more expansive management on core and supporting wetland sites will also benefit the status of the subspecies into the foreseeable future.

Regarding population trends for Hawaiian stilt, winter and summer surveys for the subspecies show a fluctuating population, which generally increased from 1986 to 2004 and since then has been roughly stable at 1,500 to 2,000 individuals (see *Range, Abundance, and Population Trends*). While the number of Hawaiian stilts counted during the surveys has only occasionally exceeded 2,000 individuals during winter or summer counts over the last 10 years, the population has remained relatively stable over the past 16 years.

We conclude that this criterion has not fully been met because although a new preliminary PVA has been produced, the Service has not yet reassessed the subspecies population size necessary for long-term viability. The Service will conduct this reassessment once the PVA has undergone peer review and is published in the scientific literature. Further, winter and summer surveys for the Hawaiian stilt show a fluctuating population with a stable to increasing trend, but the total population has not consistently been near 2,000 birds for 5 consecutive years (see *Range, Abundance, and Population Trends*).

Criterion 4 for Downlisting

Criterion 4 states that there should be multiple self-sustaining breeding populations, including multiple breeding populations on at least the following: The island group of Kauai and Niihau, the island of Oahu, the island group of Maui, Molokai, and Lanai, and the island of Hawaii. Because the Hawaiian stilt exists in one intermixed population, we refer to breeding populations solely to distinguish groups of Hawaiian stilts that breed at a specific wetland on a specific island at any given time. They may or may not be the same stilts over time.

The recovery plan defines a self-sustaining breeding population as a population that is large enough to make extirpation from stochastic forces unlikely, and that is able to remain stable or grow with little human intervention except for predator control and vegetation management (USFWS 2011, p. 121). The recovery strategy further strengthens this concept by incorporating the need to satisfy two widely recognized and scientifically accepted goals for promoting viable self-sustaining breeding populations: (1) By increasing the population size and distribution across the islands, a single or series of catastrophic events will not result in the extinction of the subspecies; and (2) increasing the population size throughout its range to a level where the threats of genetic,

demographic (population dynamics), and normal environmental uncertainties are diminished (USFWS 2011, p. 112). Furthermore, for these population and distribution goals to ensure the long-term viability of the subspecies, they will require the successful control or elimination of the identified threats.

Present distribution of the Hawaiian stilt encompasses all islands where historically known (Niihau, Kauai, Oahu, Maui, Molokai, and Hawaii), as well as the island of Lanai due to the expansion in range that occurred in the mid-1980s from the development of the Lanai wastewater treatment facility. As previously summarized, since 1986, census data indicate a Statewide population that is relatively stable or slightly increasing (Service 2011, pp. 48–49; Service 2020, pp. 5, 18; van Rees *et al.* 2020, p. 3; DOFAW 2020). Additionally, the implementation of adaptive management predator control practices over the last decade at multiple core wetland sites has demonstrated that the response of the subspecies to predator control is positive, with higher fledgling success rates and overall improvements in population densities of Hawaiian stilts than in unmanaged sites (Underwood *et al.* 2014, p. 35; Price 2020, p. 10). Current management of threats at most core wetlands and some supporting wetland sites (Tables 1 and 2) has contributed toward the stabilization of the population and likely also plays an important role in creating a Hawaiian stilt population that is at or near carrying capacity (Reed and van Rees 2019, entire; van Rees *et al.* 2020, entire). As noted above, carrying capacity in this case is really more an equilibrium population, which is the population size the habitat can support under current conditions. If additional management was implemented at more core and supporting wetlands then the carrying capacity or equilibrium population size would increase. The expansion of effective predator and vegetation control methods (*e.g.,* mammalian exclusion fencing, trapping methods, and vegetation control) into more core and supporting wetlands may increase the carrying capacity or equilibrium population size for the subspecies and further improve the status of the species into the foreseeable future. Additionally, implementation of the three essential management actions (predator, vegetation, and water level control) at the same time, at the same location, on a more regular basis, at wetlands that currently receive management and expanding such practices to those that do not, will further benefit the species. Although it is generally accepted by wetland managers in Hawaii that all three management actions in concerted effort are required restore the functionality of wetlands to meet the life-history requirements of waterbirds, currently, all three of these essential management actions do not necessarily happen at the same time on managed wetlands (Underwood *et al.* 2013, p. 2). Sustained management over time at many core and some supporting wetlands has advanced the recovery of the Hawaiian stilt by securing essential breeding habitat enabling the subspecies to increase its population size and distribution.

The wide distribution of the Hawaiian stilt population, spread out across the multiple islands, provides the subspecies with the resiliency and redundancy necessary to withstand a stochastic (*e.g.,* single wetland) or catastrophic (*e.g.,* islandwide) event, respectively. However, within-island distribution can be quite limited. For example, the number of birds on the island of Hawaii are still relatively low (200 to 250 at any given time on the island) and the birds have been highly dependent on a local wastewater treatment facility (Kealakehe) for breeding (National Park Service (NPS) 2020, *pers. comm.*). Biologists at Kaloko-Honokohau National Park (NP) have more recently been creating mudflats and more suitable habitat for Hawaiian stilts which has increased nesting attempts (eight to 10 pairs of birds on average) at the park; however, there is low nest success and very few fledglings (NPS 2020, *pers. comm.*). The birds tend to increase in number outside of the breeding season, but are primarily just foraging (NPS 2020, *pers. comm.*). Similarly, the occurrence of birds on Lanai demonstrates an expansion in range, but they are utilizing the artificial habitat of a wastewater treatment facility and there are only approximately 20 breeding pairs (Pulama Lanai 2020, *pers. comm.*). Likewise, Hawaiian stilts on Molokai also largely depend on a wastewater treatment facility, and most of Molokai's coastal wetlands are only 1 ft (0.30 meter) above sea level and thus expected to be reduced by sea-level rise resulting in a reduction of both nesting and foraging areas on the island (Jenkins 2016, *in litt.;* Dibben-Young 2017, *in litt.*). Further, recent analyses of Hawaiian stilt numbers at several NWR wetlands show a slight decline in Hawaiian stilts in recent years (Rounds 2020, *pers. comm.*), which may lead to reduced distribution. The population size does fluctuate, and the birds appear to favor some wetlands over others during different years; however, monitoring such trends is important to understanding the conservation needs of the subspecies. Therefore, we conclude that this criterion is partially met.

Discussion/Summary of Downlisting Criteria Assessment

The downlisting criteria in the recovery plan (USFWS 2011, entire) represented our best assessment, at the time the plan was prepared, of the conditions that would result in a determination that the Hawaiian stilt could be considered for reclassification under the Act as threatened rather than endangered. While the downlisting criteria in the recovery plan have not yet been completely met, we have made substantial progress as: (1) Ongoing management is occurring at most core wetlands (Criterion 1); (2) protection has been secured for about 40 percent of supporting wetlands, and about 33 percent of the supporting wetlands are being managed (Criterion 2); (3) preliminary results from a 2019 PVA have been obtained (Criterion 3) (Reed and van Reese 2019, entire); and (4) census data indicate a rangewide stable to increasing population with the resiliency and redundancy to withstand both stochastic and catastrophic events (Criterion 4).

Recovery criteria for the Hawaiian stilt may need to be revisited once the PVA is finalized. Using its assessment of population size necessary for long-term viability of the subspecies, the PVA indicates that under current vital rates at managed sites, current management effort, and current condition and availability of habitat, the Statewide carrying capacity may be below the conditional target of 2,000 individuals as listed in Recovery Criterion 3. The PVA notes that it can be shown easily that a long-lived species in a setting with low environmental stochasticity could steadily decline for 80 years but still have a probability of persistence, particularly if the starting population size is in the hundreds or thousands of individuals (van Reese and Reed 2019, p. 35). Further, the PVA questions the target goal of 2,000 individuals, citing that population sizes of long-lived vertebrates tends to be greater (van Reese and Reed 2019, p. 38). Increasing management (predator control, vegetation removal, and water-level control) across the species' range at both core and supporting wetlands is the most effective way to meet this recovery criterion. See *Current Voluntary and Regulatory Conservation Efforts,* below, for a summary of the partnerships that have contributed toward the

stabilization of the Hawaiian stilt population and efforts to manage the subspecies throughout its range.

Delisting Criteria

We provided two delisting criteria in our recovery plan. Criterion 1 states that of the supporting wetlands on the islands of Kauai, Oahu, Maui–Molokai–Lanai, and Hawaii, at least 85 percent are protected and managed in accordance with the management practices outlined in this recovery plan. Criterion 2 states that the Statewide surveyed number of Hawaiian stilts shows a stable or increasing trend and has not declined below 2,000 birds (or an alternative target based on the updated population viability analysis) for at least 10 consecutive years. The information presented above for the downlisting criteria indicates that the criteria for delisting have not yet been met; we provide a summary of information relating to the delisting criteria below.

With regard to Criterion 1, the Service finds that progress towards securing management actions on supporting wetlands has been made and is showing success, but the criterion has not been fully realized to date. For supporting wetland sites, producing long-term and sustained Hawaiian stilt habitat management is complicated by the following factors. First, many supporting wetlands are owned or managed by multiple entities, which complicates coordination and intensity of management effort. Additionally, the primary purpose of many of these sites is not waterbird conservation (*e.g.,* water reclamation facilities, wastewater pond, taro production, and flood control), and, therefore, management of conditions conducive to Hawaiian stilt breeding is secondary. Finally, achieving long-term management efforts on many of these sites is more uncertain than core and supporting sites owned by the Federal and/or State conservation agencies; this is due to a general lack of secured and dedicated funding sources and lack of internal operational capacity. Partnerships at supporting wetland sites have contributed to recovery progress for the Hawaiian stilt and other waterbirds (see *Current Voluntary and Regulatory Conservation Efforts*) and are contributing to recovery. Progress toward achieving this criterion is currently ongoing but not yet at an acceptable level of permanency or extent to achieve the greatest conservation outcomes to meet this criterion.

With regard to delisting Criterion 2, winter and summer surveys for Hawaiian stilt show a fluctuating population, which generally increased from 1986 to 2004 and since then has been roughly stable at 1,500 to 2,000 individuals (see *Range, Abundance, and Population Trends*). The number of Hawaiian stilts counted during the surveys has only occasionally exceeded 2,000 individuals during winter or summer counts over the last 10 years; thus, we will revisit this target once the PVA has been peer reviewed and published.

Regulatory and Analytical Framework

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

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

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

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

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

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects. We consider these same five factors in reclassifying a species from endangered to threatened (50 CFR 424.11(c)–(e)).

We use the term ''threat'' to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term ''threat'' includes actions or conditions that have a direct impact on individuals (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 species' expected response and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species—such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an ''endangered species'' or a ''threatened species'' only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

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

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

In addition to the threat analysis, to assess the Hawaiian stilt's viability, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency supports the ability of the subspecies to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years), redundancy supports the ability of the subspecies 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 subspecies 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 subspecies' ecological requirements for survival and reproduction at the individual, population, and (sub)species levels, and described the beneficial and risk factors influencing the subspecies' viability.

Our assessment of viability is categorized into three sequential stages. During the first stage, we evaluated the subspecies' life-history needs. The next stage involved an assessment of the historical and current condition of the subspecies' demographics and habitat characteristics, including an explanation of how the subspecies arrived at its current condition. The recent PVA provided a synthesis of this information. The third and final stage involved making predictions about the subspecies' 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 subspecies to sustain populations in the wild over time.

Summary of Biological Status and Threats

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

The sources cited in this proposed rule represent the best scientific and commercial data available concerning the current status of the subspecies, including the past, present, and future threats. We used this information to evaluate the current and future resiliency, redundancy, representation, and viability of the Hawaiian stilt. (See Regulatory and Analytical Framework.) The effects of conservation actions were also assessed as part of the current condition of the subspecies. We note that overutilization for commercial, recreational, scientific, or educational purposes (Factor B) was not identified as a threat at the time of listing, and we have no additional information to suggest it is currently, or will become, a threat in the foreseeable future; hunting of the subspecies has been prohibited since the 1940s. Furthermore, as per our policy, in this proposed rule we consider regulatory mechanisms (Factor D) with respect to how both regulatory and volunteer conservation measures might reduce or ameliorate threats to the species, rather than in the context of a potential stand-alone threat. Threats to the subspecies are reduced by voluntary and regulatory actions initiated by the Service, DOFAW, and voluntary actions by a large network of organizations interested in wetland and waterbird conservation rangewide. A summary of these efforts is found in *Current Voluntary and Regulatory Conservation Efforts.*

The primary threats to Hawaiian stilts are habitat loss and degradation (due to urban development, ground and surface water alterations that affect core and supporting wetlands, nonnative plants, and foreseeable changes in habitat quality and quantity due to sea level rise (such as groundwater flooding and inundation and coastal flooding and inundation)) (Factor A); nonnative predators (Factor C); avian disease (Factor C); environmental contaminants (Factor E); and foreseeable tropical cyclone intensity and frequency resulting from climate change (Factor E).

These threats should be considered in the context of a stable and resilient subspecies indicated from surveys over the past several decades, and peer-reviewed studies including past (Reed *et al.* 1998, entire) and most recent (Reed and van Rees 2019, entire) PVA analyses, and radio telemetry studies (Kawasaki *et al.* 2020, p. 431). Below we discuss these threats and their relationship to Hawaiian stilt current and future condition.

Habitat Loss and Degradation Due to Urban Development

Some of the largest core wetlands have been lost over the past century. On Oahu, Waikiki, Pearl Harbor, Kaelepulu (now Enchanted Lake), and Salt Lake were lost to development, each with only remnants left behind, some of which, like Waikiki, are no longer able to support the Hawaiian stilt. A small preserve (Kaelepulu Wetland Preserve, 1.2 ha (3 ac)) was set aside in 1955, a remnant of the once expansive Kaelepulu wetland. Pearl Harbor wetlands have also been greatly degraded or diminished by means of filling, urban development, nonnative plant overgrowth, and water pollution. The Mana Plains on Kauai, once the largest wetland in Hawaii at over 1,600 ac (650 ha) (circa 1910) was reduced to only 200 ac (80 ha) by 2006, primarily due to water diversions for sugar cane (Munro 1944, p. 59; Shallenberger 1977, p. 218; Erickson and Puttock 2006, p. 40). Within these last 200 ac (80 ha), 35 ac (14 ha) are designated as the Mana Plain Forest Reserve (formerly the Kawaiele Waterbird Sanctuary). Although magnitudes smaller in size, it is still considered a core wetland (USFWS 2011, pp. 207, 214). The greater Mana Plain area is also an important supporting wetland habitat for the Hawaiian stilt due to remaining scattered ephemeral (temporary) wetlands (Nadig 2017, *pers. comm.*). The adjacent Navy wastewater treatment facility at the Pacific Missile Range Facility also serves to support the subspecies as a supporting (albeit human-made) wetland. Most wetland losses in Hawaii have been human induced, ranging from water diversions, discharging fill, building dams, channelizing, pumping, grubbing (the removal of trees, shrubs, stumps, and rubbish from a site), grading, deep ripping, and other agricultural or military land use practices (Erickson and Puttock 2006, p. 40).

Many of Hawaii's wetlands, including core and supporting wetlands occupied by Hawaiian stilts, occur in coastal areas that are highly valued for development and are becoming increasingly urbanized. Although the rate of permanent losses of coastal wetlands has significantly been slowed due to wetland protection laws, suitable Hawaiian stilt breeding wetland sites continue to be subject to degradation effects of adjacent urbanization and other incompatible land uses, water extraction, and diversion. This continuous encroachment raises concerns regarding human disturbance, urban runoff impacts on water quality, and an increased incidence of domestic cats and dogs in wildlife areas (Stone 1989, pp. 129–130, 134; Wright *et al.* 2006, pp. 13–60). Further, ongoing urbanization could limit or prohibit the inland movement of coastal wetlands as areas are inundated with groundwater and marine water resulting from sea level rise because the ground is impermeable (Clausen and Clausen 2014, p. 177).

Ground and Surface Water Alterations Resulting From Urban Development

Ground and surface water alterations, such as flood control and channelization, often make wetland habitat less suitable or unusable for Hawaiian stilts by altering both water depth and timing of water level fluctuations. Nearly all surface-water features (*e.g.,* streams, lakes, reservoirs, wetlands, and estuaries) interact with ground water (United States Geological Survey (USGS) 1998, p. III). As a result, withdrawal of water from streams can deplete ground water. Similarly, pumping of ground water can deplete water in streams, lakes, and wetlands (USGS 1998, p. III). Hawaiian stilts are not always able to adjust their breeding behavior to accommodate such modifications, which results in decreased reproductive success and therefore decreased resiliency. Alternatively, water released after prolonged diversion can negatively impact habitat for Hawaiian stilts (Morin 1998, p. 27; Underwood 2017, *pers. comm.*). For example, recent (2014) water disputes on west Maui resulted in less upstream water diversion for agriculture, and subsequently a more-steady stream flow of water into Kealia Pond NWR. This steady water influx decreased the amount of stilt habitat (*i.e.,* mudflats and shallow water areas), raising water levels so high the NWR had to breech water out into the ocean so the water did not get too deep (Underwood 2017, *pers. comm.*). Prior to this surface water alteration, Kealia Pond was a common breeding site for Hawaiian stilts (sometimes supporting over 1,000 individuals) (Nishimoto 2006, p. 40; Nishimoto 2014, p. 1; Underwood 2017, *pers. comm.*). The shift to deeper, year-round water has resulted in reduction of Hawaiian stilt numbers at Kealia Pond (Underwood 2017, *pers. comm.*). The natural cycle of seasonal inundation and evaporation of fresh or brackish water mudflats has been altered, resulting in a decrease in quality of habitat. More recently, the NWR manager at Kealia has increased management practices and is starting to see more stilts on the NWR again, although in low numbers (USFWS waterbird hui 2020, *pers. comm.*).

The depletion of freshwater aquifers also causes saltwater intrusion into coastal groundwater resulting in changes to salinity levels in associated wetlands. Changes in salinity may alter the composition of the vegetation and invertebrate communities, which subsequently may affect food availability at such sites for Hawaiian stilts (Chang 1990, pp. 65, 71, 73; Morin 1998, p. 27; Wirwa 2007, pp. 86, 91; Silbernagle 2008, *pers. comm.* cited in USFWS 2011, p. 80). Further, invertebrate die-offs from salinity changes could trigger a botulism outbreak (see *Avian Disease,* below) (Morin 1998, p. 27). Records of salinity in Hawaii's wetlands range from 0 parts per thousand (ppt) up to 200 ppt (Ueoka *et al.* 1979, p. 6; Coleman 1981, pp. 12, 15, 18; Wirwa 2007, p. 91; Nadig 2017, *pers. comm.*). Alterations in ground and or surface water could result in complete habitat loss (*e.g.,* Waikiki), as mentioned above under Habitat Loss and Modification due to Urban Development.

Habitat Loss and Degradation by Nonnative Plants

Hawaii experiences a year-round growing season; therefore, management of invasive wetland plants, and sometimes native plants, must be constant (Underwood *et al.* 2013, p. 1; Nadig 2017, *pers. comm.*) to provide good habitat for the Hawaiian stilt. Invasive species such as California grass, pickleweed, water hyacinth *(Eichornia crassipes*), Indian fleabane (*Pluchea indica*), and mangrove (*Rhizophora mangle*) present serious problems in most Hawaiian wetlands by outcompeting native species and eliminating open water, mudflats, and shallow water areas (Shallenberger 1977, pp. 154, 184, 238; Griffin 1989, p. 1171; Henry 2006, p. 26). At least one native plant, aeae (*Bacopa monnieri*) may also need management as it too has the potential to smother wetland habitat (Nadig 2017, *pers. comm.*). The alteration of wetland plant communities due to extensive, blanketing overgrowth of invasive plants can greatly reduce the usefulness of wetland areas for native waterbirds, including the Hawaiian stilt (Shallenberger 1977, pp. 154, 184, 238; Griffin 1989, p. 1171; Morin 1994, p. 69; Morin 1998, p. 21; Pacific Rim Conservation 2012, p. 6; Jenkins 2016, *in litt.*). The establishment of nonnative red mangrove may facilitate the use of wetlands by introduced cattle egrets and the indigenous black-crowned night-heron or aukuu (*Nycticorax nycticorax*), thereby increasing the threat of predation on Hawaiian stilts (Rauzon and Drigot 2002, p. 240). Efforts to remove such invasive species are expensive and require ongoing vegetation management as well as periodic sweeps for removing seedlings. Nonnative plant control is a key problem facing wetland managers in the State of Hawaii (USFWS 2011, p. 80).

Sea Level Rise

Global mean sea level (GMSL) is rising and is expected to continue to rise for centuries due to thermal expansion, even if all Nations ceased production of greenhouse gasses today (Meehl *et al.* 2012, p. 576; Golledge *et al.* 2015, pp. 421, 424; DeConto and Pollard 2016, p. 591). This is because of the warming that has already occurred. Additionally, GMLS may rise even more due to warming that is yet to occur from the still uncertain level of future greenhouse gas emissions (National Oceanic Atmospheric Administration (NOAA) 2017, p. 1). The level of projected rise in GMSL is different depending on the corresponding Representative Concentration Pathway (RCP) emissions scenario (RCP 2.6, 4.5, 6, or 8.5) (van Vuuren *et al.* 2011, p. 5; Intergovernmental Panel on Climate Change 2014, p. 8). The NOAA, along with other Federal and academic science institutions, laid out six risk-based GMSL scenarios describing potential future conditions, with lower and upper bounds of GMSL rise between 0.2 and 0.6 m (0.7 and 1.9 ft) through 2040 (NOAA 2017, pp. vi–vii, 1–55 and Appendices A–D). This is highly relevant to Hawaiian stilt conservation because, even at the lowest current estimate, substantial habitat may be lost or degraded.

Sea level rise is not expected to be uniform throughout the world, due to factors including, but not limited to: (1) Variations in oceanographic factors such as circulation patterns; (2) changes in Earth's gravitational field and rotation, and the flexure of the crust and upper mantle, due to melting of land-based ice; and (3) vertical land movement due to glacial isostatic adjustments, sedimentation compaction, groundwater and fossil fuel withdrawals, and other non-climactic factors (Spada *et al.* 2013, p. 484; NOAA 2017, pp. vi–vii, 9, 19). The Hawaiian Islands are expected to receive higher increases in sea level rise than the GMSL rise (Spada *et al.* 2013, p. 484; Polhemus 2015, p. 7; NOAA 2017, p. 9). Further, sea level rise in Hawaii will not be uniform across the islands due, in part, to vertical land motion resulting from the actively growing Hawaii Island (Kane 2014, p. 3 and references therein; Polhemus 2015, p. 3). Both marine inundation and groundwater inundation will contribute to wetland habitat loss and modification, but as sea level rise increases beyond 2.4 ft (0.74 m), marine inundation will be the dominant source of inundation (Polhemus 2015, p. 25). Lastly, sea level rise is not expected to be a slow, gradual, and linear

phenomenon; it is anticipated to accelerate and at times be quite rapid (Polhemus 2015, pp. 6–7). Sea level rise is of particular concern for conservation of the Hawaiian stilt because most of Hawaii's wetlands are located just inland of a narrow coastal strand and are dependent upon natural or pumped groundwater sources to maintain pond water levels (Kane 2014, p. 7 and references therein).

Our assessment of sea level rise and its effects on Hawaiian stilt wetland habitat has been limited to the foreseeable future. We have assessed the foreseeable future as through the year 2040, based that many climate models diverge at year 2040, and the medium-term forecast of 0.98 ft (0.3 m) sea level rise effects on Hawaiian coastal wetlands (Kane and Fletcher 2013, entire). Availability of climate change models for this timeframe and localized area is limited.

By 2040, marine flooding and inundation resulting from sea level rise is anticipated to result in coastal flooding in Hawaii (Kane and Fletcher 2013, pp. 1–33, and Appendix). Marine flooding and inundation is expected to occur through a combination of storm surge (rising sea level associated with a storm), marine overwash (waves overtopping sand dunes) and tidal waves (periodic tidal fluctuations caused by gravitational pull), intensified by sea level rise and increases in tropical storm frequency and intensity (see Tropical Cyclone Intensity and Frequency) (Fletcher *et al.* 1995, p. 193). This wave action can change coastal geomorphology, increasing the flooding risks of the coastal floodplain (Theuerkauf *et al.* 2014, p. 5146) and low-island overwash (Hoeke *et al.* 2013, p. 137). In coastal wetlands with no significant barrier from the ocean, marine inundation is expected to have a greater effect on Hawaiian stilt habitat than groundwater inundation by approximately 2040 (Kane and Fletcher 2013, p. 16; Jenkins 2016, *in litt.*).

Marine overwash poses a substantial threat to Hawaiian stilt reproduction. Flooding from marine overwash during the breeding season (February thru July) will destroy nests with eggs (Coleman 1981, p. 57), although Hawaiian stilts have been observed re-nesting if nest failure occurs early in the breeding season (Coleman 1981, p. 59; Browning 2020, *in litt.*). If re-nesting did not occur over many years at wetlands on Kauai, Oahu, and Maui, the resilience and redundancy of this subspecies (Reed *et al.* 2007, p. 616) would decrease due to lack of natural recruitment.

Marine flooding and inundation also will cause an increase in salinity levels, changing the composition of vegetation in coastal wetlands (Kane *et al.* 2014, p. 1685). This could impact shallow foraging and nesting mudflat areas by allowing invasive, salt-tolerant, emergent vegetation to become established which could in turn reduce nesting habitat for the Hawaiian stilt. However, Hawaiian stilts currently occupy core wetlands that are hypersaline (*e.g.,* the Waiawa unit of Pearl Harbor NWR). Usually there is a freshwater source somewhere near these highly saline wetlands in Hawaii as there are many springs scattered across the islands, even occurring in ocean tidal zone.

Some of the most vulnerable wetlands in Hawaii are on the south shore of Molokai. Palaau and Kahanui wetlands—both supporting wetlands—may be completely inundated at 1 ft (0.3 m) and 2 to 3 ft (0.6 to 0.9 cm), respectively, and Ohiapilo may similarly be inundated at 2 ft (0.6 m) (Jenkins 2016, *in litt.*). Even under some of the most conservative sea level rise estimates, a large portion of Molokai's wetlands may be obliterated. A critical elevation point is when sea level rise impacts will rapidly accelerate after a particular increase of sea level occurs. At Kanaha State Wildlife Sanctuary on Maui, the critical elevation point is 0.7 ft (0.2 m) and it is predicted to be exceeded by year 2028 [±25 years] (Kane and Fletcher 2013, p. 18). The critical elevation point at Kealia Pond NWR (Maui) and James Campbell NWR (Oahu) is 2 ft (0.6 m) and is predicted to be exceeded by year 2066 [±16 years] (Kane and Fletcher 2013, p. 18). As on Molokai, even the more conservative estimates of sea level rise place these wetlands at risk.

Tropical Cyclone Intensity and Frequency

Tropical cyclone frequency and intensity are projected to change as a result of increasing temperature and changing circulation associated with climate change (Vecchi and Soden 2007, pp. 1068–1069, Figures 2 and 3; Emanuel *et al.* 2008, p. 360, Figure 8; Yu *et al.* 2010, p. 1371, Figure 14). A projected shift in the path of the subtropical jet stream northward, away from Hawaii, will increase the number of storms reaching the Hawaiian Islands from an easterly direction similar to Hurricane Iselle in 2014 (Murakami *et al.* 2013, p. 751). This shift may result in extreme rainfall events and associated flooding impacts to core and supporting wetland sites located on the northern and eastern shores of the affected islands. Between 1950 and 1997, 22 hurricanes passed near or over the Hawaiian Islands; five of these caused serious damage to the islands, including stilt habitat (Businger 1998, *in litt.*). Impacts from a tropical cyclone can degrade and destroy habitat as well as cause direct mortality of eggs and chicks (*e.g.,* flooding of nests and separation of chicks from parents).

Groundwater Inundation and Flooding

As sea level rises, the water table will rise simultaneously, eventually rising above the land surface, creating new wetlands and expanding others (Rotzoll and Fletcher 2012, p. 477). This will subsequently change surface drainage, saturate the soil, and inundate land in lower lying areas (Rotzoll and Fletcher 2012, p. 447). The rising groundwater table will change certain aspects of spatial configuration and vegetative zonation in some wetlands, and the freshwater resources will degrade in quality due to the underlying saltwater intrusion (Polhemus 2015, p. 21 and references therein). There are also several reports that note although ecogeopmorphic (interactions between organisms and the development of landforms) feedbacks will allow some coastal wetlands to adapt to the lower estimates of sea level rise, they all predict that more rapid and higher estimates of sea level rise will likely submerge many wetlands by the year 2100 (Kirwan *et al.* 2010, pp. 1–5; Langley *et al.* 2009, p. 6182).

Effects of groundwater flooding may have already begun at Kealia Pond NWR and wetlands with similar characteristics (Kane 2014, p. 13). The net effect, or expected rate of change, on the narrow band of habitat suitable for Hawaiian stilt has not been specifically analyzed and remains unclear. More research needs to be conducted to better understand how much wetland losses and gains we can anticipate in Hawaii due to sea level rise, as well as the impacts on the Hawaiian stilt and other Hawaiian waterbirds, and wetland ecosystems in general. Some actively managed wetlands, such as NWR units in Hawaii, will have some management flexibility to provide both foraging and breeding habitat for Hawaiian stilts at least during the early signs of groundwater inundation. However, as marine flooding and inundation exacerbates this threat, NWR units may run out of land area to meet the needs of the subspecies. Other core and supporting wetland managers may not be able to manage for adaptation as readily due to lack of funding or support, or they may too find there is no land left for which to manage.

Although the upslope expansion or creation of new wetlands from groundwater and marine flooding and inundation (ecogeomorphic feedback) could help to counteract at least some habitat losses from sea level rise, many of these sites would be outside of current landownership as well as predator control programs on current core or supporting wetlands. To take advantage of these changes, State and Federal agencies would need to commit and potentially increase funding to adjust predator control programs at newly created or expanded core and supporting wetlands, and perhaps acquire new lands; historically, predator control funding has not always been consistent (Nadig 2018, *pers. comm.*). Additionally, urban development directly adjacent to coastal wetlands, or surrounding wetlands as is the situation at Kanaha Pond State Wildlife Sanctuary, will limit or prohibit such wetlands from a natural landward migration or ecogeomorphic shift (Kane 2014, p. 29).

Because Hawaiian stilts compete for brood territories and nesting ground in mudflats and shallow water, reduction of this habitat may have negative impacts on the population, specifically reduced resiliency, redundancy, representation, and therefore reduced viability. Hawaiian stilts that are forced to use nest sites and brood-rearing habitat outside predator control areas are likely to suffer higher mortality (Price 2020, p. 10).

Predation

Predation by nonnative animals is one of the greatest threats influencing the overall viability of the Hawaiian stilt (USFWS 2011, p. v; Underwood *et al.* 2013, pp. 1–2; Underwood *et al.* 2014, pp. 32–38; Price 2020, p. 1; Harmon 2020, *in litt.*). Introduced predators have negatively influenced the overall viability of the Hawaiian stilt since the mid-1800s (Griffin *et al.* 1989, pp. 1165–1174). Birds in the Hawaiian Islands evolved in the absence of mammalian predators and are consequently highly vulnerable to these introduced animals. Predators of Hawaiian stilts include both introduced and native animals, including mongooses (*Herpestes javanicus*), black rats (*Rattus rattus*), feral cats (*Felis catus*), feral dogs (*Canis lupus familiaris*), black-crowned night herons or aukuu (*Nycticorax nycticorax*), cattle egrets (*Bubulcus ibis*), Hawaiian short-eared owl or pueo (*Asio flammeus sandwichensis*), barn owls (*Tyto alba*), common mynas (*Acridotheres tristis*), and bullfrogs (*Anas wyvilliana*) (Coleman 1981, pp. 70–73; Robinson *et al.* 1999, p. 13; Eijzenga 2004, *in litt.;* K. Viernes *pers. comm.* 1994, in Service 2011, p. 58).

Mongooses were first introduced to the island of Hawaii in 1883, and subsequently to Oahu, Maui, and Molokai. They do not seem to have established on Kauai, although sightings continue to be reported (Phillips and Lucey 2016, pp. 1–23). Mongoose have become a serious threat to Hawaiian stilts where they occur, taking eggs, young birds, and nesting adults. Feral cats became established in Hawaii shortly after European contact and were common in Oahu forests as early as 1892 (Tomich 1986, pp. 101–102). Feral cats range from sea level to at least 2,900 m (9,500 ft) on Hawaii Island (Hu *et al.* 2001, p. 236) and 3,055 m (10,000 ft) on Maui (Hodges and Nagata 2001, pp. 308, 312). The proliferation of feral cat feeding stations near parks and other areas that support Hawaiian stilts contributes toward the predation. Cats have been observed taking adult Hawaiian waterbirds (including Hawaiian stilts) and are presumed to take chicks as well (Dibben-Young 2017, *in litt.*). Rats are known to prey on eggs and young Hawaiian stilts (Underwood *et al.* 2014, pp. 32, 37). Other introduced species, such as the cattle egret, bullfrog, and barn owl, are known to prey on Hawaiian waterbirds. The introduced bullfrog is considered a voracious predator of all small animals (Berger 1981, p. 86; Viernes 1995 cited in Adams and Pearl 2007, p. 680; Robinson *et al.* 1999, p. 13; Eijzenga 2004, *in litt.*). Underwood and Letchworth (2016, pp. 380–383) hypothesize that improving bullfrog trapping will result in the improved survival of waterbird chicks. Cattle egrets play an unquantified role as a predator of nestling birds. Nonnative cats, rats, mongooses, dogs, and, to a lesser extent, pigs, barn owls, cattle egrets, predatory fish and bullfrogs all directly depredate either eggs, young, or adult Hawaiian waterbirds (Underwood *et al.* 2013, p. 1).

The effect of predation on reproductive success is a known point of vulnerability for viability of Hawaiian stilt populations and if unmanaged could result in rangewide population declines. Predator control programs in wetlands result in higher fledgling success rates and overall population densities of Hawaiian stilts (Underwood *et al.* 2014, p. 35). Without active predator control, survival is expected to be lower, particularly in the hatch-year class (Reed *et al.* 2015, p. 183). Some predation of hatch-year individuals continues to occur even where extensive predator control programs are in effect (Coleman 1981, p. 89; Reed *et. al.* 2015, p. 183). Analysis of data collected over two nesting seasons across Oahu revealed hatching success (number of nests that produced at least one chick per number of total nests) averaged between 40 and 60 percent across wetlands, with predation at 65 percent of all nest failures (Harmon 2020, *in litt.*). All data used in this analysis were collected in wetlands that actively trap and remove introduced predators, thus predation is expected to be higher without predator removal. Managed wetlands using mammal exclusion fences (*e.g.,* Honouliuli Unit of Pearl Harbor NWR) result in a greater number of eggs laid per nest and a greater number of eggs hatched per nest than managed wetlands that rely solely on mammalian trapping methods (*e.g.,* Waiawa Unit of Pearl Harbor NWR and most other managed wetlands in Hawaii) (Price 2020, p. 7; Christensen 2020, *in litt.* in Harmon 2020, *in litt.*). Notably, nearly as many nests were abandoned as were depredated in this study. Cause of abandonment is often difficult to determine as there are several potential causes: Presence or harassment from predators, competition between Hawaiian stilts, poor egg development, undetected flooding, and human disturbance (Price 2020, p. 19).

Predator control programs continue to be implemented in most core wetland areas (See Recovery Criteria and Table 1); the resulting level of reproductive success, has been sufficient to support stable to increasing population indices over several decades. Improvements in predator control continue to be implemented (*e.g.,* predator-proof fencing at the Honouliuli Unit of Pearl Harbor NWR). New trapping technologies are also being implemented (*e.g.,* automatic self-resetting traps such as Goodnature A–24 devices). Because this technology is less labor-intensive to implement, effective trapping areas can be increased so that predator populations can be reduced over broader areas. As previously summarized above, ongoing management and predation control programs need to continue into the foreseeable future. For core and supporting wetlands under federal or state control, we expect these efforts to continue so long as supporting budgets are funded at current levels. This effort has currently resulted in a stable or slightly increasing population to the point at which it is approaching population equilibrium under current management practices (See Recovery Criteria discussion above). Continuation of, and expansion of, these predator control and habitat management actions

will further the stability (and expansion) of the conservation-reliant Hawaiian stilt population and its ability to withstand stochastic (*i.e.,* resiliency) and catastrophic (*i.e.,* redundancy) events, as well as maintain its widespread distribution on multiple islands (*i.e.,* representation) and therefore its long-term viability.

Avian Disease

Avian botulism is the most prevalent disease affecting waterbirds in Hawaii, including Hawaiian stilts, and has been documented at two dozen or more wetlands (including many core and supporting wetlands) across the State (Dibben-Young 2016, p. 4; USFWS 2016, *in litt.*). Some wetlands have more recurrence than others (*e.g.,* Kauai: Hanalei NWR; Oahu: James Campbell NWR, Kaelepulu Pond, Kawainui Marsh; Maui: Kanaha Pond State Wildlife Sanctuary, Kealia Pond NWR; Molokai: Ohiapilo Pond) (Dibben-Young 2016, p. 4). Since December 2011, Hanalei NWR has experienced year-round avian botulism type C and has reported deaths of Hawaiian stilts from this disease (USFWS 2016, *in litt.*). Avian botulism is caused by a toxin produced by the anaerobic bacteria *Clostridium botulinum* type C in stagnant water. The disease may reappear annually and can affect all native and migratory waterbirds, causing paralysis evidenced by staggering and the eventual loss of use of legs. Death is likely due to respiratory failure or drowning from the inability to hold their head above water.

Botulism is an ongoing issue for mortality risk, and we have no specific data or information suggesting the degree of threat will change in the future. Procedures have been developed for response to botulism outbreaks through Hawaii's State Wildlife Action Plan, in coordination with the DOFAW, wildlife centers, and veterinarians. Improvements in response to outbreaks may benefit in reducing mortality rates, as quick carcass disposal is essential to contain the diseases' spread. This threat remains persistent and rangewide.

Environmental Contaminants

Many wetlands in Hawaii are adjacent to urban development (Kane 2014, p. 29). This proximity results in potential for the Hawaiian stilt to be exposed to contaminants from storm drains and roadside ditches that empty into streams, wetlands, and the ocean (Stone 1989, p. 132; Wright *et al.* 2006, pp. 13–60). Some wetlands used as flood control basins, such as Kawai Nui marsh, are expected to accumulate contaminants from urban runoff. Non-point source pollution from septic wastewater, agricultural runoff, roads, and contaminated storm water can overwhelm the filtering capacity of wetlands, including wetlands in Hawaii, impacting downstream coastal waters (DeCarlo and Anthony 2002, p. 490; Zhang and Zhang 2011, entire; DOFAW 2015, *in litt.;* Einoder *et al.* 2018, p. 102; van Reese 2018, p. 38). Additionally, two featherless chicks have been found at Marine Corp Base Hawaii, one each in the 2018–2019 and 2019–2020 nesting seasons, the latter of which is undergoing a toxicology analysis (DOD 2017, entire; Fry 2020, *pers. comm.*). Several core wetlands are on or adjacent to military installations and airports which further increase the risk of contaminants (Fry 2020, *pers. comm.*). Contaminants in wetlands can enter the diet of waterbirds, resulting in accumulation of toxins (Ratner 2000, entire; Einoder *et al.* 2018, p. 103). In Switzerland, polychlorinated biphenyls have been detected in waterbirds at levels within the range that could result in reproductive impairment (Zimmerman *et al.* 1997, p. 1379). Due to ocean current patterns and Hawaii's location in the Pacific Ocean, Hawaii receives an enormous amount of plastic marine debris each year. This debris not only impacts Hawaii's beaches, but also pollutes Hawaii's coastal wetlands. At this time, we know of no contaminant surveys being conducted in Hawaii wetlands or specific information about contaminant effects on the Hawaiian stilt; however, because Hawaiian stilts eat fish and aquatic invertebrates, they are particularly at risk from elevated concentrations of contaminants that accumulate in streams around Hawaii, many of which are tributaries to Hawaii's coastal wetlands (Brasher and Wolff 2007, p. 284).

Cumulative Threats Analysis

The Hawaiian stilt is threatened by ongoing predation, combined with loss or degradation of habitat resulting from urban development, ground and surface water alterations associated with urban development, nonnative plants, and flooding and inundation of habitat resulting from sea level rise. Threats such as botulism and environmental contaminants are also rangewide and persistent. Torrential rains associated with increases in hurricane frequency and intensity will increase urban runoff of oil, heavy metals, and other undesirable chemicals into Hawaii's lowland coastal wetlands. Similarly, torrential rain will increase sedimentation which, among other factors (increased temperature, pH, and salinity), is linked to increased botulism outbreak events (Rocke and Samual 1999, pp. 1250, 1255–1256). However, Hawaiian stilts have demonstrated strong resilience and adaptability, as long as active management of predators, vegetation, and water levels give them a safe place with suitable habitat to meet their needs for breeding, foraging, and sheltering. More wetlands are being fenced to exclude predators and most core wetlands are managed to some extent to meet the needs of Hawaiian stilts (see Recovery Criteria).

Management is the influencing factor that counters all of the above influence factors, easing the burden of predation, habitat loss and modification, and disease. Continuing the current level of habitat management and predation control efforts has resulted in a largely stable population to a point at which the subspecies may have reached an equilibrium population size (the number of birds the existing habitat can support) (See Recovery Criteria discussion above). Expansion of management on additional acreage and at additional locations should create enhanced stability (and expansion of) of the Hawaiian stilt population rangewide. Further, expansion and continuation of these essential actions will allow the subspecies to withstand stochastic (*i.e.,* resiliency) and catastrophic (*i.e.,* redundancy) events, as well as maintain its widespread distribution on multiple islands (*i.e.,* representation) and therefore its long-term viability.

Current Voluntary and Regulatory Conservation Efforts

The recovery of Hawaiian stilt requires strong partnerships among Federal, State, local, and private groups. The State of Hawaii and the Department of Defense have been important partners with the NWRs' efforts to protect, manage, and conserve the significant wetland habitats and to support Hawaiian stilt populations over the last 30 years. The U.S. Marine Corps Base—Hawaii has worked to maintain Hawaiian stilt habitat on its properties and facilitated events that promote Hawaiian stilt conservation and involve both the public and military personnel. Their overall goal is to contribute to regional recovery efforts of the Hawaiian stilt, with a view to building regional partnerships and strengthening the Hawaiian stilt population outside of the core habitat on the Marine Corps Base. The Navy's Pacific Missile Range Facility on Kauai has committed to habitat restoration and management actions in important nearby wetland habitat in proximity to actions involving military readiness associated with

implementation of their Integrated Natural Resources Management Plans and associated section 7 biological opinions. Several wastewater treatment facilities across the islands conduct predator control to protect nesting Hawaiian stilts and adults with chicks. Local and county governments also contribute to conservation actions. Additionally, several academic researchers continue to produce data that help guide management actions and inform policy.

In addition to the protections afforded by the Endangered Species Act, the Hawaiian stilt is protected under a variety of other laws, including the Migratory Bird Treaty Act (MBTA). The MBTA (16 U.S.C. 703–712, 50 CFR 10.13), is a domestic law that implements the U.S. commitment to four international conventions (with Canada, Japan, Mexico, and Russia) for the protection of shared migratory bird resources.

The Hawaii Endangered Species law (Hawaii Revised Statutes (HRS) 195D) prohibits take, possession, sale, transport, or commerce in designated species. This State law also recognizes as endangered or threatened those species determined to be endangered or threatened pursuant to the Federal Endangered Species Act. This Hawaii law states that a threatened species (under the Act) or an indigenous species may be determined to be an endangered species under State law. Protection of these species is under the authority of Hawaii's DLNR, and under administrative rule (Hawaii Administrative Rules (HAR) 13–124–11). Incidental take of threatened and endangered species may be authorized through the issuance of a temporary license as part of a safe harbor agreement (SHA) or habitat conservation plan (HCP) (HRS 195D–21, HCPs; 195D–22, SHAs). Although this State law can address threats such as habitat modification, collisions, and other human-caused mortality through HCPs that address the effects of individual projects or programs on Hawaiian stilt, it does not address the pervasive threats to the Hawaiian stilt posed by introduced mammalian predators.

The federal Clean Water Act (CWA) (33 U.S.C. 1251 *et seq.* (1972)) was designed, in part, to protect surface waters of the United States from unregulated pollution from point sources. The CWA provides some benefit to Hawaiian stilts through the regulation of discharge into surface waters through a permitting process. The CWA has significantly slowed the permanent loss of wetlands throughout Hawaii.

In addition to these federal and state regulatory programs, a variety of voluntary conservation partnerships have been formed to protect and manage waterbird habitat. Examples of such partnership opportunities include our Pacific Coast Joint Venture, Partners for Fish and Wildlife Program, Coastal Program, and Habitat Conservation Plan and Safe Harbor Agreement Programs; the multiagency Coastal America program; restoration plans for hazardous materials spills that target waterbird habitat; and the Natural Resources Conservation Service's wetland restoration programs. Partnerships aim to encourage landowners and private citizens to protect and preserve waterbirds and their habitats through cooperative agreements and funding for habitat restoration and creation.

Additional conservation organizations are contributing to the recovery of Hawaii's endangered waterbirds, including the Hawaiian stilt. The Nature Conservancy manages several ecological preserves in the State. Ahahui Malama I Ka Lokahi and Kawai Nui Heritage Foundation are watchdog organizations that oversee the future of Kawainui Marsh on Oahu. They sponsor and lead educational tours and coordinate plant restoration projects at Na Pohaku o Hauwahine. The Nature Center, Wildlife Society, and University of Hawaii's Pacific Cooperative Studies Unit all work on waterbird recovery issues. Private landowners that also contribute to waterbird recovery include Kamehameha Schools, Midler Family Trust, Arleone Dibben-Young (Nene O Molokai), and Kaelepulu Wetland Preserve. Additionally, Ducks Unlimited, a nonprofit wetlands conservation organization, works cooperatively with State and Federal agencies as well as with private landowners and local corporations on wetlands conservation and habitat restoration and protection efforts.

The Service also facilitates recovery implementation, including a cooperative agreement with Chevron Refinery on Oahu during 1993–2004 that implemented terms to manage Rowland's Pond to maintain it as nesting habitat for Hawaiian stilts. Activities included predator control and vegetation management at Rowland's Pond, the Impounding Basin, and Oxidation Ponds. From 2004 through 2016, Chevron Refinery continued to manage the refinery grounds for the benefit of the Hawaiian stilt and Hawaiian coot under a Safe Harbor Agreement. As a result of this agreement, at least 419 Hawaiian stilt chicks fledged at Chevron Refinery Hawaii during this period. In 2016, the complex was purchased by IES Downstream, LLC (IES), and in 2018, IES sold a portion of the refinery to PAR Hawaii Refining, LLC (PAR). Rowland's pond remains within the IES owned portion of the refinery but IES has not yet reached out to the Service for consultation. The Service is currently providing technical assistance to PAR, who is currently seeking a Habitat Conservation Plan for a low level of take. There are no recent updates regarding the status of the Hawaiian stilts at this site.

The Service has also worked with a variety of partners implementing management techniques that benefit Hawaiian stilts throughout its range. Habitat management activities for the conservation of the Hawaiian stilt include activities that maintain suitable habitat conditions. These include vegetation management activities (for example, weeding, mowing, herbicide application, out-planting of native plants, mud flat creation), activities that maintain water levels suitable for breeding or that maintain water quality (for example, irrigating wetland habitat for conservation purposes), activities for minimizing disease outbreaks (for example, monitoring for and addressing dead or decaying animals, emergency botulism outbreak responses), and large-scale restoration of native habitat (*e.g.,* feral ungulate, rat, and mongoose, control, and fencing).

Determination of Hawaiian Stilt 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 that is ''in danger of extinction throughout all or a significant portion of its range,'' and a threatened species as a species that is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The Act requires that we determine whether a species meets the definition of ''endangered species'' or ''threatened species'' because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence.

Status Throughout All of Its Range

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the Hawaiian stilt and its habitat. After evaluating threats to the subspecies and assessing the cumulative effect of the threats under the section 4(a)(1) factors, we have concluded that threats identified in the earlier 5-year status review (USFWS 2010, entire) and the recovery plan (USFWS 2011, entire) are ongoing at similar to increasing levels (USFWS 2020, p. 20). The main threats to the Hawaiian stilt continue to be the loss and degradation of habitat, including urban development, alteration in ground and surface water associated with urban development, invasion of habitat by nonnative plants, and sea level rise (Factor A); predation by a variety of introduced mammalian species (Factor C); and botulism (Factor C). Environmental contaminants are also considered a rangewide threat (Factor E). A variety of voluntary and regulatory conservation measures have helped to limit or reduce the impact of these threats to the subspecies, and are anticipated to continue into the foreseeable future (Factor D). A summary of these efforts are outlined in Current Voluntary and Regulatory Conservation Efforts, above. The best available information does not suggest that collection of Hawaiian stilt is a current or future concern (Factor B) and no other natural or manmade factors that operate at a scope, magnitude, and intensity as to affect the viability of the subspecies, either currently or in the future (Factor E).

The three key aspects of successful management of Hawaiian stilt breeding populations are predator control, vegetation management to provide more open areas, and water-level controls. These actions are in place for the vast majority of the core wetlands (see Recovery Criteria and Table 1). Further, 15 of the 34 supporting wetlands are in protected status, and 11 have some form of either habitat or predator management (see Recovery Criteria and Table 2).

Based on predictions of groundwater and coastal flooding and inundation in Hawaiian coastal wetlands, sea level rise is likely to continue to progressively affect Hawaiian stilt habitat (Factor A), as by 2040, wetlands that exist at elevations near sea level without dune barriers may be most affected (Kane and Fletcher 2013, p. 10). The resulting groundwater and marine flooding and inundation can change the amount of available Hawaiian stilt foraging and breeding habitat. Expansion of current wetlands and newly created wetlands from rising groundwater will create some new shallow water and mudflat areas for foraging and breeding; however, currently existing shallow water and mudflat areas will also be flooded (Rotzoll and Fletcher 2012, p. 477). Coastal plain wetlands are also at risk of marine flooding and inundation by storm surges, marine overwash, and high tides due to coastal erosion from rising sea levels that elevate normal tides (Fletcher *et al.* 1995, p. 203). Inundation can cause mortality to eggs and chicks, with impacts that vary temporally and spatially (Peakall 1970, p. 73; Staples *et al.* 2005, p. 1910; Holmes and York 2003, p. 1795; Miles *et al.* 2015, p. 1). Creation of new or expansion of existing wetlands due to marine flooding and inundation may also change the salinity in wetlands which may encourage the expansion of salt tolerant nonnative plants on mudflats. Increased vegetation on mudflats can reduce available Hawaiian stilt nesting habitat. Marine inundation and groundwater inundation will modify wetland habitat, but whether there will be a net gain or loss of habitat is unknown (Polhemus 2015, p. 25). Increases in foraging and breeding habitat from expanding or newly created wetlands could offset losses from sea level rise; however, this may occur outside of the area of current predator control programs (Factor C). State and Federal land managers may need to adjust existing programs and/or acquire lands in order to effectively support Hawaiian stilt habitat in the new areas.

Avian botulism (Factor C) continues to be documented at wetlands Statewide as a cause of mortality events in Hawaiian stilt and other waterbird and waterfowl species (Dibben-Young 2016, pp. 4–5). Environmental contaminants (Factor E) may also be a threat to Hawaiian stilts using wetland habitats near urban areas.

As previously stated, the Hawaiian stilt is a conservation-reliant subspecies (Reed *et al.* 2012, p. 888; Underwood *et al.* 2013, p. 1), which means that it will require active management in perpetuity (Scott *et al.* 2005, pp. 383–389; Scott *et al.* 2010, pp. 92–93: Goble *et al.* 2012, pp. 869–872). Management actions aimed at reducing or eliminating predators and control of both vegetation and water levels occurs in the majority of the core wetlands. Sea level rise due to climate change adds a high degree of uncertainty to the net gain or loss of foraging and breeding habitat, which will likely challenge current management strategies.

Despite these ongoing threats, the Hawaiian stilt population is stable to increasing population (Reed *et al.* 2011b, pp. 475–476, 478–479; USFWS 2011a, p. iv; DOFAW 2020). We conclude that the Hawaiian stilt population has maintained resiliency, redundancy, and representation over the past few decades. Having multiple breeding populations spread out across the main Hawaiian Islands affords the subspecies some protection from both stochastic and catastrophic events. Additionally, the subspecies will continue to be monitored in the biannual waterbird count, as well as at numerous NWRs across the State, to detect any changes that reflect a change in the current status of the subspecies. The current status of the subspecies has improved from the time of listing.

Considering the best available information, including the stability of the population demonstrated over decades, the new data presented in the preliminary 2019 PVA, and the demonstrated adaptability and resiliency of the subspecies, in combination with the expectation that existing conservation actions at their present scope and intensity will continue into the foreseeable future, we conclude that the subspecies no longer meets the Act's definition of an endangered species throughout all of its range. Therefore, we proceed with determining whether the Hawaiian stilt is likely to become endangered within the foreseeable future throughout all of its range.

To determine if a species is considered a threatened species under the Act, we look to future threats facing the species and how the species will likely respond to those threats. The foreseeable future considers population status, trends, and threats for the species. Collective management efforts aimed at the subspecies for the conservation of Hawaiian stilt have been sufficient to maintain a stable population, and it appears that the subspecies is at or near carrying capacity—limited primarily by amount of managed wetland habitat as this is a conservation-reliant subspecies. Hawaiian stilts continue to face significant ongoing threats, as discussed under Summary of Biological Status and Threats. The threat of predation of Hawaiian stilt eggs, chicks, and adults by a myriad of animals is ongoing, despite implementation of predator control at most core wetlands and many supporting wetlands (Tables 1 and 2). Impacts of sea level rise are expected to progressively increase, resulting in moderate impacts on coastal habitat by 2040. Pressure to alter ground and

surface water continues with ongoing urban development. Although the preliminary results from a 2019 PVA predict a zero percent chance of extinction over 80 years as long as current management practices continue, it also notes that the population is sensitive to changes in vital rates. For example, if adult mortality increases by just 10 percent, the species has a high probability of extinction (Reed and van Rees 2019 p. 1). Thus, the best available information is consistent with these threats (excluding sea-level rise) having been managed sufficiently over the past several decades such that reproductive success in managed sites supports a stable Statewide population, so that the subspecies is not immediately in danger of extinction. The PVA does have several limitations that suggests this is only one tool for us to consider reclassification. Foremost is that the PVA does not account for changes in quality or availability of currently managed habitat due to the effects of sea level rise.

The Hawaiian stilt remains vulnerable to the continuing threat of predation and habitat loss and degradation by several means, and maintaining current population levels (and viability) is contingent upon ongoing commitment to management of wetland habitat and predators at their present scope and intensity. In particular, the demographic data used to provide working assumptions of the preliminary results of the 2019 PVA derives from studies on sites with active habitat and predator management, so reducing management efforts would render its conclusions less applicable; risk of extinction appears particularly sensitive to increases in adult mortality (Reed and van Rees 2019 p. 24). Sustained management commitments are necessary to keep these vital rates at manageable levels (*e.g.,* below 34 percent annual adult mortality). Expansion of existing efforts on current core and supporting wetlands and expansion of the habitat and predator management onto new sites (other core, other supporting wetlands or other suitable locations) would greatly enhance the recovery potential of this subspecies.

The threat of sea level rise is also likely to increase over time and can be expected to alter the spatial distribution and quality of wetland habitats and require adaptive changes in which sites will be the focus of management. Thus, after assessing the best available information, we conclude that the Hawaiian stilt is not currently in danger of extinction, but is likely to become in danger of extinction in the foreseeable throughout all of its range (*i.e.,* meets the Act's definition of a threatened 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. The court in *Center for Biological Diversity* v. *Everson,* 2020 WL 437289 (D.D.C. Jan. 28, 2020) (*Center for Biological Diversity*), vacated the aspect of the 2014 Significant Portion of its Range Policy that provided that the Services do not undertake an analysis of significant portions of a species' range if the species warrants listing as threatened throughout all of its range. Therefore, we proceed to evaluating whether the species is endangered in a significant portion of its range—that is, whether there is any portion of the species' range for which both (1) the portion is significant; and (2) the species is in danger of extinction in that portion. Depending on the case, it might be more efficient for us to address the ''significance'' question or the ''status'' question first. We can choose to address either question first. Regardless of which question we address first, if we reach a negative answer with respect to the first question that we address, we do not need to evaluate the other question for that portion of the species' range.

Following the court's holding in *Center for Biological Diversity,* we now consider whether there are any significant portions of the subspecies' range where the subspecies is in danger of extinction now (*i.e.,* endangered). In undertaking this analysis for Hawaiian stilt, we choose to address the status question first—we consider information pertaining to the geographic distribution of both the subspecies and the threats that the subspecies faces to identify any portions of the range where the subspecies is endangered.

Based upon best available information, Hawaiian stilts disperse frequently between the main Hawaiian Islands and they readily colonize newly restored or created habitats suggesting that Hawaiian stilt in Hawaii form one large population (van Rees *et al..* 2020, p. 3, with supporting literature). Thus, there is no biologically meaningful way to break this subspecies' range into portions, and the threats that the subspecies faces affect the subspecies throughout its entire range. This means that no portions of the subspecies' range have a different status from its rangewide status. Therefore, no portion of the subspecies' range can provide a basis for determining that the subspecies is in danger of extinction in a significant portion of its range, and we determine that the subspecies is likely to become in danger of extinction within the foreseeable future throughout all of its range. Our analysis is consistent with the courts' holdings in *Desert Survivors* v. *Department of the Interior,* No. 16–cv–01165–JCS, 2018 WL 4053447 (N.D. Cal. Aug. 24, 2018), and *Center for Biological Diversity* v. *Jewell,* 248 F. Supp. 3d, 946, 959 (D. Ariz. 2017).

Determination of Status

Our review of the best available scientific and commercial information indicates that the Hawaiian stilt meets the definition of a threatened subspecies. Therefore, we propose to reclassify the Hawaiian stilt as a threatened subspecies in accordance with sections 3(20) and 4(a)(1) of the Act.

Proposed Rule Issued Under Section 4(d) of the Act

Background

Section 4(d) of the Act contains two sentences. The first sentence states that the ''Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation'' of species listed as threatened. The U.S. Supreme Court has noted that statutory language like ''necessary and advisable'' demonstrates a large degree of deference to the agency (see *Webster* v. *Doe,* 486 U.S. 592 (1988)). Conservation is defined in the Act to mean ''the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to [the Act] are no longer necessary.'' Additionally, the second sentence of section 4(d) of the Act states that the Secretary ''may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1), in the case of fish or wildlife, or section 9(a)(2), in the case of plants.'' Thus, the combination of the two sentences of section 4(d) provides the Secretary with wide latitude of discretion to select and promulgate appropriate regulations tailored to the specific conservation needs of the threatened species. The second sentence grants particularly broad discretion to us when adopting the prohibitions under section 9.

The courts have recognized the extent of the Secretary's discretion under this standard to develop rules that are appropriate for the conservation of a species. For example, courts have

upheld rules developed under section 4(d) as a valid exercise of agency authority where they prohibit take of threatened wildlife or include a limited taking prohibition (see *Alsea Valley Alliance* v. *Lautenbacher,* 2007 U.S. Dist. Lexis 60203 (D. Or. 2007); *Washington Environmental Council* v. *National Marine Fisheries Service,* 2002 U.S. Dist. Lexis 5432 (W.D. Wash. 2002)). Courts have also upheld 4(d) rules that do not address all of the threats a species faces (*see State of Louisiana* v. *Verity,* 853 F.2d 322 (5th Cir. 1988)). As noted in the legislative history when the Act was initially enacted, ''once an animal is on the threatened list, the Secretary has an almost infinite number of options available to him with regard to the permitted activities for those species. He may, for example, permit taking, but not importation of such species, or he may choose to forbid both taking and importation but allow the transportation of such species'' (H.R. Rep. No. 412, 93rd Cong., 1st Sess. 1973).

Exercising this authority under section 4(d), we have developed a proposed rule that is designed to address the specific threats to and conservation needs of the Hawaiian stilt. Although the statute does not require us to make a ''necessary and advisable'' finding with respect to the adoption of specific prohibitions under section 9, we find that this proposed rule as a whole satisfies the requirement in section 4(d) of the Act to issue regulations deemed necessary and advisable to provide for the conservation of the Hawaiian stilt.

As discussed under Summary of Biological Status and Threats, we have concluded that the Hawaiian stilt is likely to become in danger of extinction within the foreseeable future primarily due to predation by nonnative animals (*i.e.,* mongooses, rats, cats, dogs, carnivorous birds, and bullfrogs); habitat loss and degradation by urban development, altered ground and surface water for urban expansion, overgrowth of nonnative plants, sea level rise associated with climate change (both coastal and groundwater flooding and inundation); disease, primarily botulism caused by the bacterium *Clostridium botulinum* (type C); and environmental contaminants. Additionally, Hawaiian stilt habitat is anticipated to be negatively impacted in the near future by an increase in frequency and intensity of hurricanes associated with climate change, which may also directly harm individuals, eggs, or nesting success through flooding.

The provisions of this proposed 4(d) rule would promote conservation of the Hawaiian stilt by encouraging activities that facilitate conservation and management of the Hawaiian stilt and its habitat where it currently occurs and may occur in the future. Thus, we are encouraging management of the landscape in ways that meet both land management considerations and the conservation needs of the Hawaiian stilt. The provisions of this proposed rule are one of many tools that we would use to promote the conservation of the Hawaiian stilt. This proposed 4(d) rule would apply only if and when we make final the reclassification of the Hawaiian stilt as a threatened subspecies.

Provisions of the Proposed 4(d) Rule

This proposed 4(d) rule would provide for the conservation of the Hawaiian stilt by prohibiting the following activities, except as otherwise authorized or permitted: Take (*i.e.,* harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct); importing or exporting; possession and other acts with unlawfully taken specimens; delivering, receiving, transporting, or shipping in interstate or foreign commerce in the course of commercial activity; or selling or offering for sale in interstate or foreign commerce. These prohibitions would result in regulating a range of human activities that have the potential to affect the viability of the Hawaiian stilt, including agricultural or urban development; recreational and commercial activities; introduction of predators; and direct capture, injury, or killing of Hawaiian stilts. Regulating these activities will help preserve the Hawaiian stilt population. This proposed 4(d) rule would also provide for the conservation of the subspecies by providing select exceptions to the prohibitions for the purpose of promoting conservation of Hawaiian stilt and expansion of their range by increasing flexibility in management activities for State and private landowners. Below we outline each prohibition and any exceptions, as well as provide our justification for their inclusion in this proposed 4(d) rule.

Prohibition of Take

Under the Act, ''take'' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Some of these provisions have been further defined in regulation at 50 CFR 17.3. Take can result knowingly or otherwise, by direct and indirect impacts, intentionally or incidentally. Regulating incidental and intentional take will help preserve the Hawaiian stilt population and decrease synergistic, negative effects from other threats.

Rangewide threats continue to act on the subspecies, and its viability remains reliant on the implementation of conservation actions (see Summary of Biological Status and Threats). However, as explained below, there are a few circumstances in which allowing either intentional or incidental take will benefit the Hawaiian stilt as a subspecies and further its recovery. We have outlined three circumstances below as proposed exceptions to the proposed prohibition of take. By allowing take under these three circumstances, the proposed rule would provide needed protection to the subspecies while allowing management flexibility to benefit the subspecies' long-term conservation.

Proposed Take Exceptions

1. Take that is incidental to conducting lawful nonnative predator control or conducting lawful habitat management activities (from a Service and DOFAW-approved list of such activities) for the conservation benefit of Hawaiian stilts or other native waterbirds.

Rationale: Control of introduced predators and habitat management are identified as primary recovery actions for the Hawaiian stilt (USFWS 2011, p. 10). Predation is the greatest threat to Hawaiian stilts, followed by habitat loss and degradation or modification. We propose a take exception for the incidental take of stilts during control of predators (*e.g.,* mongoose, dogs (feral and domestic), feral pigs, cats (feral and domestic), rats, bullfrogs, cattle egrets, and barn owls) designed to protect stilts (or other native waterbirds) or habitat management activities designed to protect stilts (or other native waterbirds). This exception to the prohibition of take will help to reduce or eliminate the depredation of Hawaiian stilts during all life stages, provide sufficient nesting habitat to support the reproductive needs of the population, and provide our conservation partners the flexibility to practice adaptive management to meet the needs of the subspecies. The Service and DOFAW will maintain a list of acceptable habitat conservation management activities; for the current list, contact the Service or DOFAW. We propose this exception to take year-round.

Predators are managed using a variety of methods, including fencing, trapping,

shooting, and toxicants. All methods must be used in compliance with State and Federal regulations. In addition to the application of the above tools, predator control as defined includes activities related to predator control, such as performing efficacy surveys, trap checks, and maintenance duties. Nesting success is higher for Hawaiian stilts that nest earlier in the season; therefore, implementing predator control during this time may be most beneficial to the subspecies (Price 2020, p. 1).

During lawful predator control, or lawful habitat management activities from the Service and DOFAW-approved list, incidental take of Hawaiian stilts (eggs, chicks, fledglings, or adults) may occur in the form of temporary displacement due to human presence, unintentional injury, or death (*e.g.,* accidental ingestion of chemical approved for predator control, collision or crushing by means of mechanical machinery). Reasonable care must be practiced to minimize the effects of such taking and may include, but is not limited to: (a) Procuring and implementing technical assistance from a qualified biologist(s) on predator control or habitat management methods, techniques, and protocols prior to application of methods; (b) compliance with all applicable regulations and following principles of integrated pest management and habitat management; and (c) judicious use of methods and tool adaptations to reduce hazards to Hawaiian stilts (*e.g.,* ingest bait, injury or death from an interaction with mechanical devices).

2. Take by authorized law enforcement officers for the purposes of aiding or euthanizing sick, injured, or orphaned Hawaiian stilts; disposing of dead specimens; and salvaging a dead specimen that may be used for scientific study.

Rationale: The increased interaction of Hawaiian stilts with the human environment subsequently increases the likelihood of encounters with orphaned, injured, sick, or dead Hawaiian stilts. By providing an exception for law enforcement officers in consultation with State wildlife biologists to provide aid to orphaned, injured, or sick Hawaiian stilts, or disposal or salvage of dead Hawaiian stilts, we increase the odds for saving orphaned, injured, or sick Hawaiian stilts and may maximize the use of carcasses for research purposes that may inform management decisions and further the recovery of the subspecies.

Prohibition of Import, Export, and Interstate and Foreign Commerce

We have proposed to include the prohibition of import, export, interstate and foreign commerce, and sale or offering for sale in such commerce of the Hawaiian stilt in this proposed rule to complement and support our proposal to include the prohibition of take. Because the Hawaiian stilt is not known to be held in captivity for commercial, recreational, scientific, or educational purposes, any such exchange of the subspecies would require removing one or more individuals (including eggs) from the sole population of the subspecies resulting in take. Additionally, because the Hawaiian stilt is a conservation-reliant subspecies and likely to become in danger of extinction within the foreseeable future due to the threats discussed above and under Summary of Biological Status and Threats, any major reduction in population size by intentional removal of individuals would negatively impact the viability of the subspecies. Therefore, regulating the import, export, and interstate and foreign commerce of Hawaiian stilt will help to preserve their population. There are no proposed exceptions for these prohibitions.

Prohibition of Possession and Other Acts With Unlawfully Taken Specimens

Although the Hawaiian stilt population is currently stable, it is considered a conservation-reliant subspecies and requires active management to maintain this stability. The Hawaiian stilt is not thriving to the degree that its population is considered capable of sustaining unrestricted capture or collection from the wild without the likelihood of negative impacts to the long-term viability of the subspecies. Because capture and collection of Hawaiian stilts remains prohibited as discussed above, maintaining the complementary prohibition on possession and other acts with illegally taken Hawaiian stilts will further discourage such illegal take. Thus, we propose to prohibit the possession, sale, offering for sale, delivery, receiving, carrying, transporting, or shipping of illegally taken Hawaiian stilts intrastate (within State), interstate (between States), and internationally in order to maintain the viability of the Hawaiian stilt population. Regulating these human activities will contribute to the preservation of the subspecies. There are no proposed exceptions to these prohibitions.

We may issue permits to carry out otherwise prohibited activities, including those described above, involving threatened wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.32. With regard to threatened wildlife, a permit may be issued for the following purposes: Scientific purposes, to enhance propagation or survival, for economic hardship, for zoological exhibition, for educational purposes, for incidental taking, or for special purposes consistent with the purposes of the Act. There are also certain statutory exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

We recognize the special and unique relationship with our State natural resource agency partners in contributing to conservation of listed subspecies. State agencies often possess scientific data and valuable expertise on the status and distribution of endangered, threatened, and candidate species of wildlife and plants. State agencies, because of their authorities and their close working relationships with local governments and landowners, are in a unique position to assist us in implementing all aspects of the Act. In this regard, section 6 of the Act provides that we shall cooperate to the maximum extent practicable with the States in carrying out programs authorized by the Act. Therefore, any qualified employee or agent of a State conservation agency that is a party to a cooperative agreement with us in accordance with section 6(c) of the Act, who is designated by his or her agency for such purposes, would be able to conduct activities designed to conserve the Hawaiian stilt that may result in otherwise prohibited take without additional authorization.

Nothing in this proposed 4(d) rule would change in any way the recovery planning provisions of section 4(f) of the Act, the consultation requirements under section 7 of the Act, or our ability to enter into partnerships for the management and protection of the Hawaiian stilt. However, interagency cooperation may be further streamlined through planned programmatic consultations for the subspecies between us and other Federal agencies, where appropriate. We ask the public, particularly State agencies and other interested stakeholders that may be affected by the proposed 4(d) rule, to provide comments and suggestions regarding additional guidance and methods that we could provide or use, respectively, to streamline the implementation of this proposed 4(d) rule (see Information Requested).

If finalized, the provisions in this proposed 4(d) rule would address only Federal Endangered Species Act requirements, and would not change State law. State law requires the issuance of a temporary license for the take of endangered and threatened animal species, if the activity otherwise prohibited is: (1) For scientific purposes or to enhance the propagation or survival of the affected species (HRS 195D–4(f)); or (2) incidental to an otherwise lawful activity (HRS 195D–4(g)). Incidental take licenses require the development of a habitat conservation plan (HRS 195D–21) or a safe harbor agreement (HRS 195D–22), and consultation with the State's Endangered Species Recovery Committee. Therefore, if this rule is finalized, persons would still need to obtain a State permit for some of the actions described in this proposed 4(d) rule.

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.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have determined that environmental analyses as defined under the authority of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), need not be prepared in connection with determining and implementing a species' listing status under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of references cited in this rulemaking is available on the internet at *http://www.regulations.gov* and upon request from the Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff members of the U.S. Fish and Wildlife Service's Species Assessment Team and the Pacific Islands Fish and Wildlife 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 § 17.11(h) by revising the entry for ''Stilt, Hawaiian'' under BIRDS in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
*	*	*	*	*
Birds				
*	*	*	*	*
Stilt, Hawaiian (aeo)	*Himantopus mexicanus knudseni.*	Wherever found	T	35 FR 16047, 10/13/1970; [**Federal Register** citation of the final rule]; 50 CFR 17.41(j)4d.
*	*	*	*	*

■ 3. Amend § 17.41 by adding paragraph (j) to read as follows:

§ 17.41 Special rules—birds.

* * * * *

(j) Hawaiian stilt (*Himantopus mexicanus knudseni*) (aeo).

(1) *Definition.* For the purposes of this paragraph (j), ''qualified biologist'' means an individual with a combination of academic training in the area of wildlife biology or related discipline and demonstrated field experience in the identification and life history of the Hawaiian stilt.

(2) *Prohibitions.* The following prohibitions that apply to endangered wildlife also apply to the Hawaiian stilt. Except as provided under paragraph (j)(3) of this section and §§ 17.4 through 17.6, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or cause to be committed, any of the following acts in regard to this species:

(i) Import or export, as set forth at § 17.21(b) for endangered wildlife.

(ii) Take, as set forth at § 17.21(c)(1) for endangered wildlife.

(iii) Possession and other acts with unlawfully taken specimens, as set forth at § 17.21(d)(1) for endangered wildlife.

(iv) Interstate or foreign commerce in the course of commercial activity, as set forth at § 17.21(e) for endangered wildlife.

(v) Sale or offer for sale, as set forth at § 17.21(f) for endangered wildlife.

(3) *Exceptions from prohibitions.* In regard to this species, you may:

(i) Conduct activities as authorized by a permit under § 17.32.

(ii) Take, as set forth at § 17.21(c)(2) through (4) for endangered wildlife and

(c)(6) and (7) for endangered migratory birds.

(iii) Take when the take is incidental to an otherwise lawful activity caused by:

(A) *Nonnative predator control or habitat management activities for Hawaiian stilt or other native waterbird conservation purposes.* A qualified biologist, or personnel working under their direct supervision, may incidentally take Hawaiian stilt in the course of carrying out nonnative predator control or habitat management activities for Hawaiian stilt conservation purposes if reasonable care is practiced to minimize effects to the Hawaiian stilt as follows:

(*1*) Nonnative predator control activities for the conservation of the Hawaiian stilt, or other native Hawaiian waterbirds, which may include the use of fencing, trapping, shooting, and toxicants to control predators, and related activities such as performing efficacy surveys, trap checks, and maintenance duties. Reasonable care for predator control activities may include, but is not limited to, procuring and implementing technical assistance from a qualified biologist on predator control methods and protocols prior to application of methods; compliance with all State and Federal regulations and guidelines for application of predator control methods; and judicious use of methods and tool adaptations to reduce the likelihood of Hawaiian stilt ingesting bait or being injured or dying from interaction with mechanical devices. A list of currently acceptable predator control methods is available by contacting the Service or State of Hawaii Department of Land and Natural Resources, Division of Forestry and Wildlife.

(*2*) Habitat management activities for the conservation of the Hawaiian stilt, or other native waterbirds, as long as the activities benefit Hawaiian stilts, which may include: Weeding, mowing, fertilizing, herbicide application, water level maintenance, water quality monitoring and maintenance, sedimentation and dead or decaying animal monitoring and maintenance, outplanting native plants, creating mudflats, and irrigating wetland habitat for conservation purposes (if mechanical mowing of pastures adjacent to wetlands for conservation management purposes is not feasible, alternate methods of keeping grass short may be used, such as grazing); emergency botulism outbreak responses; and large-scale restoration of native habitat (*e.g.,* feral ungulate control, fencing). Reasonable care for habitat management may include, but is not limited to, procuring and implementing technical assistance from a qualified biologist on habitat management activities, and documented best efforts to minimize Hawaiian stilt exposure to hazards (*e.g.,* predation, crushing by vehicle or machinery). A list of currently acceptable management activities is available by contacting the Service or State of Hawaii Department of Land and Natural Resources, Division of Forestry and Wildlife.

(B) *Actions carried out by law enforcement officers in the course of official law enforcement duties.* When acting in the course of their official duties, State and local government law enforcement officers, working in conjunction with authorized wildlife biologists and wildlife rehabilitators in the State of Hawaii, may take Hawaiian stilt for the following purposes:

(*1*) Aiding or euthanizing sick, injured, or orphaned Hawaiian stilt;

(*2*) Disposing of a dead specimen; or

(*3*) Salvaging a dead specimen that may be used for scientific study; or

(*4*) Possession and other acts with unlawfully taken specimens as provided in § 17.21(d)(2) through (4).

(4) *Reporting and disposal requirements.* Any injury or mortality of Hawaiian stilt associated with the actions excepted under paragraphs (j)(3)(iii)(A) and (B) of this section must be reported to the Service and authorized State wildlife officials within 48 hours, and specimens may be disposed of only in accordance with directions from the Service. Reports should be made to the Service's Office of Law Enforcement (contact information is at 50 CFR 10.22) or the Service's Pacific Islands Fish and Wildlife Office (contact information for the Service regional offices is at 50 CFR 2.2). Alternatively, the State of Hawaii Department of Land and Natural Resources, Division of Forestry and Wildlife, may be contacted.

Signing Authority

The Principal Deputy Director, Exercising the Delegated Authority of the Director, U.S. Fish and Wildlife Service, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the U.S. Fish and Wildlife Service. Martha Williams, Principal Deputy Director, Exercising the Delegated Authority of the Director, U.S. Fish and Wildlife Service, approved this document on March 16, 2021, for publication.

Dated: March 16, 2021.

Madonna Baucum,

Regulations and Policy Chief, Division of Policy, Economics, Risk Management, and Analytics, Joint Administrative Operations, U.S. Fish and Wildlife Service.

[FR Doc. 2021–05846 Filed 3–24–21; 8:45 am]

BILLING CODE 4333–15–P

Notices

Federal Register

Vol. 86, No. 56

Thursday, March 25, 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

Animal and Plant Health Inspection Service

[Docket No. APHIS–2018–0025]

Decision To Authorize the Importation of Fresh Pepper Fruit From Colombia Into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our decision to authorize the importation of fresh pepper fruit from Colombia into the continental United States. Based on the findings of a pest risk analysis, which we made available to the public for review and comment, we have determined that the application of one or more designated phytosanitary measures will be sufficient to mitigate the risks of introducing or disseminating plant pests or noxious weeds via the importation of fresh pepper fruit from Colombia.

DATES: The articles covered by this notice may be authorized for importation after March 25, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Claudia Ferguson, Senior Regulatory Policy Specialist, Regulatory Coordination and Compliance, Imports, Regulations, and Manuals PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737–1231; (301) 851–2352.

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in ''Subpart L—Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–12, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests.

Section 319.56–4 of the regulations contains a performance-based process for approving the importation of commodities that, based on the findings of a pest risk analysis (PRA), can be safely imported subject to one or more of the designated phytosanitary measures listed in paragraph (b) of that section. Under the process, APHIS proposes to authorize the importation of a fruit or vegetable into the United States if, based on the findings of a pest risk analysis, we determine that the measures can mitigate the plant pest risk associated with the importation of that fruit or vegetable. APHIS then publishes a notice in the **Federal Register** announcing the availability of the pest risk analysis that evaluates the risks associated with the importation of that fruit or vegetable.

In accordance with that process, we published a notice [1] in the **Federal Register** (84 FR 20322–20323, Docket No. APHIS–2018–0025) on May 9, 2019, in which we announced the availability, for review and comment, of a pest risk assessment (PRA) that evaluated the risks associated with the importation of fresh pepper fruit (*Capsicum* spp., specifically the domesticated species *Capsicum annuum* L., *C. baccatum* L., *C. chinense* Jacq., *C. frutescens* L., and *C. pubescens* Ruiz & Pav.) from Colombia and a risk management document (RMD) prepared to identify phytosanitary measures that could be applied to the commodity to mitigate the pest risk.

We solicited comments concerning our proposal for 60 days ending July 8, 2019. We received two comments by that date. They were from a State department of agriculture and a private citizen. They are discussed below.

One commenter voiced concerns regarding the mitigation methods proposed for three insect species, *Anastrepha fraterculus, Ceratitis capitata,* and *Neoleucinodes elegantalis,* that the PRA said could follow the pathway on peppers from Colombia. While our RMD stated that *N. elegantalis* leaves easily identifiable bore hole, the commenter believes the *N. elegantalis* species of fruit fly may leave inconspicuous holes in the fruit's leaves despite the determination that the holes are easily identifiable. In regards to the *A. fraterculus* and *C. capitata* species, the commenter believed, as internal fruit feeders, the pests could potentially infest a greenhouse and remain undetected.

APHIS has determined the proposed risk mitigation procedures in the RMD and notice are sufficient for the aforementioned pests and will remove the pests from the pathway of Colombia peppers. We consider the mitigation of a pest-exclusionary structure to be an absolute barrier to all of the pests in conjunction with safeguards such as: Monthly visits and inspections to the production places, pest-exclusionary greenhouses and trapping programs at production places, and halting production if a greenhouse is infested. Furthermore, APHIS prohibits a greenhouse from exporting, if any fruit fly is detected, until the risk is mitigated (which we determine). Lastly, APHIS agrees with the commenter that internally feeding insects, such as *Neolucinodes elegantalis,* may leave inconspicuous holes or damage; however, it is unlikely that *Neolucinodes elegantalis* populations will become established inside of pest-exclusionary structures. In the unlikely event they are, U.S. Customs and Border Protection inspections at the port of entry coupled with possible emergence during transit provide additional safeguards. Upon exiting a secure greenhouse, peppers must be safeguarded by intact, insect-proof mesh screens or plastic tarpaulins in transit to the packinghouse, while awaiting packing, and when they arrive into the continental United States; the consignment will be denied entry if those measures are not followed.

The second comment was generally favorable toward our proposed decision but asked if peppers from the Dominican Republic could be authorized importation into the United States, as well, subject to a systems approach. However, APHIS already has authorized the importation of peppers from the Dominican Republic. The conditions for their importation are found in APHIS' Fruits and Vegetables Import Requirements (FAVIR) database at *https://epermits.aphis.usda.gov/manual/index.cfm?REGION_ID=214&*

[1] To view the notice, PRA, risk management document, economic evaluation assessment, and the comments that we received, go to *http://www.regulations.gov,* and enter APHIS–2018–0025 in the Search field.

NEW=1&ACTION=countrySummCommPI.

Lastly, in the initial notice, we did not specify that the peppers must be commercial consignments only. However, Colombia's request was for commercially produced and shipped peppers, as reflected in pages 2 to 4 of the PRA; accordingly, we will only issues permits for commercial consignments.

Therefore, in accordance with the regulations in § 319.56–4(c)(3)(iii), we are announcing our decision to authorize the importation of fresh pepper fruit from Colombia into the continental United States subject to the following phytosanitary measures, which will be listed in FAVIR, available at *https://epermits.aphis.usda.gov/manual:*

- The peppers must be grown in approved places of production registered with the national plant protection organization (NPPO) of Colombia.
- Pepper places of production must consist of pest-exclusionary structures.
- The places of production must contain traps for the detection of Mediterranean fruit fly (*C. capitata* (Wiedemann)) and South American fruit fly (*A. fraterculus* (Wiedemann)) both within and around the structures.
- The places of production must be inspected prior to harvest for *N. elegantalis* (Guenée), a fruit boring moth; *Copitarsia decolora* (Guenée), a moth; and *Puccinia pampeana* Speg., a pathogenic fungus that causes pepper and green pepper rust.
- If any of these pests, or other quarantine pests, are found to be generally infesting or infecting the places of production, the NPPO of Colombia must immediately prohibit that production site from exporting peppers to the continental United States and notify APHIS of the action. The prohibition will remain in effect until the Colombian NPPO and APHIS agree that the risk has been mitigated.
- The Colombian NPPO must maintain records of trap placement, checking of traps, and any quarantine pest captures. The Colombian NPPO must maintain an APHIS-approved quality control program to monitor or audit the trapping program. The trapping records must be maintained for APHIS review.
- The peppers must be packed within 24 hours of harvest in a pest-exclusionary packinghouse.
- The peppers must be safeguarded by an insect-proof mesh screen or plastic tarpaulin while in transit to the packinghouse and while awaiting packing. The peppers must be packed in insect-proof cartons or containers, or covered with insect-proof mesh or plastic tarpaulin, for transit into the continental United States. These safeguards must remain intact until arrival in the continental United States or the consignment will be denied entry into the continental United States.
- During the time the packinghouse is in use for exporting peppers to the continental United States, the packinghouse may only accept peppers from registered approved places of production.
- Each consignment of peppers must be accompanied by a phytosanitary certificate of inspection issued by the Colombian NPPO stating that the fruit in the consignment has been produced in accordance with 7 CFR 319.56–4. Consignments must be packed in cartons that are labeled with the identity of the place of production.
- Consignments of fresh pepper fruit from Colombia are subject to inspection at the port of entry in the continental United States.
- Consignments are not for importation or distribution into or within Hawaii, Puerto Rico, or any U.S. Territory.
- Commercial consignments only.

In addition to these specific measures, fresh peppers from Colombia will be subject to the general requirements listed in § 319.56–3 that are applicable to the importation of all fruits and vegetables.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the reporting and recordkeeping requirements included in this notice are covered under the Office of Management and Budget control number 0579–0049. The estimated annual burden on respondents is 644.10 hours, which will be added to 0579–0049 in the next quarterly update.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this notice, please contact Mr. Joseph Moxey, APHIS' Information Collection Coordinator, at (301) 851–2483.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this action as not a major rule, as defined by 5 U.S.C. 804(2).

Authority: 7 U.S.C. 1633, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 22nd day of March 2021.

Mark Davidson,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2021–06169 Filed 3–24–21; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2020–0104]

Addition of India to the List of Regions Affected With African Swine Fever

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that we have added India to the list of regions that the Animal and Plant Health Inspection Service considers to be affected with African swine fever (ASF). We have taken this action because of confirmation of ASF in India.

DATES: India was added to the APHIS list of regions considered affected with ASF on May 13, 2020.

FOR FURTHER INFORMATION CONTACT: Dr. Ingrid Kotowski, Regionalization Evaluation Services, Veterinary Services, APHIS, 920 Main Campus Drive, Suite 200, Raleigh, NC 27606; (919) 855–7732; email: *AskRegionalization@usda.gov.*

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation of specified animals and animal products to prevent introduction into the United States of various animal diseases, including African swine fever (ASF). ASF is a highly contagious animal disease of wild and domestic swine. It can spread rapidly in swine populations with extremely high rates of morbidity and mortality. A list of regions where ASF exists or is reasonably believed to exist is maintained on the Animal and Plant Health Inspection Service (APHIS) website at *https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/animal-and-animal-product-import-information/animal-health-status-of-regions/.* This list is referenced in § 94.8(a)(2) of the regulations.

Section 94.8(a)(3) of the regulations states that APHIS will add a region to the list referenced in § 94.8(a)(2) upon determining ASF exists in the region, based on reports APHIS receives of outbreaks of the disease from veterinary officials of the exporting country, from the World Organization for Animal Health (OIE), or from other sources the Administrator determines to be reliable, or upon determining that there is reason to believe the disease exists in the region. Section 94.8(a)(1) of the regulations specifies the criteria on which the Administrator bases the reason to believe ASF exists in a region. Section 94.8(b) prohibits importation of pork and pork products from regions listed in accordance with § 94.8, except if processed and treated in accordance with the provisions specified in that section or consigned to an APHIS-approved establishment for further processing. Section 96.2 restricts the importation of swine casings that originated in or were processed in a region where ASF exists, as listed under § 94.8(a).

On May 9, 2020, the veterinary authorities of India reported to APHIS the occurrence of ASF in that country. Therefore, in response to this outbreak, on May 13, 2020, APHIS added India to the list of regions where ASF exists or is reasonably believed to exist. This notice serves as an official record and public notification of that action.

As a result, pork and pork products from India, including casings, are subject to APHIS import restrictions designed to mitigate the risk of ASF introduction into the United States.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this action as not a major rule, as defined by 5 U.S.C. 804(2).

Authority: 7 U.S.C. 1633, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 22nd day of March 2021.

Mark Davidson,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2021–06172 Filed 3–24–21; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Information Collection for the Child and Adult Care Food Program (CACFP)

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 collection is a reinstatement, with change, of a previously approved collection for which approval has expired. FNS uses this collection to obtain account and record information from State and service institutions that is necessary to effectively manage the CACFP and ensure compliance with statutory and regulatory Program requirements.

DATES: Written comments must be received on or before May 24, 2021.

ADDRESSES: Comments may be sent to Laura Roth, Community Meals Branch, Policy and Program Development Division, Child Nutrition Programs, Food and Nutrition Service, U.S. Department of Agriculture, 1320 Braddock Place, Alexandria, VA 22314. Comments may also be submitted via fax to the attention of Laura Roth at 703–305–6294 or via email to *Laura.Roth@usda.gov.* Comments will also be accepted through the Federal eRulemaking 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 (OMB) 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 Laura Roth, Community Meals Branch, Policy and Program Development Division, Child Nutrition Programs, Food and Nutrition Service, U.S. Department of Agriculture, via email to *Laura.Roth@usda.gov* or by phone at 703–605–2590.

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: 7 CFR part 226, Child and Adult Care Food Program (CACFP).

Form Number: None.

OMB Number: 0584–0055.

Expiration Date: February 29, 2020.

Type of Request: Reinstatement, with change, of a previously approved collection for which approval has expired.

Abstract: This is a reinstatement, with change, of a previously approved information collection that expired on February 29, 2020. Section 17 of the Richard B. Russell National School Lunch Act (NSLA), as amended, (42 U.S.C. 1766), authorizes the CACFP. Under this Program, the Secretary of Agriculture is authorized to provide cash reimbursement and commodity assistance, on a per meal basis, for food service to children in nonresidential child care centers and family or group day care homes, and to eligible adults in nonresidential adult day care centers. The U.S. Department of Agriculture (USDA), through the Food and Nutrition Service (FNS), has established application, monitoring, and reporting requirements to manage the CACFP effectively. The purpose of this submission to OMB is to obtain approval to reinstate the discussed information collection. States and service institutions participating in the CACFP will submit to FNS account and record information reflecting their efforts to comply with statutory and regulatory Program requirements. Examples of data collected and reported with this collection include, but are not limited to: Applications and supporting documents; records of enrollment; records supporting the free and reduced price eligibility determinations; daily records indicating numbers of program participants in attendance and the number of meals served by type and category; and receipts, invoices and other records of CACFP costs and documentation of non-profit operation of food service.

FNS published an initial 60-day notice to renew this information collection on December 26, 2019 (84 FR

70930). The public comment period ended on February 24, 2020. In the process of preparing the initial 60-day notice, FNS adjusted reporting and recordkeeping burden because of decreases in the number of sponsoring organizations and facilities, and an increase in the number of enrolled participants who are required to submit information. To ensure that the information collection request (ICR) adequately represented the reporting burden associated with operating CACFP, FNS included the requirement that State agencies must comply with policy, instructions, guidance, and handbooks issued by USDA. Similarly, FNS also added the burden hours associated with reviewing materials to comply with all regulations issued by USDA for institutions. In the past, reviewing policy, instructions, guidance, and handbooks were burden implied with implementing CACFP, however, it was not included in the burden table. Adding the hours it would take to review materials is important because it allows USDA to capture the burden of operating CACFP. FNS also separated out burden associated with the serious deficiency process for new, renewing, and participating institutions. Finally, FNS included the reporting burden for State agencies and institutions associated with submitting documents of corrective action and other records related to operating the program such as administrative budget, notice of proposed suspension, and notice of corrective actions.

In addition to revising reporting and recordkeeping burden, FNS added public disclosure burden associated with public notification requirements, which have been a part of the CACFP regulations but were not included in the burden estimates for the previously approved information collection. FNS included public disclosure burden for State agencies per policy guidance, which allows State agencies to issue media releases on behalf of the institutions. Public disclosure burden hours for State agencies were not captured in the past. However, through feedback from State agencies, FNS adjusted the burden hours because FNS learned that many State agencies issue a public notice on behalf of their institutions.

In response to the first **Federal Register** Notice, FNS received 49 comments. Based on comments received, FNS further revised the burden associated with the information collection. In particular, FNS modified the burden of some of its reporting and recordkeeping requirements to better account for the complexity of certain activities applicable to State agencies. These requirements include:

- List of schools in which one-half of children enrolled are eligible for free or reduced-price meals (7 CFR 226.6(f)(1)(ix)(A)): For this reporting activity, FNS increased the estimated average number of hours per response from 15 minutes (0.25 hours) to 2 hours.
- Standard institutions and food service management company contract (7 CFR 226.6(i)): For this reporting activity FNS increased the estimated average number of hours per response from 15 minutes (0.25 hours) to 1 hour.
- Sponsoring organization agreement (7 CFR 226.6(p)): For this reporting activity, FNS increased the estimated average number of hours per response from 15 minutes (0.25 hours) to 6 hours.
- Collect and maintain on file CACFP agreements (Federal/State and State/institutions), records received from applicant and participating institutions, National Disqualified List/State Agency Lists, and documentation of administrative review (appeals), and Program assistance activities, results, and corrective actions (7 CFR 226.6). For this recordkeeping activity, FNS increased the estimated average number of hours per record from 1 hour to 5 hours.

In addition, FNS included burden for a set of existing requirements applicable to State agencies, local government agencies, and businesses (institutions and facilities) that were not delineated in previous burden tables. These requirements include:

- Application procedures for new institutions (7 CFR 226.6(b)(1)): Under this reporting requirement, 56 State agencies will each implement application procedures for 5 new institutions. Thus, the information collection activities associated with this requirement result in 280 responses for State agencies. FNS estimates that it takes State agencies approximately 1 hour per response, resulting in 280 burden hours. This change to the burden reflects an increase of 280 total annual responses and 280 total annual burden hours for States agencies.
- Application procedures for renewing institutions (7 CFR 226.6(b)(2)): Under this reporting requirement, 56 State agencies will each implement application procedures for 390 renewing institutions. Thus, the information collection activities associated with this requirement result in 21,840 responses for State agencies. FNS estimates that it takes State agencies approximately 30 minutes (0.5 hours) per response, resulting in 10,920 burden hours. This change to the burden reflects an increase of 21,840 total annual responses and 10,920 total annual burden hours for States agencies.
- State/institution agreement (7 CFR 226.6(b)(4)): Under this reporting requirement, 56 State agencies will each develop 5 written agreements between the State agency and the institutions that have been approved for participation in the Program. Thus, the information collection activities associated with this requirement result in 280 responses for State agencies. FNS estimates that it takes State agencies approximately 30 minutes (0.5 hours) per response, resulting in 140 burden hours. This change to the burden reflects an increase of 280 total annual responses and 140 total annual burden hours for States agencies. FNS also estimates that 42 local government agencies will each complete 1 application. Thus, the information collection activities associated with this requirement result in 42 responses for local government agencies. FNS estimates that it takes local government agencies approximately 30 minutes (0.5 hours) per response, resulting in 21 burden hours. This change to the burden reflects an increase of 42 total annual responses and 21 total annual burden hours for local government agencies. Finally, FNS estimates that 238 institutions will each complete 1 application. Thus, the information collection activities associated with this requirement result in 238 responses for institutions. FNS estimates that it takes institutions approximately 30 minutes (0.5 hours) per response, resulting in 119 burden hours. This change to the burden reflects an increase of 238 total annual responses and 119 total annual burden hours for institutions.
- Agreement termination for seriously deficient and subsequently disqualified institutions (7 CFR 226.6(c)(6)(ii)(G)): Under this reporting requirement, 56 State agencies will each terminate 3 agreements with institutions that FNS determines to be seriously deficient and subsequently disqualifies. Thus, the information collection activities associated with this requirement result in 168 responses for State agencies. FNS estimates that it takes State agencies approximately 15 minutes (0.25 hours) per response, resulting in 42 burden hours. This change to the burden reflects an increase of 168 total annual responses and 42 total annual burden hours for States agencies.
- List of schools in the State in which at least one-half of the children enrolled are certified eligible to receive free or reduced-price meals (7 CFR 2226.6(e)(1)(ix)(A)): Under this reporting requirement, 56 State agencies will each coordinate with the National

School Lunch Program State agency to ensure the receipt of a list of schools in the State in which at least one-half of the children enrolled are certified eligible to receive free or reduced-price meals. Thus, the information collection activities associated with this requirement result in 56 responses for State agencies. FNS estimates that it takes State agencies approximately 30 minutes (0.5 hours) per response, resulting in 28 burden hours. This change to the burden reflects an increase of 56 total annual responses and 28 total annual burden hours for States agencies.

• Responsibility to ensure that free and reduced-price meals are served to participants unable to pay the full price (7 CFR 226.6(f)(1)(i)): Under this reporting requirement, 56 State agencies will each inform institutions that are pricing programs of their responsibility to ensure that free and reduced-price meals are served to participants unable to pay the full price. Thus, the information collection activities associated with this requirement result in 56 responses for State agencies. FNS estimates that it takes State agencies approximately 15 minutes (0.25 hours) per response, resulting in 14 burden hours. This change to the burden reflects an increase of 56 total annual responses and 14 total annual burden hours for States agencies.

• Administrative review (appeal) request notice (7 CFR 226.6(k)(5)(i)): Under this reporting requirement, 56 State agencies will each send 3 notices of the action being taken or proposed, the basis for the action, and the procedures under which an institution and the responsible principals or responsible individuals may request an administrative review (appeal) of the action. Thus, the information collection activities associated with this requirement result in 168 responses for State agencies. FNS estimates that it takes State agencies approximately 15 minutes (0.25 hours) per response, resulting in 42 burden hours. This change to the burden reflects an increase of 168 total annual responses and 42 total annual burden hours for States agencies.

• Acknowledge the receipt of the request for an administrative review (appeal) (7 CFR 226.6(k)(5)(ii)): Under this reporting requirement, 56 State agencies will each acknowledge the receipt of 3 requests for an administrative review (appeal). Thus, the information collection activities associated with this requirement result in 168 responses for State agencies. FNS estimates that it takes State agencies approximately 5 minutes (0.0835 hours) per response, resulting in 14 burden hours. This change to the burden reflects an increase of 168 total annual responses and 14 total annual burden hours for States agencies.

• Review documentation submitted to refute the findings contained in the notice of action (7 CFR 226.6(k)(5)(v)): Under this reporting requirement, 56 State agencies will each review 3 sets of documentation submitted to refute the findings contained in the notice of action. Thus, the information collection activities associated with this requirement result in 168 responses for State agencies. FNS estimates that it takes State agencies approximately 2 hours per response, resulting in 336 burden hours. This change to the burden reflects an increase of 168 total annual responses and 336 total annual burden hours for States agencies.

• Hold administrative review hearing (7 CFR 226.6(k)(5)(vi)): Under this reporting requirement, 56 State agencies will each hold 3 administrative review hearings. Thus, the information collection activities associated with this requirement result in 168 responses for State agencies. FNS estimates that it takes State agencies approximately 4 hours per response, resulting in 672 burden hours. This change to the burden reflects an increase of 168 total annual responses and 672 total annual burden hours for States agencies.

• Inform of the administrative review's outcome (7 CFR 226.6(k)(5)(ix) and 226.6(k)(9)): Under this reporting requirement, 56 State agencies will each inform 3 institutions of the administrative review's outcome within 60 days of the State agency's receipt of the request for an administrative review. Thus, the information collection activities associated with this requirement result in 168 responses for State agencies. FNS estimates that it takes State agencies approximately 30 minutes (0.5 hours) per response, resulting in 84 burden hours. This change to the burden reflects an increase of 168 total annual responses and 84 total annual burden hours for States agencies.

• Review at least 33.3 percent of all institutions (7 CFR 226.6(m)(6)): Under this reporting requirement, 56 State agencies will each review 129 institutions. Thus, the information collection activities associated with this requirement result in 7,224 responses for State agencies. FNS estimates that it takes State agencies approximately 20 hours per response, resulting in 144,480 burden hours. This change to the burden reflects an increase of 129 total annual responses and 144,480 total annual burden hours for States agencies.

• Provide information on the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) to participating institutions (7 CFR 226.6(r)): Under this reporting requirement, 56 State agencies will each provide participating institutions information on WIC. Thus, the information collection activities associated with this requirement result in 56 responses for State agencies. FNS estimates that it takes State agencies approximately 15 minutes (0.25 hours) per response, resulting in 14 burden hours. This change to the burden reflects an increase of 56 total annual responses and 14 total annual burden hours for States agencies.

• Review institution budgets (7 CFR 226.7(g)): Under this reporting requirement, 56 State agencies will each review 390 institution budgets. Thus, the information collection activities associated with this requirement result in 21,840 responses for State agencies. FNS estimates that it takes State agencies approximately 2 hours per response, resulting in 43,680 burden hours. This change to the burden reflects an increase of 21,840 total annual responses and 43,680 total annual burden hours for States agencies.

• Ensure that parents of enrolled children are provided with WIC information (7 CFR 226.15(o)): Under this reporting requirement, 3,257 institutions will each ensure that parents are provided with WIC information. Thus, the information collection activities associated with this requirement result in 3,257 responses for local government agencies. FNS estimates that it takes local government agencies approximately 15 minutes (0.25 hours) per response, resulting in 814 burden hours. This change to the burden reflects an increase of 3,257 total annual responses and 814 total annual burden hours for local government agencies. FNS also estimates that 18,601 institutions will each ensure that parents are provided with WIC information. Thus, the information collection activities associated with this requirement result in 18,601 responses for institutions. FNS estimates that it takes institutions approximately 15 minutes (0.25 hours) per response, resulting in 4,650 burden hours. This change to the burden reflects an increase of 18,601 total annual responses and 4,650 total annual burden hours for institutions.

• Written notification of the right to make announced or unannounced reviews (7 CFR 226.16(d)(4)(vi)): Under this reporting requirement, 3,257 institutions will each provide written notification of the right to make

announced or unannounced reviews. Thus, the information collection activities associated with this requirement result in 3,257 responses for local government agencies. FNS estimates that it takes local government agencies approximately 15 minutes (0.25 hours) per response, resulting in 814 burden hours. This change to the burden reflects an increase of 3,257 total annual responses and 814 total annual burden hours for local government agencies. FNS also estimates that 18,601 institutions will each provide written notification of the right to make announced or unannounced reviews. Thus, the information collection activities associated with this requirement result in 18,601 responses for institutions. FNS estimates that it takes institutions approximately 15 minutes (0.25 hours) per response, resulting in 4,650 burden hours. This change to the burden reflects an increase of 18,601 total annual responses and 4,650 total annual burden hours for institutions.

• Notify of an imminent threat to the health or safety of participating children or the public (7 CFR 226.16(d)(4)(viii)): Under this reporting requirement, 814 local government agencies will each discover that 1 facility conduct or conditions pose an imminent threat to the health or safety of participating children or the public. These local government agencies will notify the appropriate State or local licensing or health authorities and take action that is consistent with the recommendations and requirements of those authorities. Thus, the information collection activities associated with this requirement result in 814 responses for local government agencies. FNS estimates that it takes local government agencies approximately 15 minutes (0.25 hours) per response, resulting in 204 burden hours. This change to the burden reflects an increase of 814 total annual responses and 204 total annual burden hours for local government agencies. FNS also estimates that 4,650 institutions will each discover that 1 facility conduct or conditions pose an imminent threat to the health or safety of participating children or the public. These institutions will notify the appropriate State or local licensing or health authorities and take action that is consistent with the recommendations and requirements of those authorities. Thus, the information collection activities associated with this requirement result in 4,650 responses for institutions. FNS estimates that it takes institutions approximately 15 minutes (0.25 hours) per response, resulting in 1,163 burden hours. This change to the burden reflects an increase of 4,650 total annual responses and 1,163 total annual burden hours for institutions.

• Notify a day care home that it has been found to be seriously deficient (7 CFR 226.16(l)(3)(i)): Under this reporting requirement, 83 local government agencies will each notify 1 day care home that it has been found to be seriously deficient. Thus, the information collection activities associated with this requirement result in 83 responses for local government agencies. FNS estimates that it takes local government agencies approximately 15 minutes (0.25 hours) per response, resulting in 21 burden hours. This change to the burden reflects an increase of 83 total annual responses and 21 total annual burden hours for local government agencies. FNS also estimates that 540 institutions will each notify 1 day care home that it has been found to be seriously deficient. Thus, the information collection activities associated with this requirement result in 540 responses for institutions. FNS estimates that it takes institutions approximately 15 minutes (0.25 hours) per response, resulting in 135 burden hours. This change to the burden reflects an increase of 540 total annual responses and 135 total annual burden hours for institutions.

• Suspension of day care home for serious health or safety violations (7 CFR 226.16(1)(4)): Under this reporting requirement, 21 local government agencies will each suspend 1 day care home for serious health or safety violations. In these cases, local government agencies will notify the day care home that its participation has been suspended, that the day care home has been determined seriously deficient, and that the sponsoring organization proposes to terminate the day care home's agreement for cause. In addition, they will provide a copy of the notice to the State agency. Thus, the information collection activities associated with this requirement result in 21 responses for local government agencies. FNS estimates that it takes local government agencies approximately 15 minutes (0.25 hours) per response, resulting in 5 burden hours. This change to the burden reflects an increase of 21 total annual responses and 5 total annual burden hours for local government agencies. FNS also estimates that 135 institutions will each suspend 1 day care home for serious health or safety violations. In these cases, institutions will notify the day care home that its participation has been suspended, that the day care home has been determined seriously deficient, and that the sponsoring organization proposes to terminate the day care home's agreement for cause. In addition, they will provide a copy of the notice to the State agency. Thus, the information collection activities associated with this requirement result in 135 responses for institutions. FNS estimates that it takes institutions approximately 15 minutes (0.25 hours) per response, resulting in 34 burden hours. This change to the burden reflects an increase of 135 total annual responses and 34 total annual burden hours for institutions.

• Application to operate as an at-risk afterschool care center (7 CFR 226.17a(e)): Under this reporting requirement, 564 local government agencies will each make 1 written application to the State agency for an afterschool care program that it wants to operate as an at-risk afterschool care center. Thus, the information collection activities associated with this requirement result in 564 responses for local government agencies. FNS estimates that it takes local government agencies approximately 1 hour per response, resulting in 564 burden hours. This change to the burden reflects an increase of 564 total annual responses and 564 total annual burden hours for local government agencies. FNS also estimates that 3,220 institutions will each make 1 written application to the State agency for an afterschool care program that it wants to operate as an at-risk afterschool care center. Thus, the information collection activities associated with this requirement result in 3,220 responses for institutions. FNS estimates that it takes institutions approximately 1 hour per response, resulting in 3,220 burden hours. This change to the burden reflects an increase of 3,220 total annual responses and 3,220 total annual burden hours for institutions.

• Advise the State agency of any substantive changes to the afterschool care program (7 CFR 226.17a(h)): Under this reporting requirement, 564 local government agencies will advise the State agency of substantive changes to the afterschool care program. Thus, the information collection activities associated with this requirement result in 564 responses for local government agencies. FNS estimates that it takes local government agencies approximately 30 minutes (0.5 hours) per response, resulting in 282 burden hours. This change to the burden reflects an increase of 564 total annual responses and 282 total annual burden hours for local government agencies. FNS also estimates that 3,220

institutions will advise the State agency of substantive changes to the afterschool care program. Thus, the information collection activities associated with this requirement result in 3,220 responses for institutions. FNS estimates that it takes institutions approximately 30 minutes (0.5 hours) per response, resulting in 1,610 burden hours. This change to the burden reflects an increase of 3,220 total annual responses and 1,610 total annual burden hours for institutions.

• Distribution of sponsoring organization's notice to parents (7 CFR 226.17(d)): Under this reporting requirement, 69,647 facilities will distribute to parents a copy of the sponsoring organization's notice to parents. Thus, the information collection activities associated with this requirement result in 69,647 responses for facilities. FNS estimates that it takes facilities approximately 15 minutes (0.25 hours) per response, resulting in 17,412 burden hours. This change to the burden reflects an increase of 69,647 total annual responses and 17,412 total annual burden hours for facilities.

• Inform sponsoring organization about any change in the number of children enrolled for care or in its licensing or approval status (7 CFR 226.18(a)(5)): Under this reporting requirement, 89,843 facilities will each inform the sponsoring organization about 5 changes in the number of children enrolled for care or in its licensing or approval status. Thus, the information collection activities associated with this requirement result in 89,843 responses for facilities. FNS estimates that it takes facilities approximately 15 minutes (0.25 hours) per response, resulting in 112,304 burden hours. This change to the burden reflects an increase of 89,843 total annual responses and 112,304 total annual burden hours for facilities.

• Notify sponsoring organization about being out of their home during the meal service period (7 CFR 226.18(a)(14)): Under this reporting requirement, 89,843 facilities will each notify their sponsoring organization 5 times that they are planning to be out of their home during the meal service period. Thus, the information collection activities associated with this requirement result in 89,843 responses for facilities. FNS estimates that it takes facilities approximately 15 minutes (0.25 hours) per response, resulting in 112,304 burden hours. This change to the burden reflects an increase of 89,843 total annual responses and 112,304 total annual burden hours for facilities.

• Establish and maintain Program procedures (7 CFR 226.6(b), 226.6(d), 226.6(m)(5), 226.7(h), 226.7(i), 226.7(k), 226.7(l), and 226.8): Under these recordkeeping requirements, 56 State agencies will each establish and maintain Program procedures, such as procedures to determine the eligibility of institutions, to annually review information submitted by institutions, and to audit institutions. Thus, the information collection activities associated with these requirements result in 56 responses for State agencies. FNS estimates that it takes State agencies approximately 16 hours per response, resulting in 896 burden hours. This change to the burden reflects an increase of 56 total annual responses and 896 total annual burden hours for State agencies.

• Establish and maintain an acceptable financial management system (7 CFR 226.7(b) and 226.7(m)): Under these recordkeeping requirements, 56 State agencies will each establish and maintain an acceptable financial management system, adhere to financial management standards and otherwise carry out financial management policies in accordance with 2 CFR part 200, subpart D and USDA implementing regulations 2 CFR part 400, part 415, and part 416, as applicable; and FNS guidance to identify allowable Program costs and set standards for institutional recordkeeping and reporting. Thus, the information collection activities associated with these requirements result in 56 responses for State agencies. FNS estimates that it takes State agencies approximately 80 hours per response, resulting in 4,480 burden hours. This change to the burden reflects an increase of 56 total annual responses and 4,480 total annual burden hours for State agencies.

After incorporating the above revisions, the estimated total number of burden hours increased by more than 10,000 hours, when compared to the burden hours included in the first **Federal Register** Notice. As a result, FNS is publishing this second **Federal Register** Notice.

The previously approved ICR OMB inventory for this collection included reporting and recordkeeping burden that consisted of 2,481,136 hours. As explained above, due to a combination of decreased respondents, adjustments to the estimated average number of hours per response for certain activities, and additional reporting, recordkeeping, and public disclosure requirements, program burden increased from 2,481,136 hours to 4,213,209 hours. The recordkeeping burden decreased from 610,724 hours to 566,012 hours. In contrast, the reporting burden increased from 1,870,412 hours to 3,644,458 hours, and the public disclosure burden increased from zero hours to 2,740 hours. The average burden per response and the annual burden hours for reporting and recordkeeping are explained below and summarized in the charts that follow.

Affected Public: State, Local, and Tribal Government; Business or Other for Profit; Not for Profit; and Individual/Households. Respondent groups identified include: (1) State agencies that administer the CACFP in their State; (2) local government agencies that are CACFP sponsoring organizations; (3) institutions (*i.e.,* a sponsoring organization, child care center, at-risk afterschool care center, outside-school-hours care center, emergency shelter, or adult day care center) that enter into agreements with the State agency to assume responsibility for CACFP operations; (4) facilities (*i.e.,* adult or child care centers or family day care homes) that administer the CACFP under the auspices of a sponsoring organization; and (5) households that are CACFP participants.

Estimated Number of Respondents: The total estimated number of respondents is 3,794,949. This includes: (1) 56 State agencies, (2) 3,791 local government agencies, (3) 21,650 institutions, (4) 159,490 facilities (includes 89,843 family day care homes and 69,647 sponsored center facilities), and (5) 3,599,004 households.

Estimated Number of Responses per Respondent: The overall frequency of responses across the entire information collection is 4.272 responses per respondent. The estimated number of responses per respondent in this collection ranges from 3.254 to 1,496 for the reporting burden and from 3 to 28 for the recordkeeping burden. The estimated number of responses per respondent in this collection is 1 for the public disclosure burden.

Estimated Total Annual Responses: 16,213,093.

Estimated Time per Response: The estimated time of response varies from 5 minutes (0.0835 hours) to 5.446 hours depending on the respondent group and the type of burden, as shown in the tables below. The average estimated time per response for all respondents across the entire collection is 0.260 hours.

Estimated Total Annual Burden on Respondents: 4,213,209 hours. See the table below for estimated total annual burden for each type of respondent.

Current OMB Inventory: 2,481,136 hours.

Difference (Burden Revisions Requested): 1,732,073 hours.

Respondent	Estimated number respondent	Responses annually per respondent	Total annual responses	Estimated avg. # of hours per response	Estimated total hours
Reporting Burden					
State/Local/Tribal Government Level:					
State Agencies	56	1,496	83,785	2.448	205,131
Local Government Agencies	3,791	33.812	128,182	1.710	219,226
Business Level:					
Institutions	21,650	33.834	732,516	1.709	1,252,114
Facilities	159,490	18.070	2,881,957	0.344	990,018
Household Level:					
Households	3,599,004	3.254	11,712,188	0.0835	977,968
Total Estimated Reporting Burden	3,783,991	4.106	15,538,627.720	0.235	3,644,457.867
Recordkeeping Burden					
State/Local/Tribal Government Level:					
State Agencies	56	28.000	1,568	5.446	8,540
Local Government Agencies	3,791	6.700	25,400	0.462	11,724
Business Level:					
Institutions	21,650	7.301	158,069	0.426	67,278
Facilities	159,490	3.000	478,470	1.000	478,470
Total Estimated Recordkeeping Burden	184,987	3.587	663,507.000	0.853	566,011.650
Public Disclosure Burden					
State/Local/Tribal Government Level:					
State Agencies	28	1.000	28	0.250	7
Local Government Agencies	1,629	1.000	1,629	0.250	407
Business Level:					
Institutions	9,301	1.000	9,301	0.250	2,325
Total Estimated Public Disclosure Burden	10,958	1.000	10,958.000	0.250	2,739.500
Total of Reporting, Recordkeeping, and Public Disclosure					
Total	3,794,949	4.272	16,213,092.720	0.260	4,213,209.017

Cynthia Long,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 2021–06177 Filed 3–24–21; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

[Docket No. NRCS–21–0001]

Notice of Request for an Extension of Existing Information Collection Package

AGENCY: Natural Resources Conservation Service (NRCS), United States Department of Agriculture (USDA).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces that NRCS will request an extension for a currently approved information collection for Long-Term Contracting forms.

DATES: Written comments on this notice will be accepted until close of business May 24, 2021.

ADDRESSES: NRCS prefers that comments be submitted electronically through the Federal eRulemaking Portal. You may submit comments, identified by Docket ID No. NRCS–21–0001, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *By Mail to:* Carrie Lindig, Easement Programs Division, Room 4526–S, U.S. Department of Agriculture, 1400 Independence Ave. SW, Washington, DC 20250. Include docket number NRCS–21–0001 in your comment.

All comments received, including those received by mail, will be posted without change to *http://www.regulations.gov.*

Additional Information or Comments: Contact Carrie Lindig; telephone (202) 720–1882; email *carrie.lindig@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Long-Term Contracting.

OMB Number: 0578–0013.

Expiration Date of Approval: Three years from approval date.

Type of Request: Extension of a currently approved information collection.

Abstract: The primary objective of NRCS is to work in partnership with the American people and the farming and ranching community to protect, conserve and sustain our nation's natural resources on privately owned land. The purpose of the LongTerm Contracting information collection is to allow for programs to provide Federal technical and financial cost-sharing assistance through long term contracts to eligible producers, landowners, and entities. These long-term contracts provide for making land use changes and installing conservation measures and practices to protect, conserve, develop, and use the soil, water, and related natural resources on private lands. Under the terms of the agreement, the participant agrees to apply, or arrange to apply, the conservation treatment specified in the conservation

plan. In return for this agreement, Federal financial assistance payments are made to the land user, or third party, upon successful application of the conservation treatment. Additionally, NRCS purchases easements for the long-term protection of the property and provides for the protection and management of the property for the life of the easement.

The information collected through this package is used by NRCS to ensure the proper use of program funds. The conservation programs in this information collection that are subject to the requirements of the Paperwork Reduction Act are listed in Table A. No changes or adjustments are proposed at this time, this notice is limited to the request for an extension of the currently approved information collection package used by NRCS for Long-Term Contracting for the programs listed in Table A. Table B shows the burden for those programs subject to the requirements of the Paperwork Reduction Act.

TABLE A—CONSERVATION PROGRAMS SUBJECT TO THE REQUIREMENTS OF THE PAPERWORK REDUCTION ACT

Progr	Description
Emergency Conservation Program (ECP) (7 CFR part 701).	USDA Farm Service Agency's ECP provides emergency funding and technical assistance for farmers and ranchers to rehabilitate farmland damaged by natural disasters and for carrying out emergency water conservation measures in periods of severe drought. Funding for ECP is appropriated by Congress.
Emergency Watershed Program (EWP) (7 CFR part 624).	The EWP was initiated in 1950 and is administered by NRCS. It provides technical and financial assistance to local institutions for the removal of storm and flood debris from stream channels and for the restoration of stream channels and levees to reduce the threat to life and property. The program also provides for establishing permanent easements in floodplains with private landowners.
Healthy Forests Reserve Program (HFRP) (7 CFR part 625).	HFRP is a voluntary program established for the purpose of restoring and enhancing forest ecosystems to: (1) Promote the recovery of threatened and endangered species; (2) improve biodiversity; and (3) enhance carbon sequestration. The HFRP was signed into law as part of the Healthy Forests Restoration Act of 2003 and amended in 2008. The Agricultural Act of 2014 made minor changes to HFRP land eligibility and funding.
Resource Conservation and Development Program (RC&D).	The RC&D was initiated in 1962 and was administered by NRCS. Through this program, NRCS assisted multi-county areas in enhancing conservation, water quality, wildlife habitat, recreation, and rural development. The R&D Program provided technical and limited financial assistance for the planning and installation of approved projects.
Watershed Protection and Flood Prevention Program (WRFPP) (7 CFR part 622).	WPFPP was initiated in 1954 and is administered by NRCS. It assists State and local units of government in flood prevention, watershed protection, and water management. Part of this effort involves the establishment of conservation practices on private lands to reduce erosion, sedimentation, and runoff.

TABLE B—BURDEN FOR REQUIRED PROGRAMS UNDER THE PAPERWORK REDUCTION ACT

Form	Purpose	Program(s)	Number submitted annually
AD–1153	Application	EWP, WPFPP, HFRP	750; Estimated time per participant is 0.30 per response.
AD–1154	Contract or Agreement	EWP, HFRP	150; Estimated time per participant is 0.37 per response.
AD–1155, AD–1155A	Schedule of Practices/Costs and signature sheet.	EWP, WPFPP, HFRP	300; Estimated time per participant is 0.373 per response.
AD–1156	Schedule Modification	EWP, WPFPP, HFRP	25; Estimated time per participant is 0.375 per response.
AD–1157	Option Agreement to Purchase	EWP, HFRP	170; Estimated time per participant is 0.40 per response.
AD–1157A	Option Agreement to Purchase Amendment.	EWP, HFRP	170; Estimated time per participant is 0.40 per response.
AD–1158	Subordination Agreement and Limited Lien Waiver.	EWP, HFRP	100; Estimated time per participant is 0.495 per response.
AD–1159	Notice of Intent to Continue	Not used by any nonexempt pro-grams.	
AD–1160	Compatible Use Authorization	EWP, HFRP	200; Estimated time per participant is 0.40 per response.
AD–1161	Application for Payment	CTA, EWP, HFRP	200; Estimated time per participant is 0.30 per response.
NRCS–CPA–68	Conservation Plan	EWP, WPFPP, HFRP	2,700; Estimated time per participant is 0.75 per response.
NRCS–LTP–13	Status/Contract Review	EWP, HFRP	250; Estimated time per participant is 0.375 per response.
NRCS–LTP–20, NRCS–CPA–260	Warranty Easement Deed, Conservation Easement Deed.	EWP, HFRP	170; Estimated time per participant is 0.40 per response.
NRCS–LTP–70	Agreement for the Purchase of Conservation Easement.	HFRP	50; Estimated time per participant is 0.69 per response.
NRCS–LTP–80	Agreement for the Purchase of Conservation Easement.	EWP	120; Estimated time per participant is 0.69 per response.
NRCS–LTP–151	Contract Violation Notification	EWP, HFRP	20; Estimated time per participant is 0.495 per response.
NRCS–LTP–152	Transfer Agreement	EWP, HFRP	5; Estimated time per participant is 0.495 per response.
NRCS–LTP–153	Agreement Covering Non-Compliance With Provisions of the Contract.	EWP, HFRP	10; Estimated time per participant is 1.5 per response.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.30 to 1.5 hours per response.

Type of Respondents: Program participants.

Estimated Number of Respondents: 5,390.

Estimated Number of Responses: 5,390.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 3,058.70 hours.

Comments are invited on:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information 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 those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to Carrie Lindig, Natural Resources Conservation Service, Easement Programs Division, 1400 Independence Ave. SW, Room 4526–S, Washington, DC 20250. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Terry Cosby,

Acting Chief, Natural Resources Conservation Service.

[FR Doc. 2021–06167 Filed 3–24–21; 8:45 am]

BILLING CODE 3410–16–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Minnesota 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 Minnesota Advisory Committee (Committee) will hold a briefing via web conference on Friday April 2, 2021 at 12:00 p.m. Central Time for the purpose of gathering testimony on Police Practices and civil rights concerns in Minnesota.

DATES: The meeting will be held on:

- Friday, April 2, 2021, at 12:00 p.m. Central Time

Web link: https://civilrights.webex.com/civilrights/j.php?MTID=mc40a85e4a2e33a9160e367682810d10d

Join by phone: 800–360–9509 USA Toll Free

Access Code: 199 851 3415

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. An individual who is 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 *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzm3AAA* under the Commission on Civil Rights, Minnesota 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 address.

Agenda

I. Welcome & Roll Call
II. Chair's Comments
III. Panelists Discussion
IV. Public Comment
VI. Adjournment

Dated: March 22, 2021.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2021–06174 Filed 3–24–21; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Illinois 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 Illinois Advisory Committee (Committee) will hold a meeting via the online platform WebEx on Tuesday, April 13, 2021 at 12:00 p.m. Central Time. The purpose of the meeting is for the Committee to start preparing for their upcoming WebEx briefing on Education and Civil Rights concerns in the state.

DATES: The meeting will be held on:

- Tuesday, April 13, 2021, at 12:00 p.m. Central Time

Web link: https://civilrights.webex.com/civilrights/j.php?MTID=md4d564c28cf610f9e94e7291a3d9bf0d

Join by phone: 800–360–9505 USA Toll Free

Access code: 199 496 5009

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. Individual who is 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 *https://www.facadatabase.gov/FACA/FACAPublicView CommitteeDetails?id=a10t0000001gzlZAAQ* under the Commission on Civil Rights, Illinois 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. Discussion: Education Project
IV. Next Steps
V. Public Comment
VI. Adjournment

Dated: March 22, 2021.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2021–06175 Filed 3–24–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–24–2021]

Foreign-Trade Zone 76—Bridgeport, Connecticut; Application for Reorganization Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Bridgeport Port Authority, grantee of FTZ 76, requesting authority to reorganize the zone under the alternative site framework (ASF) adopted by the FTZ Board (15 CFR Sec. 400.2(c)). The ASF is an option for grantees for the establishment or reorganization of zones and can permit significantly greater flexibility in the designation of new subzones or ''usage-driven'' FTZ sites for operators/users located within a grantee's ''service area'' in the context of the FTZ Board's standard 2,000-acre activation limit for a zone. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally docketed on March 19, 2021.

FTZ 76 was approved by the FTZ Board on March 26, 1982 (Board Order 186, 47 FR 14932, April 7, 1982) and expanded on November 9, 1994 (Board Order 713, 59 FR 59992, November 21, 1994).

The current zone includes the following sites: *Site 1* (3 acres)—Foreign-Trade Zone Industrial Park, 939 Barnum Avenue, Bridgeport; *Site 2* (14 acres)—Campus Office Park, 480 Barnum Avenue, Bridgeport; *Site 3* (36 acres)—Bridgeport Brass Facility, 427 Housatonic Avenue, Bridgeport; *Site 4* (50 acres)—Bridgeport Regional Maritime Complex, 837 Seaview Avenue, Bridgeport; *Site 5* (20 acres)—Cilco Terminal, 315–441 Seaview Avenue, Bridgeport; and, *Site 6* (353 acres)—Remington Woods, 615 Asylum Street, Bridgeport. The zone also includes three subzones: Subzone 76A for ASML US, LLC consisting of five sites in Wilton, Newtown and Bethel; Subzone 76B for MannKind Corporation consisting of two sites in Danbury; and, Subzone 76C for SDI USA, LLC consisting of one site in Meriden.

The grantee's proposed service area under the ASF would include Fairfield and Litchfield Counties as well as a portion of New Haven County, as described in the application. If approved, the grantee would be able to serve sites throughout the service area based on companies' needs for FTZ designation. The application indicates that the proposed service area is within and adjacent to the Bridgeport, Connecticut Customs and Border Protection port of entry.

The applicant is requesting authority to reorganize its existing zone to include existing Site 5 as a ''magnet'' site and reduce the size of the site to 18.3 acres. The applicant is also requesting that existing Subzone 76A become a subzone under the ASF. The application would have no impact on FTZ 76's other subzones.

In accordance with the FTZ Board's regulations, Elizabeth Whiteman of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is May 24, 2021. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to June 8, 2021.

A copy of the application will be available for public inspection in the ''Reading Room'' section of the FTZ Board's website, which is accessible via *www.trade.gov/ftz.* For further information, contact Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov.*

Dated: March 22, 2021.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2021–06184 Filed 3–24–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–557–822]

Utility Scale Wind Towers From Malaysia: Preliminary Affirmative Countervailing Duty Determination

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of utility scale wind towers (wind towers) from Malaysia. The period of investigation is January 1, 2019, through December 31, 2019. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable March 25, 2021.

FOR FURTHER INFORMATION CONTACT: Nathan James 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) 482–5305.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 703(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on November 16, 2020.[1] On December 28, 2020, Commerce postponed the preliminary determination to March 19, 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

[1] *See Utility Scale Wind Towers from India and Malaysia: Initiation of Countervailing Duty Investigations,* 85 FR 73019 (November 16, 2020) (*Initiation Notice*).

[2] *See Utility Scale Wind Towers from India and Malaysia: Postponement of Preliminary Determinations in the Countervailing Duty Investigations,* 85 FR 84302 (December 28, 2020).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination in the Countervailing Duty Investigation of Utility Scale Wind Towers from Malaysia,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

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 *http://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.*

Scope of the Investigation

The product covered by this investigation is wind towers from Malaysia. 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] we set aside a period of time in the *Initiation Notice* for parties to raise issues regarding product coverage (*i.e.,* scope).[5] We did not receive comments concerning the scope of the investigation of wind towers as it appeared in the *Initiation Notice.*

Methodology

Commerce is conducting this investigation in accordance with section 701 of the Act. For each of the subsidy programs found countervailable, Commerce preliminarily determines that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[6]

All-Others Rate

Sections 703(d) and 705(c)(5)(A) of the Act provide that, in the preliminary determination, Commerce shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any zero and *de minimis* rates and any rates based entirely under section 776 of the Act.

In this investigation, Commerce calculated an estimated countervailable subsidy rate for CS Wind, the only individually-examined exporter/producer in this investigation. Because the only individually calculated rate is not zero, *de minimis,* or based entirely on facts otherwise available, the estimated weighted-average rate calculated for CS Wind is the rate assigned to all other producers and exporters, pursuant to section 705(c)(5)(A)(i) of the Act.

Preliminary Determination

Commerce preliminarily determines that the following estimated countervailable subsidy rates exist:

Company	Subsidy rate *ad valorem* (percent)
CS Wind Malaysia Sdn Bhd	6.32
All Others	6.32

Suspension of Liquidation

In accordance with section 703(d)(1)(B) and (d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the rates indicated above.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of its public announcement, or if there is no public announcement, within five days of the date 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. Interested parties will be notified of the deadline for the submission of such case briefs and written comments at a later date. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.[7] Commerce has modified certain of its requirements for serving documents containing business proprietary information until further notice.[8] 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.

International Trade Commission Notification

In accordance with section 703(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its 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 wind towers from Malaysia are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act, and 19 CFR 351.205(c).

[4] *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice,* 85 FR at 73020.

[6] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[7] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[8] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

Dated: March 19, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation consists of certain wind towers, whether or not tapered, and sections thereof. Certain wind towers support the nacelle and rotor blades in a wind turbine with a minimum rated electrical power generation capacity in excess of 100 kilowatts and with a minimum height of 50 meters measured from the base of the tower to the bottom of the nacelle (*i.e.,* where the top of the tower and nacelle are joined) when fully assembled.

A wind tower section consists of, at a minimum, multiple steel plates rolled into cylindrical or conical shapes and welded together (or otherwise attached) to form a steel shell, regardless of coating, end-finish, painting, treatment, or method of manufacture, and with or without flanges, doors, or internal or external components (*e.g.,* flooring/decking, ladders, lifts, electrical buss boxes, electrical cabling, conduit, cable harness for nacelle generator, interior lighting, tool and storage lockers) attached to the wind tower section. Several wind tower sections are normally required to form a completed wind tower.

Wind towers and sections thereof are included within the scope whether or not they are joined with nonsubject merchandise, such as nacelles or rotor blades, and whether or not they have internal or external components attached to the subject merchandise.

Specifically excluded from the scope are nacelles and rotor blades, regardless of whether they are attached to the wind tower. Also excluded are any internal or external components which are not attached to the wind towers or sections thereof, unless those components are shipped with the tower sections.

Merchandise covered by this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 7308.20.0020 or 8502.31.0000. Wind towers of iron or steel are classified under HTSUS 7308.20.0020 when imported separately as a tower or tower section(s). Wind towers may be classified under HTSUS 8502.31.0000 when imported as combination goods with a wind turbine (*i.e.,* accompanying nacelles and/or rotor blades). While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope Comments
IV. Scope of the Investigation
V. Injury Test
VI. Subsidies Valuation
VII. Use of Facts Otherwise Available
VIII. Analysis of Programs
IX. Recommendation

[FR Doc. 2021–06197 Filed 3–24–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–827]

Mattresses From the Socialist Republic of Vietnam: Final 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) determines that imports of mattresses from the Socialist Republic of Vietnam (Vietnam) are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is July 1, 2019, through December 31, 2019.

DATES: Applicable March 25, 2021.

FOR FURTHER INFORMATION CONTACT: Stephen Bailey or Dakota Potts, 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) 482–0193 or (202) 482–0223, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 3, 2020, Commerce published the *Preliminary Determination* in the LTFV investigation of mattresses from Vietnam, in which we also postponed the final determination until March 18, 2021.[1] The petitioners in this investigation are Brooklyn Bedding, Corsicana Mattress Company, Elite Comfort Solutions, FXI, Inc., Innocor, Inc., Kolcraft Enterprises, Inc., Leggett & Platt, Incorporated, the International Brotherhood of Teamsters, and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO (''USW'') (collectively, the petitioners). The mandatory respondents in this investigation are Wanek Furniture Co., Ltd., Millennium Furniture Co., Ltd., and Comfort Bedding Co., Ltd. (collectively, Ashley Group) and Vietnam Glory Home Furnishings Co., Ltd. and Glory (Viet Nam) Industry Co., Ltd. (collectively, Vietnam Glory). We invited interested parties to comment on the *Preliminary Determination.*[2] A summary of the events that occurred since Commerce published the *Preliminary Determination* may be found in the Issues and Decision Memorandum.[3] The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.*

Scope of the Investigation

The products covered by this investigation are mattresses from Vietnam. For a full description of the scope of this investigation, *see* the ''Scope of the Investigation,'' at Appendix I.

Scope Comments

In Commerce's Preliminary Scope Decision Memorandum, we set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope) in scope case briefs or other written comments on scope issues.[4] Certain interested parties commented on the scope of the investigation as it appeared in the Preliminary Scope Decision Memorandum, unchanged from the *Initiation Notice.*[5] For a summary of the product coveragecomments and rebuttal responses submitted to the record for this final determination, and accompanying discussion and analysis of all comments timely received, *see* the Final Scope Memorandum.[6] In the Final

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[1] *See Mattresses from the Socialist Republic of Vietnam: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures,* 85 FR 69591 (November 3, 2020) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (Preliminary Decision Memorandum).

[2] *Id.*

[3] *See* Memorandum, ''Issues and Decision Memorandum for the Final Affirmative Determination in the Less-Than-Fair-Value Investigation of Mattresses from the Socialist Republic of Vietnam,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[4] *See*Memorandum, ''Mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, the Republic of Turkey, the Socialist Republic of Vietnam, and the People's Republic of China: Scope Comments Decision Memorandum for the Preliminary Determination,'' dated October 27, 2020 (Preliminary Scope Decision Memorandum).

[5] *See Mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, the Republic of Turkey, and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations,* 85 FR 23002 (April 24, 2020) (*Initiation Notice*).

[6] *See* Memorandum, ''Mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, the Republic

Continued

Scope Memorandum, Commerce determined that it is not modifying the scope language as it appeared in the *Initiation Notice. See* the scope in Appendix I to this notice.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs that were submitted by parties in this investigation are addressed in the Issues and Decision Memorandum. A list of the issues addressed in the Issues and Decision Memorandum is attached to this notice at Appendix II.

Verification

Commerce was unable to conduct on-site verification of the information relied upon in making its final determination in this investigation. However, we took additional steps in lieu of an on-site verification to verify the information relied upon in making this final determination, in accordance with section 782(i) of the Tariff Act of 1930, as amended (the Act).[7]

Methodology

Commerce conducted this investigation in accordance with section 731 of the Act. Export price was calculated in accordance with section 772(a) of the Act. Constructed export price was calculated in accordance with section 772(b) of the Act. Because Vietnam is a non-market economy within the meaning of section 771(18) of the Act, normal value was calculated in accordance with section 773(c) of the Act. For a full description of the methodology underlying Commerce's determination, *see* the Preliminary Decision Memorandum; *see also* the Issues and Decision Memorandum.

Changes Since the Preliminary Determination

Based on our analysis of the comments received and the information received in lieu of on-site verification, we made certain changes to the margin calculation for Ashley Group. For a discussion of these changes, *see* the Issues and Decision Memorandum.

Vietnam-Wide Entity and Use of Adverse Facts Available

For the reasons explained in the *Preliminary Determination,* we continue to find that the use of adverse facts available (AFA), pursuant to sections 776(a) and (b) of the Act, is warranted in determining the rate for the mandatory respondent, Vietnam Glory, and for the Vietnam-wide entity. In selecting the AFA rate for Vietnam Glory and the Vietnam-wide entity, Commerce's practice is to select a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.[8] For the final determination, we are unable to corroborate the two highest dumping margins calculated in the petition, *i.e.,* 989.90 and 686.59 percent. However, we are able to corroborate the third highest margin calculated in the petition, *i.e.,* 668.38 percent, by examining the U.S. price and normal value that are the basis of the dumping margins alleged in the petition compared to the U.S. prices reported by Ashley Group and the normal values calculated for Ashley Group in this investigation. For the final determination, we are assigning Vietnam Glory and the Vietnam-wide entity, as AFA, the highest dumping margin calculated in the petition which we are able to corroborate using the component method and Ashley Group's record data, a dumping margin of 668.38 percent. For further discussion, *see* the Issues and Decision Memorandum at ''Use of Adverse Facts Available''[9] and the proprietary memorandum accompanying the Issues and Decision Memorandum for a full proprietary analysis.[10]

Separate Rates

We received one comment about our decision in the *Preliminary Determination* to grant separate rate status to 11 companies, including Ashley Group and Vietnam Glory. However, we have not changed our decision from the *Preliminary Determination* for the final determination.[11] The exporters granted separate rate status in this final determination are listed in the table in the ''Final Determination'' section of this notice. We continue to assign the estimated weighted-average dumping margin for Ashley Group to the exporters not individually examined that are entitled to a separate rate. The companies denied a separate rate will be treated as part of the Vietnam-wide entity.

Combination Rates

As explained in the *Initiation Notice* and implemented in the *Preliminary Determination,* we have continued to calculate producer/exporter combination rates for the respondents that are eligible for a separate rate.[12] Policy Bulletin 05.1 describes this practice.[13]

Final Determination

The final estimated weighted-average dumping margins are as follows:

Producer	Exporter	Estimated weighted-average dumping margin (percent)
Cong Ty Tnhn Nem Thien Kim (a.k.a. Better Z's, Ltd.)	Dockter China Limited	144.92
Hava's Co., Ltd	Hava's Co., Ltd	144.92
Cong Ty Tnhn Nem Thien Kim (a.k.a. Better Z's, Ltd.)	Healthcare Sleep Products Limited	144.92
Gesin Vietnam Co., Ltd	Hong Kong Gesin Technology Limited	144.92
Sinomax (Vietnam) Household Products Limited	Sinomax International Trading Limited	144.92
Sinomax (Vietnam) Household Products Limited	Sinomax Macao Commercial Offshore Limited	144.92
Super Foam Vietnam Ltd	Super Foam Vietnam Ltd	144.92

of Turkey, the Socialist Republic of Vietnam, and the People's Republic of China: Final Scope Decision Memorandum,'' dated concurrently with, and hereby adopted by, this notice (Final Scope Memorandum).

[7] *See* Commerce's Letter, ''Antidumping Duty Investigation of Mattresses from Indonesia: Supplemental Questionnaire in Lieu of On-Site Verification,'' dated January 19, 2021.

[8] *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Purified Carboxymethyl Cellulose from Finland,* 69 FR 77216 (December 27, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Purified Carboxymethyl Cellulose from Finland,* 70 FR 28279 (May 17, 2005).

[9] *See* Issues and Decision Memorandum.

[10] *See* Memorandum, ''Corroboration of the Adverse Facts Available Rate for the Final Determination in the Less-Than-Fair-Value Investigation of Mattresses from the Socialist Republic of Vietnam,'' dated concurrently with, and hereby adopted by, this notice.

[11] *See* Issues and Decision Memorandum at Comment 8 for a complete discussion and analysis.

[12] *See Initiation Notice; see also Preliminary Determination.*

[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.*

Producer	Exporter	Estimated weighted-average dumping margin (percent)
Taimei Company Limited (a.k.a. Taimei Co., Ltd)	Taimei Company Limited (a.k.a. Taimei Co., Ltd)	144.92
Tong Li Vietnam Industrial Co., LTD	Tong Li Vietnam Industrial Co., LTD	144.92
Vietnam Glory Home Furnishings Co., Ltd./Glory (Viet Nam) Industry Co., Ltd.	Vietnam Glory Home Furnishings Co.,Ltd./Glory (Viet Nam) Industry Co., Ltd.	668.38
Wanek Furniture Co., Ltd./Millennium Furniture Co., Ltd./ Comfort Bedding Company Limited.	Wanek Furniture Co., Ltd./Millennium Furniture Co., Ltd./ Comfort Bedding Company Limited.	144.92
Vietnam-wide entity		668.38

Disclosure

We intend to disclose to interested parties under Administrative Protective Order (APO), the calculations performed in connection with this final determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of the notice of final determination in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, Commerce will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all appropriate entries of mattresses from Indonesia, as described in Appendix I of this notice, which are entered, or withdrawn from warehouse, for consumption on or after November 3, 2020, the date of publication of the *Preliminary Determination* in the **Federal Register**.

Pursuant to section 735(c)(1)(B)(ii) of the Act and 19 CFR 351.210(d), upon publication of this notice, Commerce will instruct CBP to require a cash deposit for estimated antidumping duties for such entries as follows: (1) for the exporter/producer combinations listed in the table above, the cash deposit rate is equal to the estimated weighted-average dumping margin listed for that combination in the table; (2) for all combinations of Vietnamese exporters/producers not listed in the above table, the cash deposit rate is equal to the estimated weighted-average dumping margin listed in the table for the Vietnam-wide entity; and (3) for all non-Vietnamese exporters not listed in the table above, the cash deposit rate is equal to the cash deposit rate applicable to the Vietnamese exporter/producer combination (or the Vietnam-wide entity) that supplied that non-Vietnamese exporter.

These suspension of liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the International Trade Commission (ITC) of the final affirmative determination of sales at LTFV. Because the final determination is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of subject mattresses, no later than 45 days after this final determination. If the ITC determines that such injury does not exist, this proceeding will be terminated, and all cash deposited for antidumping duties will be refunded. If the ITC determines that such injury does exist, Commerce will issue an antidumping duty order directing CBP to assess, upon further instruction by Commerce, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the ''Continuation of Suspension of Liquidation'' section.

Notification Regarding APO

This notice serves as a reminder to the parties subject to APO of their responsibility concerning the disposition of propriety information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or, alternatively, conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation that is subject to sanction.

Notification to Interested Parties

This determination is issued and published pursuant to sections 735(d) and 777(i)(1) of the Act, and 19 CFR 351.210(c).

Dated: March 18, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The products covered by this investigation are all types of youth and adult mattresses. The term ''mattress'' denotes an assembly of materials that at a minimum includes a ''core,'' which provides the main support system of the mattress, and may consist of innersprings, foam, other resilient filling, or a combination of these materials. Mattresses may also contain: (1) ''upholstery,'' the material between the core and the top panel of the ticking on a single-sided mattress; or between the core and the top and bottom panel of the ticking on a double-sided mattress; and/or (2) ''ticking,'' the outermost layer of fabric or other material (*e.g.,* vinyl) that encloses the core and any upholstery, also known as a cover.

The scope of this investigation is restricted to only ''adult mattresses'' and ''youth mattresses.'' ''Adult mattresses'' are frequently described as ''twin,'' ''extra-long twin,'' ''full,'' ''queen,'' ''king,'' or ''California king'' mattresses. ''Youth mattresses'' are typically described as ''crib,'' ''toddler,'' or ''youth'' mattresses. All adult and youth mattresses are included regardless of size and size description.

The scope encompasses all types of ''innerspring mattresses,'' ''non-innerspring mattresses,'' and ''hybrid mattresses.'' ''Innerspring mattresses'' contain innersprings, a series of metal springs joined together in sizes that correspond to the dimensions of mattresses. Mattresses that contain innersprings are referred to as ''innerspring mattresses'' or ''hybrid mattresses.'' ''Hybrid mattresses'' contain two or more support systems as the core, such as layers of both memory foam and innerspring units.

''Non-innerspring mattresses'' are those that do not contain any innerspring units. They are generally produced from foams (*e.g.,* polyurethane, memory (viscoelastic), latex foam, gel- infused viscoelastic (gel foam), thermobonded polyester, polyethylene) or other resilient filling.

Mattresses covered by the scope of this investigation may be imported independently, as part of furniture or furniture mechanisms (*e.g.,* convertible sofa bed mattresses, sofa bed mattresses imported with sofa bed mechanisms, corner group

mattresses, day-bed mattresses, roll-away bed mattresses, high risers, trundle bed mattresses, crib mattresses), or as part of a set in combination with a ''mattress foundation.'' ''Mattress foundations'' are any base or support for a mattress. Mattress foundations are commonly referred to as ''foundations,'' ''boxsprings,'' ''platforms,'' and/or ''bases.'' Bases can be static, foldable, or adjustable. Only the mattress is covered by the scope if imported as part of furniture, with furniture mechanisms, or as part of a set in combination with a mattress foundation.

Excluded from the scope of this investigation are ''futon'' mattresses. A ''futon'' is a bi-fold frame made of wood, metal, or plastic material, or any combination thereof, that functions as both seating furniture (such as a couch, love seat, or sofa) and a bed. A ''futon mattress'' is a tufted mattress, where the top covering is secured to the bottom with thread that goes completely through the mattress from the top through to the bottom, and it does not contain innersprings or foam. A futon mattress is both the bed and seating surface for the futon.

Also excluded from the scope are airbeds (including inflatable mattresses) and waterbeds, which consist of air- or liquid-filled bladders as the core or main support system of the mattress.

Also excluded is certain multifunctional furniture that is convertible from seating to sleeping, regardless of filler material or components, where that filler material or components are upholstered, integrated into the design and construction of, and inseparable from, the furniture framing, and the outermost layer of the multifunctional furniture converts into the sleeping surface. Such furniture may, and without limitation, be commonly referred to as ''convertible sofas,'' ''sofabeds,'' ''sofa chaise sleepers,'' ''futons,'' ''ottoman sleepers'' or a like description.

Also excluded from the scope of this investigation are any products covered by the existing antidumping duty orders on uncovered innerspring units from China or Vietnam. *See Uncovered Innerspring Units from the People's Republic of China: Notice of Antidumping Duty Order,* 74 FR 7661 (February 19, 2009); *Antidumping Duty Order: Uncovered Innerspring Units from the Socialist Republic of Vietnam,* 73 FR 75391 (December 11, 2008).

Also excluded from the scope of this investigation are bassinet pads with a nominal length of less than 39 inches, a nominal width less than 25 inches, and a nominal depth of less than 2 inches.

Additionally, also excluded from the scope of this investigation are ''mattress toppers.'' A ''mattress topper'' is a removable bedding accessory that supplements a mattress by providing an additional layer that is placed on top of a mattress. Excluded mattress toppers have a height of four inches or less.

The products subject to this investigation are currently properly classifiable under HTSUS subheadings: 9404.21.0010, 9404.21.0013, 9404.29.1005, 9404.29.1013, 9404.29.9085, and 9404.29.9087. Products subject to this investigation may also enter under HTSUS subheadings: 9404.21.0095, 9404.29.1095, 9404.29.9095, 9401.40.0000, and 9401.90.5081. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this investigation is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Use of Adverse Facts Available
V. Changes Since the Preliminary Determination
VI. Discussion of the Issues
Comment 1: Whether to Continue to Apply Total AFA to Vietnam Glory
Comment 2: Whether to Continue to Use Emirates Sleep Financial Statements to Calculate Surrogate Financial Ratios
Comment 3: Whether to Continue to Use Indian Harmonized Tariff Schedule (HTS) Code 9404.20.90 to Value Innerspring Units
Comment 4: Whether to Base Prices for Sleeper Sofa Mattresses on Market Values
Comment 5: Surrogate Value (SV) Classification of Certain Ashley Group Inputs
Comment 6: SAS Programming Errors for U.S. Sales Expenses Related to Sleeper Sofa Mattresses
Comment 7: SAS Programming Errors for Ocean Freight, Marine Insurance, Brokerage and Handling, and Packing Glue
Comment 8: Whether Commerce Should Include Ashley Furniture Industries (AFI) and Ashley Furniture Trading Company (AFTC) in Ashley Group's Combination Cash Deposit Rate
VII. Recommendation

[FR Doc. 2021–06194 Filed 3–24–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–801–002]

Mattresses From Serbia: Final Affirmative Determination of Sales at Less Than Fair Value, and Final Negative Finding of Critical Circumstances

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

SUMMARY: The Department of Commerce (Commerce) determines that imports of mattresses from Serbia are being, or are likely to be, sold in the United States at less than fair value (LTFV) during the period of investigation January 1, 2019, through December 31, 2019.

DATES: Applicable March 25, 2021.

FOR FURTHER INFORMATION CONTACT: Joshua DeMoss, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3362, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 3, 2020, Commerce published the *Preliminary Determination* of sales at LTFV of mattresses from Serbia, in which we also postponed the final determination to March 18, 2021.[1] We invited interested parties to comment on the *Preliminary Determination.* The mandatory respondent in this investigation is Healthcare Europe DOO Ruma (Healthcare). For a complete description of the events that followed the *Preliminary Determination, see* the Issues and Decision Memorandum.[2] The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.*

Scope of the Investigation

The products covered by this investigation are mattresses from Indonesia. For a complete description of the scope of this investigation, *see* the ''Scope of the Investigation'' in Appendix I.

Scope Comments

In Commerce's Preliminary Scope Decision Memorandum, we set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope) in scope case briefs or other written comments on scope issues.[3] Certain

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[1] *See Mattresses from Serbia: 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,* 85 FR 69589 (November 3, 2020) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Affirmative Determination in the Less-Than-Fair-Value Investigation of Mattresses from Serbia,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See* Memorandum, ''Mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, the Republic of Turkey, the Socialist Republic of Vietnam, and the People's Republic of China: Scope Comments Decision Memorandum for the Preliminary Determination,'' dated October 27, 2020 (Preliminary Scope Decision Memorandum).

interested parties commented on the scope of the investigation as it appeared in the Preliminary Scope Decision Memorandum, unchanged from the *Initiation Notice.*[4] For a summary of the product coverage comments and rebuttal responses submitted to the record for this final determination, and accompanying discussion and analysis of all comments timely received, *see* the Final Scope Memorandum.[5] In the Final Scope Memorandum, Commerce determined that it is not modifying the scope language as it appeared in the *Initiation Notice. See* the scope in Appendix I to this notice.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in this investigation are discussed in the Issues and Decision Memorandum. A list of topics included in the Issues and Decision Memorandum is included as Appendix II to this notice.

Verification

Commerce was unable to conduct on-site verification of the information relied upon in making its final determination in this investigation. However, we took additional steps in lieu of an on-site verification to verify the information relied upon in making this final determination, in accordance with section 782(i) of the Tariff Act of 1930, as amended (the Act).[6]

Changes Since the Preliminary Determination

Based on our analysis of the comments received, we made certain changes to the margin calculations for Healthcare. For a complete discussion of these changes, *see* the Issues and Decision Memorandum. We have also revised the all-others rate.

Final Negative Determination of Critical Circumstances

Commerce preliminarily determined that critical circumstances did not exist with respect to imports of mattresses from Healthcare and that critical circumstances did not exist with respect to all other exporters or producers not individually examined.[7] We have not modified our critical circumstances finding for Healthcare for the final determination. Thus, pursuant to section 735(a)(3) of the Act, we find that critical circumstances do not exist with respect to imports of mattresses from Serbia. For a full description of the methodology and results of Commerce's critical circumstances analysis, *see* the Issues and Decision Memorandum.

All-Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated all-others 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 or *de minimis* margins, and margins determined entirely under section 776 of the Act.

Commerce calculated an individual estimated weighted-average dumping margin for Healthcare, the only individually examined exporter/producer in this investigation. Because the only individually calculated dumping margin is not zero, *de minimis,* or based entirely on facts otherwise available, the estimated weighted-average dumping margin calculated for Healthcare is the margin assigned to all other producers and exporters, pursuant to section 735(c)(5)(A) of the Act.

Final Determination

The final estimated weighted-average dumping margins are as follows:

Exporter/producer	Estimated weighted-average dumping margin (percent)
Healthcare Europe DOO Ruma	112.11
All Others	112.11

Disclosure

Commerce intends to disclose to interested parties the calculations performed for this final 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).

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we will direct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of mattresses from Serbia, as described in Appendix I of this notice, which were entered, or withdrawn from warehouse, for consumption on or after November 3, 2020, the date of publication of the affirmative *Preliminary Determination* in the **Federal Register**.

Pursuant to section 735(c)(1)(B)(ii) of the Act and 19 CFR 351.210(d), Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) The cash deposit rate for the company listed above will be equal to the company-specific estimated weighted-average dumping margin determined in this final determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin. These suspension of liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the International Trade Commission (ITC) of the final affirmative determinations of sales at LTFV. Because Commerce's final determination is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determinations as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports, or sales (or the likelihood of sales) for importation of mattresses from Serbia no later than 45 days after our final determination. If the ITC determines that such injury does not exist, these proceedings will be terminated, and all cash deposits will be refunded. If the ITC determines that such injury does exist, Commerce will issue antidumping duty orders directing CBP to assess, upon further instruction by Commerce, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective

[4] *See Mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, the Republic of Turkey, and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations,* 85 FR 23002 (April 24, 2020) (*Initiation Notice*).

[5] *See* Memorandum, ''Mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, the Republic of Turkey, the Socialist Republic of Vietnam, and the People's Republic of China: Final Scope Decision Memorandum,'' dated concurrently with, and hereby adopted by, this notice (Final Scope Memorandum).

[6] *See* Commerce's Letter, Questionnaire In-Lieu-of-Onsite-Verification, dated February 3, 2021; *see also* Healthcare's Letter, ''Investigation of Mattresses from Serbia: Healthcare's Response to the Department's Questionnaire in Lieu of On-Site Verification,'' dated February 11, 2021.

[7] *See Preliminary Determination,* 85 FR at 69589, and accompanying PDM at 5–7.

date of the suspension of liquidation, as discussed above in the ''Continuation of Suspension of Liquidation'' section.

Notification Regarding Administrative Protective Orders

This notice serves as a final reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act and 19 CFR 351.210(c).

Dated: March 18, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The products covered by this investigation are all types of youth and adult mattresses. The term ''mattress'' denotes an assembly of materials that at a minimum includes a ''core,'' which provides the main support system of the mattress, and may consist of innersprings, foam, other resilient filling, or a combination of these materials. Mattresses may also contain: (1) ''upholstery,'' the material between the core and the top panel of the ticking on a single-sided mattress; or between the core and the top and bottom panel of the ticking on a double-sided mattress; and/or (2) ''ticking,'' the outermost layer of fabric or other material (*e.g.,* vinyl) that encloses the core and any upholstery, also known as a cover.

The scope of this investigation is restricted to only ''adult mattresses'' and ''youth mattresses.'' ''Adult mattresses'' are frequently described as ''twin,'' ''extra-long twin,'' ''full,'' ''queen,'' ''king,'' or ''California king'' mattresses. ''Youth mattresses'' are typically described as ''crib,'' ''toddler,'' or ''youth'' mattresses. All adult and youth mattresses are included regardless of size and size description.

The scope encompasses all types of ''innerspring mattresses,'' ''non-innerspring mattresses,'' and ''hybrid mattresses.'' ''Innerspring mattresses'' contain innersprings, a series of metal springs joined together in sizes that correspond to the dimensions of mattresses. Mattresses that contain innersprings are referred to as ''innerspring mattresses'' or ''hybrid mattresses.'' ''Hybrid mattresses'' contain two or more support systems as the core, such as layers of both memory foam and innerspring units.

''Non-innerspring mattresses'' are those that do not contain any innerspring units. They are generally produced from foams (*e.g.,* polyurethane, memory (viscoelastic), latex foam, gel- infused viscoelastic (gel foam), thermobonded polyester, polyethylene) or other resilient filling.

Mattresses covered by the scope of this investigation may be imported independently, as part of furniture or furniture mechanisms (*e.g.,* convertible sofa bed mattresses, sofa bed mattresses imported with sofa bed mechanisms, corner group mattresses, day-bed mattresses, roll-away bed mattresses, high risers, trundle bed mattresses, crib mattresses), or as part of a set in combination with a ''mattress foundation.'' ''Mattress foundations'' are any base or support for a mattress. Mattress foundations are commonly referred to as ''foundations,'' ''boxsprings,'' ''platforms,'' and/or ''bases.'' Bases can be static, foldable, or adjustable. Only the mattress is covered by the scope if imported as part of furniture, with furniture mechanisms, or as part of a set in combination with a mattress foundation.

Excluded from the scope of this investigation are ''futon'' mattresses. A ''futon'' is a bi-fold frame made of wood, metal, or plastic material, or any combination thereof, that functions as both seating furniture (such as a couch, love seat, or sofa) and a bed. A ''futon mattress'' is a tufted mattress, where the top covering is secured to the bottom with thread that goes completely through the mattress from the top through to the bottom, and it does not contain innersprings or foam. A futon mattress is both the bed and seating surface for the futon.

Also excluded from the scope are airbeds (including inflatable mattresses) and waterbeds, which consist of air- or liquid-filled bladders as the core or main support system of the mattress.

Also excluded is certain multifunctional furniture that is convertible from seating to sleeping, regardless of filler material or components, where that filler material or components are upholstered, integrated into the design and construction of, and inseparable from, the furniture framing, and the outermost layer of the multifunctional furniture converts into the sleeping surface. Such furniture may, and without limitation, be commonly referred to as ''convertible sofas,'' ''sofabeds,'' ''sofa chaise sleepers,'' ''futons,'' ''ottoman sleepers'' or a like description.

Also excluded from the scope of this investigation are any products covered by the existing antidumping duty orders on uncovered innerspring units from China or Vietnam. *See Uncovered Innerspring Units from the People's Republic of China: Notice of Antidumping Duty Order,* 74 FR 7661 (February 19, 2009); *Antidumping Duty Order: Uncovered Innerspring Units from the Socialist Republic of Vietnam,* 73 FR 75391 (December 11, 2008).

Also excluded from the scope of this investigation are bassinet pads with a nominal length of less than 39 inches, a nominal width less than 25 inches, and a nominal depth of less than 2 inches.

Additionally, also excluded from the scope of this investigation are ''mattress toppers.'' A ''mattress topper'' is a removable bedding accessory that supplements a mattress by providing an additional layer that is placed on top of a mattress. Excluded mattress toppers have a height of four inches or less.

The products subject to this investigation are currently properly classifiable under HTSUS subheadings: 9404.21.0010, 9404.21.0013, 9404.29.1005, 9404.29.1013, 9404.29.9085, and 9404.29.9087. Products subject to this investigation may also enter under HTSUS subheadings: 9404.21.0095, 9404.29.1095, 9404.29.9095, 9401.40.0000, and 9401.90.5081. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this investigation is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Final Negative Determination of Critical Circumstances
V. Changes Since the Preliminary Determination
VI. Discussion of the Issues
Comment 1: Whether Commerce's Application of the Major Input and Transactions Disregarded Rule Is Unreasonable and Flawed
Comment 2: Whether Commerce Should Continue to Find Healthcare and EverRest are Affiliated
Comment 3: Whether Commerce Appropriately Initiated an MNC Provision Inquiry
Comment 4: Whether Commerce Appropriately Denied Healthcare's Level of Trade Adjustment
VII. Recommendation

[FR Doc. 2021–06192 Filed 3–24–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–555–001]

Mattresses From Cambodia: Final Affirmative Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances

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

SUMMARY: The Department of Commerce (Commerce) determines that imports of mattresses from Cambodia are being, or are likely to be, sold in the United States at less than fair value (LTFV) for the period of investigation January 1, 2019, through December 31, 2019.

DATES: Applicable March 25, 2021.

FOR FURTHER INFORMATION CONTACT: John McGowan or Preston Cox, AD/CVD

Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3019 or (202) 482–5041, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 3, 2020, Commerce published the *Preliminary Determination* in the LTFV investigation of mattresses from Cambodia, in which we also postponed the final determination until March 18, 2021.[1] We invited interested parties to comment on the *Preliminary Determination.* A summary of the events that occurred since Commerce published the *Preliminary Determination,* as well as a full discussion of the issues raised by parties for this final determination, may be found in the Issues and Decision Memorandum.[2] The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.*

Scope of the Investigation

The products covered by this investigation are mattresses from Cambodia. For a complete description of the scope of this investigation, *see* the ''Scope of the Investigation'' in Appendix I.

Scope Comments

In Commerce's Preliminary Scope Decision Memorandum, we set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope) in scope case briefs or other written comments on scope issues.[3] Certain interested parties commented on the scope of the investigation as it appeared in the Preliminary Scope Decision Memorandum, unchanged from the *Initiation Notice.*[4] For a summary of the product coverage comments and rebuttal responses submitted to the record for this final determination, and accompanying discussion and analysis of all comments timely received, *see* the Final Scope Memorandum.[5] In the Final Scope Memorandum, Commerce determined that it is not modifying the scope language as it appeared in the *Initiation Notice. See* the scope in Appendix I to this notice.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs that were submitted by parties in this investigation are addressed in the Issues and Decision Memorandum. A list of the issues addressed in the Issues and Decision Memorandum is attached at Appendix II.

Verification

Commerce was unable to conduct on-site verification of the information relied upon in making its final determination in this investigation. However, we took additional steps in lieu of an on-site verification to verify the information relied upon in making this final determination, in accordance with section 782(i) of the Tariff Act of 1930, as amended (the Act).[6]

Changes Since the Preliminary Determination

Based on our review and analysis of the comments received from interested parties, we made certain changes to the margin calculations for Best Mattresses/Rose Lion.[7] For a discussion of these changes, *see* the Issues and Decision Memorandum. In light of the change to the weighted-average dumping margin of Best Mattress/Rose Lion, we have also revised the all-others rate.

Final Negative Determination of Critical Circumstances

Commerce preliminarily determined that critical circumstances existed with respect to imports of mattresses from Best Mattresses/Rose Lion and that critical circumstances did not exist with respect to all other exporters or producers not individually examined.[8] We modified our critical circumstances finding for Best Mattresses/Rose Lion for the final determination. Thus, pursuant to section 735(a)(3) of the Act, we find that critical circumstances do not exist with respect to imports of mattresses from Cambodia. For a full description of the methodology and results of Commerce's critical circumstances analysis, *see* the Issues and Decision Memorandum.

All-Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated weighted-average dumping margin for all other producers and exporters not individually investigated shall be equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding rates that are zero, *de minimis,* or determined entirely under section 776 of the Act.

Commerce calculated an individual estimated weighted-average dumping margin for Best Mattresses/Rose Lion, the only individually examined exporter/producer in this investigation. Because the only individually calculated dumping margin is not zero, *de minimis,* or based entirely on facts otherwise available, the estimated weighted-average dumping margin calculated for Best Mattresses/Rose Lion is the margin assigned to all other producers and exporters, pursuant to section 735(c)(5)(A) of the Act.

Final Determination

The final estimated weighted-average dumping margins are as follows:

Exporter/producer	Estimated weighted-average dumping margin (percent)
Best Mattresses International Company Limited/Rose Lion Furniture International	45.34

[1] *See Mattresses from Cambodia: 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 69594 (November 3, 2020) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Affirmative Determination in the Less-Than-Fair-Value Investigation of Mattresses from Cambodia,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See* Memorandum, ''Mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, the Republic of Turkey, the Socialist Republic of Vietnam, and the People's Republic of China: Scope Comments Decision Memorandum for the Preliminary Determination,'' dated October 27, 2020 (Preliminary Scope Decision Memorandum).

[4] *See Mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, the Republic of Turkey, and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations,* 85 FR 23002 (April 24, 2020) (*Initiation Notice*).

[5] See Memorandum, ''Mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, the Republic of Turkey, the Socialist Republic of Vietnam, and the People's Republic of China: Final Scope Decision Memorandum,'' dated concurrently with, and hereby adopted by, this notice (Final Scope Memorandum).

[6] *See* Commerce's Letter, dated December 15, 2020.

[7] In the *Preliminary Determination,* Commerce determined that the two mandatory respondents (*i.e.,* Best Mattresses International Company Limited (Best Mattresses) and Rose Lion Furniture International Company Limited (Rose Lion)) are affiliated, pursuant to sections 771(33)(A) and (F) of the Act, and to treat them as a single entity, pursuant to 19 CFR 351.401(f). For a discussion of this analysis, *see* PDM at 4–5.

[8] *See Preliminary Determination,* 85 FR at 69595, and accompanying PDM at 5–7.

Exporter/producer	Estimated weighted-average dumping margin (percent)
All Others	45.34

Disclosure

We intend to disclose to parties in this proceeding the calculations performed for this final determination within five days of the date of publication of this notice, in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, Commerce will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all appropriate entries of mattresses from Cambodia, as described in Appendix I of this notice, which are entered, or withdrawn from warehouse, for consumption on or after November 3, 2020, the date of publication of the *Preliminary Determination* in the **Federal Register**.

Pursuant to section 735(c)(1)(B)(ii) of the Act and 19 CFR 351.210(d), upon publication of this notice, Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) The cash deposit rate for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margin determined in this final determination; (2) if the exporter is not a respondent identified above but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin. These suspension-of-liquidation instructions will remain in effect until further notice.

Further, because our final critical circumstances determination is negative, in accordance with section 735(c)(3) of the Act, we will instruct CBP to terminate the retroactive suspension of liquidation ordered at the *Preliminary Determination* for Best Mattresses/Rose Lion and to refund any cash deposits required with respect to entries of shipments of subject merchandise covered by the retroactive suspension of liquidation.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the International Trade Commission (ITC) of the final affirmative determination of sales at LTFV. Because Commerce's final determination is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of mattresses from Cambodia no later than 45 days after this final determination. If the ITC determines that such injury does not exist, this proceeding will be terminated, and all cash deposits posted will be refunded and suspension of liquidation will be lifted. If the ITC determines that such injury does exist, Commerce will issue an antidumping duty order directing CBP to assess, upon further instruction by Commerce, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the ''Continuation of Suspension of Liquidation'' section.

Notification Regarding Administrative Protective Orders (APO)

This notice will serve as a reminder to parties subject to an administrative protective order of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act, and 19 CFR 351.210(c).

Dated: March 18, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The products covered by this investigation are all types of youth and adult mattresses. The term ''mattress'' denotes an assembly of materials that at a minimum includes a ''core,'' which provides the main support system of the mattress, and may consist of innersprings, foam, other resilient filling, or a combination of these materials. Mattresses may also contain: (1) ''upholstery,'' the material between the core and the top panel of the ticking on a single-sided mattress; or between the core and the top and bottom panel of the ticking on a double-sided mattress; and/or (2) ''ticking,'' the outermost layer of fabric or other material (*e.g.,* vinyl) that encloses the core and any upholstery, also known as a cover.

The scope of this investigation is restricted to only ''adult mattresses'' and ''youth mattresses.'' ''Adult mattresses'' are frequently described as ''twin,'' ''extra-long twin,'' ''full,'' ''queen,'' ''king,'' or ''California king'' mattresses. ''Youth mattresses'' are typically described as ''crib,'' ''toddler,'' or ''youth'' mattresses. All adult and youth mattresses are included regardless of size and size description.

The scope encompasses all types of ''innerspring mattresses,'' ''non-innerspring mattresses,'' and ''hybrid mattresses.'' ''Innerspring mattresses'' contain innersprings, a series of metal springs joined together in sizes that correspond to the dimensions of mattresses. Mattresses that contain innersprings are referred to as ''innerspring mattresses'' or ''hybrid mattresses.'' ''Hybrid mattresses'' contain two or more support systems as the core, such as layers of both memory foam and innerspring units.

''Non-innerspring mattresses'' are those that do not contain any innerspring units. They are generally produced from foams (*e.g.,* polyurethane, memory (viscoelastic), latex foam, gel- infused viscoelastic (gel foam), thermobonded polyester, polyethylene) or other resilient filling.

Mattresses covered by the scope of this investigation may be imported independently, as part of furniture or furniture mechanisms (*e.g.,* convertible sofa bed mattresses, sofa bed mattresses imported with sofa bed mechanisms, corner group mattresses, day-bed mattresses, roll-away bed mattresses, high risers, trundle bed mattresses, crib mattresses), or as part of a set in combination with a ''mattress foundation.'' ''Mattress foundations'' are any base or support for a mattress. Mattress foundations are commonly referred to as ''foundations,'' ''boxsprings,'' ''platforms,'' and/or ''bases.'' Bases can be static, foldable, or adjustable. Only the mattress is covered by the scope if imported as part of furniture, with furniture mechanisms, or as part of a set in combination with a mattress foundation.

Excluded from the scope of this investigation are ''futon'' mattresses. A ''futon'' is a bi-fold frame made of wood, metal, or plastic material, or any combination thereof, that functions as both seating furniture (such as a couch, love seat, or sofa) and a bed. A ''futon mattress'' is a tufted mattress, where the top covering is secured to the bottom with thread that goes completely through the mattress from the top through to the bottom, and it does not contain innersprings or foam. A futon mattress is both the bed and seating surface for the futon.

Also excluded from the scope are airbeds (including inflatable mattresses) and

waterbeds, which consist of air- or liquid-filled bladders as the core or main support system of the mattress.

Also excluded is certain multifunctional furniture that is convertible from seating to sleeping, regardless of filler material or components, where that filler material or components are upholstered, integrated into the design and construction of, and inseparable from, the furniture framing, and the outermost layer of the multifunctional furniture converts into the sleeping surface. Such furniture may, and without limitation, be commonly referred to as ''convertible sofas,'' ''sofabeds,'' ''sofa chaise sleepers,'' ''futons,'' ''ottoman sleepers'' or a like description.

Also excluded from the scope of this investigation are any products covered by the existing antidumping duty orders on uncovered innerspring units from China or Vietnam. *See Uncovered Innerspring Units from the People's Republic of China: Notice of Antidumping Duty Order,* 74 FR 7661 (February 19, 2009); *Antidumping Duty Order: Uncovered Innerspring Units from the Socialist Republic of Vietnam,* 73 FR 75391 (December 11, 2008).

Also excluded from the scope of this investigation are bassinet pads with a nominal length of less than 39 inches, a nominal width less than 25 inches, and a nominal depth of less than 2 inches.

Additionally, also excluded from the scope of this investigation are ''mattress toppers.'' A ''mattress topper'' is a removable bedding accessory that supplements a mattress by providing an additional layer that is placed on top of a mattress. Excluded mattress toppers have a height of four inches or less.

The products subject to this investigation are currently properly classifiable under HTSUS subheadings: 9404.21.0010, 9404.21.0013, 9404.29.1005, 9404.29.1013, 9404.29.9085, and 9404.29.9087. Products subject to this investigation may also enter under HTSUS subheadings: 9404.21.0095, 9404.29.1095, 9404.29.9095, 9401.40.0000, and 9401.90.5081. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this investigation is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Scope Comments
V. Scope of the Investigation
VI. Final Negative Determination of Critical Circumstances
VII. Changes Since the Preliminary Determination
VIII. Discussion of the Issues
IX. Recommendation

[FR Doc. 2021–06188 Filed 3–24–21; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–898]

Utility Scale Wind Towers From India: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With Final Antidumping Duty Determination

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of utility scale wind towers (wind towers) from India. The period of investigation is April 1, 2019, through March 31, 2020. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable March 25, 2021.

FOR FURTHER INFORMATION CONTACT: David Crespo or Melissa Kinter, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3693 or (202) 482–1413, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 703(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on November 16, 2020.[1] On December 28, 2020, Commerce postponed the preliminary determination of this investigation, and the revised deadline is now March 19, 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 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 *http://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.*

Scope of the Investigation

The product covered by this investigation is wind towers from India. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the *Preamble* to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage, (*i.e.,* scope).[5] No interested party commented on the scope of the investigation as it appeared in the *Initiation Notice.*

Methodology

Commerce is conducting this investigation in accordance with section 701 of the Act. For each of the subsidy programs found countervailable, Commerce preliminarily determines that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[6]

Commerce notes that, in making these findings, it relied, in part, on facts available, and, because it finds that one or more respondents did not act to the best of their ability to respond to Commerce's requests for information, it drew an adverse inference where appropriate in selecting from among the facts otherwise available.[7] For further information, *see* ''Use of Facts Otherwise Available and Adverse Inferences'' in the Preliminary Decision Memorandum.

Alignment

As noted in the Preliminary Decision Memorandum, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), Commerce is aligning the final countervailing duty (CVD) determination in this investigation with the final determination in the companion antidumping duty (AD) investigation of wind towers from India

[1] *See Utility Scale Wind Towers from India and Malaysia: Initiation of Countervailing Duty Investigations,* 85 FR 73019 (November 16, 2020) (*Initiation Notice*).

[2] *See Utility Scale Wind Towers from India and Malaysia: Postponement of Preliminary Determinations in the Countervailing Duty Investigations,* 85 FR 84302 (December 28, 2020).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination of the Countervailing Duty Investigation of Utility Scale Wind Towers from India,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice.*

[6] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[7] *See* sections 776(a) and (b) of the Act.

based on a request made by the petitioner.[8] Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be issued no later than August 2, 2021, unless postponed.

All-Others Rate

Sections 703(d) and 705(c)(5)(A) of the Act provide that in the preliminary determination, Commerce shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any zero and *de minimis* rates and any rates based entirely under section 776 of the Act.

Commerce calculated an individual estimated countervailable subsidy rate for Vestas Wind Technology India Private Limited (Vestas), the only individually examined exporter/producer in this investigation. Because the rate calculated for Vestas is not zero, *de minimis*, or based entirely on facts otherwise available, it is the rate assigned to all-other producers and exporters, pursuant to section 705(c)(5)(A)(i) of the Act.

Preliminary Determination

Commerce preliminarily determines that the following estimated countervailable subsidy rates exist:

Company	Subsidy rate (percent)
Vestas Wind Technology India Private Limited	3.74
Naiks Brass & Iron Works *	397.16
Nordex India Pvt *	397.16
Prommada Hindustan *	397.16
Suzlon Energy *	397.16
Vinayaka Energy Tek *	397.16
Wish Energy Solutions Pvt Ltd *	397.16
Zeeco India Pvt. Ltd *	397.16
All Others	3.74

* Rate based on adverse facts available.

Suspension of Liquidation

In accordance with section 703(d)(1)(B) and (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 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**. Further, pursuant to 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the rates indicated above.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of its public announcement, or if there is no public announcement, within five days of the date 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. However, Commerce is currently unable to conduct on-site verification of the information relied upon in making its final determination in this investigation. Accordingly, we intend to take additional steps in lieu of on-site verification. Commerce will notify interested parties of any additional documentation or information required.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance. Interested parties will be notified of the timeline for the submission of such case briefs and written comments at a later date. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.[9] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

International Trade Commission Notification

In accordance with section 703(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its 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.

Notification to Interested Parties

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act, and 19 CFR 351.205(c).

Dated: March 19, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation consists of certain wind towers, whether or not tapered, and sections thereof. Certain wind towers support the nacelle and rotor blades in a wind turbine with a minimum rated electrical power generation capacity in excess of 100 kilowatts and with a minimum height of 50 meters measured from the base of the tower to the bottom of the nacelle (*i.e.,* where the top of the tower and nacelle are joined) when fully assembled.

A wind tower section consists of, at a minimum, multiple steel plates rolled into cylindrical or conical shapes and welded together (or otherwise attached) to form a steel shell, regardless of coating, end-finish, painting, treatment, or method of manufacture, and with or without flanges, doors, or internal or external components (*e.g.,* flooring/decking, ladders, lifts, electrical buss boxes, electrical cabling, conduit, cable harness for nacelle generator, interior lighting, tool and storage lockers) attached to the wind tower section. Several wind tower sections are normally required to form a completed wind tower.

Wind towers and sections thereof are included within the scope whether or not they are joined with nonsubject merchandise, such as nacelles or rotor blades, and whether or not they have internal or external components attached to the subject merchandise.

Specifically excluded from the scope are nacelles and rotor blades, regardless of whether they are attached to the wind tower. Also excluded are any internal or external components which are not attached to the wind towers or sections thereof, unless those components are shipped with the tower sections.

Merchandise covered by this investigation is currently classified in the Harmonized

[8] *See* Petitioner's Letter, ''Utility Scale Wind Towers from India: Request to Align Countervailing Duty Investigation Final Determination with Antidumping Duty Investigation Final Determination,'' dated March 16, 2021.

[9] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

Tariff Schedule of the United States (HTSUS) under subheading 7308.20.0020 or 8502.31.0000. Wind towers of iron or steel are classified under HTSUS 7308.20.0020 when imported separately as a tower or tower section(s). Wind towers may be classified under HTSUS 8502.31.0000 when imported as combination goods with a wind turbine (*i.e.,* accompanying nacelles and/or rotor blades). While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope Comments
IV. Scope of the Investigation
V. Injury Test
VI. Subsidies Valuation
VII. Use of Facts Otherwise Available and Adverse Inferences
VIII. Analysis of Programs
IX. Recommendation

[FR Doc. 2021–06196 Filed 3–24–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–560–836]

Mattresses From Indonesia: Final 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) determines that imports of mattresses from Indonesia are being, or are likely to be, sold in the United States at less than fair value (LTFV) for the period of investigation January 1, 2019, through December 31, 2019.

DATES: Applicable March 25, 2021.

FOR FURTHER INFORMATION CONTACT: Janae Martin or Brian Smith, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0238 or (202) 482–1766, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 3, 2020, Commerce published the *Preliminary Determination* in the LTFV investigation of mattresses from Indonesia, in which we also postponed the final determination until March 18, 2021.[1] We invited interested parties to comment on the *Preliminary Determination.* A summary of the events that occurred since Commerce published the *Preliminary Determination,* may be found in the Issues and Decision Memorandum.[2] The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.*

Scope of the Investigation

The products covered by this investigation are mattresses from Indonesia. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In Commerce's Preliminary Scope Decision Memorandum, we set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope) in scope case briefs or other written comments on scope issues.[3] Certain interested parties commented on the scope of the investigation as it appeared in the Preliminary Scope Decision Memorandum, unchanged from the *Initiation Notice.*[4] For a summary of the product coverage comments and rebuttal responses submitted to the record for this final determination, and accompanying discussion and analysis of all comments timely received, *see* the Final Scope Memorandum.[5] In the Final Scope Memorandum, Commerce determined that it is not modifying the scope language as it appeared in the *Initiation Notice. See* Appendix I.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs that were submitted by parties in this investigation are addressed in the Issues and Decision Memorandum. A list of the issues addressed in the Issues and Decision Memorandum is provided in Appendix II.

Verification

Commerce was unable to conduct on-site verification of the information relied upon in making its final determination in this investigation. However, we took additional steps in lieu of an on-site verification to verify the information relied upon in making this final determination, in accordance with section 782(i) of the Tariff Act of 1930, as amended (the Act).[6]

Changes Since the Preliminary Determination

Based on our review and analysis of the comments received from interested parties, we made adjustments to PT Zinus Global Indonesia's (Zinus) cost of production and U.S. sales prices. For a discussion of these changes, see the Issues and Decision Memorandum.

All-Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated weighted-average dumping margin for all other producers and exporters not individually investigated shall be equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated excluding rates that are zero, *de minimis,* or determined entirely under section 776 of the Act. Commerce calculated an individual estimated weighted-average dumping margin for Zinus, the only individually examined exporter/producer in this investigation. Because the only individually calculated dumping margin is not zero, *de minimis,* or based entirely on facts otherwise available, the estimated weighted-average dumping margin calculated for Zinus is the margin assigned to all other producers and

[1] *See Mattresses from Indonesia: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures,* 85 FR 69597 (November 3, 2020) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Affirmative Determination in the Less-Than-Fair-Value Investigation of Mattresses from Indonesia,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See* Memorandum, ''Mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, the Republic of Turkey, the Socialist Republic of Vietnam, and the People's Republic of China: Scope Comments Decision Memorandum for the Preliminary Determination,'' dated October 27, 2020 (Preliminary Scope Decision Memorandum).

[4] *See Mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, the Republic of Turkey, and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations,* 85 FR 23002 (April 24, 2020) (*Initiation Notice*).

[5] *See* Memorandum, ''Mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, the Republic of Turkey, the Socialist Republic of Vietnam, and the People's Republic of China: Final Scope Decision Memorandum,'' dated concurrently with, and hereby adopted by, this notice (Final Scope Memorandum).

[6] *See* Commerce's Letter, ''Antidumping Duty Investigation of Mattresses from Indonesia: Supplemental Questionnaire in Lieu of On-Site Verification,'' dated January 19, 2021.

exporters, pursuant to section 735(c)(5)(A) of the Act.

Final Determination

The final estimated weighted-average dumping margins are as follows:

Exporter/producer	Estimated weighted-average dumping margin (percent)
PT Zinus Global Indonesia	2.22
All-Others	2.22

Disclosure

We intend to disclose to parties in this proceeding the calculations performed for this final determination within five days of the date of publication of this notice, in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, Commerce will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all appropriate entries of mattresses from Indonesia, as described in Appendix I of this notice, which are entered, or withdrawn from warehouse, for consumption on or after November 3, 2020, the date of publication of the *Preliminary Determination* in the **Federal Register**.

Pursuant to section 735(c)(1)(B)(ii) of the Act and 19 CFR 351.210(d), upon publication of this notice, Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) The cash deposit rate for the respondent listed above will be equal to the company-specific estimated weighted-average dumping margin determined in this final determination; (2) if the exporter is not a respondent identified above but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin. These suspension-of-liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the International Trade Commission (ITC) of the final affirmative determination of sales at LTFV. Because Commerce's final determination is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of mattresses from Indonesia no later than 45 days after this final determination. If the ITC determines that such injury does not exist, this proceeding will be terminated, and all cash deposits posted will be refunded and suspension of liquidation will be lifted. If the ITC determines that such injury does exist, Commerce will issue an antidumping duty order directing CBP to assess, upon further instruction by Commerce, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the ''Continuation of Suspension of Liquidation'' section.

Notification Regarding Administrative Protective Orders (APO)

This notice will serve as a reminder to the parties subject to APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act, and 19 CFR 351.210(c).

Dated: March 18, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The products covered by this investigation are all types of youth and adult mattresses. The term ''mattress'' denotes an assembly of materials that at a minimum includes a ''core,'' which provides the main support system of the mattress, and may consist of innersprings, foam, other resilient filling, or a combination of these materials. Mattresses may also contain: (1) ''upholstery,'' the material between the core and the top panel of the ticking on a single-sided mattress; or between the core and the top and bottom panel of the ticking on a double-sided mattress; and/or (2) ''ticking,'' the outermost layer of fabric or other material (*e.g.,* vinyl) that encloses the core and any upholstery, also known as a cover.

The scope of this investigation is restricted to only ''adult mattresses'' and ''youth mattresses.'' ''Adult mattresses'' are frequently described as ''twin,'' ''extra-long twin,'' ''full,'' ''queen,'' ''king,'' or ''California king'' mattresses. ''Youth mattresses'' are typically described as ''crib,'' ''toddler,'' or ''youth'' mattresses. All adult and youth mattresses are included regardless of size and size description.

The scope encompasses all types of ''innerspring mattresses,'' ''non-innerspring mattresses,'' and ''hybrid mattresses.'' ''Innerspring mattresses'' contain innersprings, a series of metal springs joined together in sizes that correspond to the dimensions of mattresses. Mattresses that contain innersprings are referred to as ''innerspring mattresses'' or ''hybrid mattresses.'' ''Hybrid mattresses'' contain two or more support systems as the core, such as layers of both memory foam and innerspring units.

''Non-innerspring mattresses'' are those that do not contain any innerspring units. They are generally produced from foams (*e.g.,* polyurethane, memory (viscoelastic), latex foam, gel- infused viscoelastic (gel foam), thermobonded polyester, polyethylene) or other resilient filling.

Mattresses covered by the scope of this investigation may be imported independently, as part of furniture or furniture mechanisms (*e.g.,* convertible sofa bed mattresses, sofa bed mattresses imported with sofa bed mechanisms, corner group mattresses, day-bed mattresses, roll-away bed mattresses, high risers, trundle bed mattresses, crib mattresses), or as part of a set in combination with a ''mattress foundation.'' ''Mattress foundations'' are any base or support for a mattress. Mattress foundations are commonly referred to as ''foundations,'' ''boxsprings,'' ''platforms,'' and/or ''bases.'' Bases can be static, foldable, or adjustable. Only the mattress is covered by the scope if imported as part of furniture, with furniture mechanisms, or as part of a set in combination with a mattress foundation.

Excluded from the scope of this investigation are ''futon'' mattresses. A ''futon'' is a bi-fold frame made of wood, metal, or plastic material, or any combination thereof, that functions as both seating furniture (such as a couch, love seat, or sofa) and a bed. A ''futon mattress'' is a tufted mattress, where the top covering is secured to the bottom with thread that goes completely through the mattress from the top through to the bottom, and it does not contain innersprings or foam. A futon mattress is both the bed and seating surface for the futon.

Also excluded from the scope are airbeds (including inflatable mattresses) and waterbeds, which consist of air- or liquid-filled bladders as the core or main support system of the mattress.

Also excluded is certain multifunctional furniture that is convertible from seating to

sleeping, regardless of filler material or components, where that filler material or components are upholstered, integrated into the design and construction of, and inseparable from, the furniture framing, and the outermost layer of the multifunctional furniture converts into the sleeping surface. Such furniture may, and without limitation, be commonly referred to as ''convertible sofas,'' ''sofabeds,'' ''sofa chaise sleepers,'' ''futons,'' ''ottoman sleepers'' or a like description.

Also excluded from the scope of this investigation are any products covered by the existing antidumping duty orders on uncovered innerspring units from China or Vietnam. *See Uncovered Innerspring Units from the People's Republic of China: Notice of Antidumping Duty Order,* 74 FR 7661 (February 19, 2009); *Antidumping Duty Order: Uncovered Innerspring Units from the Socialist Republic of Vietnam,* 73 FR 75391 (December 11, 2008).

Also excluded from the scope of this investigation are bassinet pads with a nominal length of less than 39 inches, a nominal width less than 25 inches, and a nominal depth of less than 2 inches.

Additionally, also excluded from the scope of this investigation are ''mattress toppers.'' A ''mattress topper'' is a removable bedding accessory that supplements a mattress by providing an additional layer that is placed on top of a mattress. Excluded mattress toppers have a height of four inches or less.

The products subject to this investigation are currently properly classifiable under HTSUS subheadings: 9404.21.0010, 9404.21.0013, 9404.29.1005, 9404.29.1013, 9404.29.9085, and 9404.29.9087. Products subject to this investigation may also enter under HTSUS subheadings: 9404.21.0095, 9404.29.1095, 9404.29.9095, 9401.40.0000, and 9401.90.5081. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this investigation is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Changes From the Preliminary Determination
V. Discussion of the Issues
Comment 1: Zinus' Reporting of Constructed Export Price (CEP) Inventory Sales
Comment 2: Zinus' Reporting of Sales Deductions
Comment 3: Transactions Disregarded Adjustments
Comment 4: Financial Statements Used To Value Constructed Value (CV) Profit and Selling Expenses
Comment 5: Startup Adjustment
Comment 6: Region in Cohen's *d* Test
Comment 7: Level of Trade (LOT) in Cohens *d* Test
Comment 8: Treatment of Intra-Company Payments
Comment 9: Clerical Error Corrections
VI. Recommendation

[FR Doc. 2021–06195 Filed 3–24–21; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–557–818]

Mattresses From Malaysia: Final 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) determines that imports of mattresses from Malaysia are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation is January 1, 2019, through December 31, 2019.

DATES: Applicable March 25, 2021.

FOR FURTHER INFORMATION CONTACT: Dennis McClure, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-5973.

SUPPLEMENTARY INFORMATION:

Background

On November 3, 2020, Commerce published in the **Federal Register** the *Preliminary Determination* of sales at LTFV of mattresses from Malaysia and invited interested parties to comment.[1] Commerce established a deadline of November 24, 2020 for the submission of case briefs in response to the *Preliminary Determination.* No case briefs were submitted. As no parties filed comments and no facts have changed, we have made no changes to the *Preliminary Determination* in this final determination, and, therefore, there is no unpublished Issues and Decision Memorandum accompanying this notice.

Scope of the Investigation

The products covered by this investigation are mattresses from Malaysia. For a full description of the scope of this investigation, *see* the ''Scope of the Investigation,'' in the Appendix to this notice.

Scope Comments

In Commerce's Preliminary Scope Decision Memorandum, we set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope) in scope case briefs or other written comments on scope issues.[2] Certain interested parties commented on the scope of the investigation as it appeared in the Preliminary Scope Decision Memorandum, unchanged from the *Initiation Notice.*[3] For a summary of the product coverage comments and rebuttal responses submitted to the record for this final determination, and accompanying discussion and analysis of all comments timely received, *see* the Final Scope Memorandum.[4] In the Final Scope Memorandum, Commerce determined that it is not modifying the scope language as it appeared in the *Initiation Notice. See* the scope in the appendix to this notice.

Verification

As stated in the *Preliminary Determination,* two of the mandatory respondents, Delandis Furniture (M) Sdn Bhd (Delandis) and Vision Foam Ind. Sdn Bhd. (Vision Foam), did not participate in the investigation and a third mandatory respondent, Far East Foam Industries Sdn Bhd (Far East Foam), discontinued its participation in the investigation.[5] Accordingly, Commerce based the *Preliminary Determination* on total adverse facts available (AFA), and did not conduct verification under section 782(i) of the Tariff Act of 1930, as amended (the Act).

Use of Adverse Facts Available

The mandatory respondents Delandis, Vision Foam, and Far East Foam failed to cooperate in this investigation.[6] Therefore, in the *Preliminary Determination,* pursuant to sections 776(a)(1), 776(a)(2)(A)–(C), and 776(b) of the Act, we assigned to Delandis, Vision Foam and Far East Foam an estimated

[1] *See Mattresses from Malaysia: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures,* 85 FR 69574–69575 (November 3, 2020) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Memorandum, ''Mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, the Republic of Turkey, the Socialist Republic of Vietnam, and the People's Republic of China: Scope Comments Decision Memorandum for the Preliminary Determination,'' dated October 27, 2020 (Preliminary Scope Decision Memorandum).

[3] *See Mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, the Republic of Turkey, and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations,* 85 FR 23002 (April 24, 2020) (*Initiation Notice*).

[4] *See* Memorandum, ''Mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, the Republic of Turkey, the Socialist Republic of Vietnam, and the People's Republic of China: Final Scope Decision Memorandum,'' dated concurrently with, and hereby adopted by, this notice (Final Scope Memorandum).

[5] *See Preliminary Determination* PDM at 5–10.

[6] *Id.*

weighted-average dumping margin based on AFA. No parties filed comments concerning the *Preliminary Determination* with respect to these companies, and there is no new information on the record that would cause us to revisit the *Preliminary Determination.* Accordingly, we continue to find that the application of AFA pursuant to sections 776(a) and (b) of the Act is warranted with respect to Delandis, Vision Foam, and Far East Foam. In applying total AFA, we continue to determine an estimated weighted-average dumping margin for Delandis, Vision Foam, and Far East Foam of 42.92 percent, the highest dumping margin alleged in the Petition, which is the only dumping margin information on the record of this investigation,[7] and which Commerce corroborated to the extent practicable within the meaning of section 776(c) of the Act.[8] In applying total AFA, we continue to determine an estimated weighted-average dumping margin for Delandis, Vision Foam, and Far East Foam of 42.92 percent, the highest dumping margin alleged in the Petition, which is the only dumping margin information on the record of this investigation,[9] and which Commerce corroborated to the extent practicable within the meaning of section 776(c) of the Act.[10]

All-Others Rate

As discussed in the *Preliminary Determination,* Commerce based the estimated weighted-average dumping margin for all other producers and exporters on the only dumping margin alleged in the Petition,[11] in accordance with section 735(c)(5)(B) of the Act. We made no changes to this rate for this final determination.

Final Determination

The final estimated weighted-average dumping margins are as follows:

Exporter or producer	Estimated weighted-average dumping margin (percent)
Delandis Furniture (M) Sdn Bhd	42.92
Far East Foam Industries Sdn Bhd	42.92
Vision Foam Ind. Sdn Bhd	42.92
All Others	42.92

Disclosure

The estimated weighted-average dumping margins assigned to the mandatory respondents in this investigation in the *Preliminary Determination* are based on AFA. As these rates are based on information from the Petition, unchanged from the *Preliminary Determination.* Accordingly, there are no calculations to disclose for this final determination.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, for this final determination, we will direct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of mattresses from Malaysia, as described in the Appendix to this notice, which are entered, or withdrawn from warehouse, for consumption on or after November 3, 2020, the date of publication in the **Federal Register** of the affirmative *Preliminary Determination.*

Pursuant to section 735(c)(1)(B)(ii) of the Act and 19 CFR 351.210(d), Commerce will instruct CBP to require a cash deposit for such entries of merchandise for estimated antidumping duties, as follows: (1) The cash deposit rate for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this final determination; (2) if the exporter is not a respondent identified above but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the estimated weighted-average dumping margin for all other producers and exporters.

These suspension-of-liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the International Trade Commission (ITC) of the final affirmative determination of sales at LTFV. Because Commerce's final determination is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of mattresses from Malaysia, no later than 45 days after this final determination. If the ITC determines that such injury does not exist, this proceeding will be terminated and all cash deposits posted will be refunded. If the ITC determines that such injury does exist, Commerce will issue an antidumping duty order directing CBP to assess, upon further instruction by Commerce, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the ''Continuation of Suspension of Liquidation'' section.

Notification Regarding Administrative Protective Orders

This notice will serve as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of propriety information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Notification to Interested Parties

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act and 19 CFR 351.210(c).

Dated: March 18, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Investigation

The products covered by this investigation are all types of youth and adult mattresses. The term ''mattress'' denotes an assembly of materials that at a minimum includes a ''core,'' which provides the main support system of the mattress, and may consist of

[7] *See* Petitioners' Letter, ''Mattresses from Cambodia, China, Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam: Antidumping and Countervailing Duty Petitions,'' dated March 31, 2020; *see also* Petitioners' Letter, ''Mattresses from Cambodia, China, Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam: Responses to Petition Second Supplemental Questionnaires,'' dated April 13, 2020 (collectively, Petition). The petitioners are Brooklyn Bedding; Corsicana Mattress Company; Elite Comfort Solutions; Future Foam Inc.; FXI, Inc.; Innocor, Inc.; Kolcraft Enterprises Inc.; Leggett & Platt, Incorporated; the International Brotherhood of Teamsters; and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO (USW).

[8] *See Preliminary Determination* PDM at 8–10.

[9] *See* Petition.

[10] *See Preliminary Determination* PDM at 8–10.

[11] *See* Petition; *see also Preliminary Determination,* 85 FR at 69574.

innersprings, foam, other resilient filling, or a combination of these materials. Mattresses may also contain: (1) ''upholstery,'' the material between the core and the top panel of the ticking on a single-sided mattress; or between the core and the top and bottom panel of the ticking on a double-sided mattress; and/or (2) ''ticking,'' the outermost layer of fabric or other material (*e.g.,* vinyl) that encloses the core and any upholstery, also known as a cover.

The scope of this investigation is restricted to only ''adult mattresses'' and ''youth mattresses.'' ''Adult mattresses'' are frequently described as ''twin,'' ''extra-long twin,'' ''full,'' ''queen,'' ''king,'' or ''California king'' mattresses. ''Youth mattresses'' are typically described as ''crib,'' ''toddler,'' or ''youth'' mattresses. All adult and youth mattresses are included regardless of size and size description.

The scope encompasses all types of ''innerspring mattresses,'' ''non-innerspring mattresses,'' and ''hybrid mattresses.'' ''Innerspring mattresses'' contain innersprings, a series of metal springs joined together in sizes that correspond to the dimensions of mattresses. Mattresses that contain innersprings are referred to as ''innerspring mattresses'' or ''hybrid mattresses.'' ''Hybrid mattresses'' contain two or more support systems as the core, such as layers of both memory foam and innerspring units.

''Non-innerspring mattresses'' are those that do not contain any innerspring units. They are generally produced from foams (*e.g.,* polyurethane, memory (viscoelastic), latex foam, gel- infused viscoelastic (gel foam), thermobonded polyester, polyethylene) or other resilient filling.

Mattresses covered by the scope of this investigation may be imported independently, as part of furniture or furniture mechanisms (*e.g.,* convertible sofa bed mattresses, sofa bed mattresses imported with sofa bed mechanisms, corner group mattresses, day-bed mattresses, roll-away bed mattresses, high risers, trundle bed mattresses, crib mattresses), or as part of a set in combination with a ''mattress foundation.'' ''Mattress foundations'' are any base or support for a mattress. Mattress foundations are commonly referred to as ''foundations,'' ''boxsprings,'' ''platforms,'' and/or ''bases.'' Bases can be static, foldable, or adjustable. Only the mattress is covered by the scope if imported as part of furniture, with furniture mechanisms, or as part of a set in combination with a mattress foundation.

Excluded from the scope of this investigation are ''futon'' mattresses. A ''futon'' is a bi-fold frame made of wood, metal, or plastic material, or any combination thereof, that functions as both seating furniture (such as a couch, love seat, or sofa) and a bed. A ''futon mattress'' is a tufted mattress, where the top covering is secured to the bottom with thread that goes completely through the mattress from the top through to the bottom, and it does not contain innersprings or foam. A futon mattress is both the bed and seating surface for the futon.

Also excluded from the scope are airbeds (including inflatable mattresses) and waterbeds, which consist of air- or liquid-filled bladders as the core or main support system of the mattress.

Also excluded is certain multifunctional furniture that is convertible from seating to sleeping, regardless of filler material or components, where that filler material or components are upholstered, integrated into the design and construction of, and inseparable from, the furniture framing, and the outermost layer of the multifunctional furniture converts into the sleeping surface. Such furniture may, and without limitation, be commonly referred to as ''convertible sofas,'' ''sofabeds,'' ''sofa chaise sleepers,'' ''futons,'' ''ottoman sleepers'' or a like description.

Also excluded from the scope of this investigation are any products covered by the existing antidumping duty orders on uncovered innerspring units from China or Vietnam. *See Uncovered Innerspring Units from the People's Republic of China: Notice of Antidumping Duty Order,* 74 FR 7661 (February 19, 2009); *Antidumping Duty Order: Uncovered Innerspring Units from the Socialist Republic of Vietnam,* 73 FR 75391 (December 11, 2008).

Also excluded from the scope of this investigation are bassinet pads with a nominal length of less than 39 inches, a nominal width less than 25 inches, and a nominal depth of less than 2 inches.

Additionally, also excluded from the scope of this investigation are ''mattress toppers.'' A ''mattress topper'' is a removable bedding accessory that supplements a mattress by providing an additional layer that is placed on top of a mattress. Excluded mattress toppers have a height of four inches or less.

The products subject to this investigation are currently properly classifiable under HTSUS subheadings: 9404.21.0010, 9404.21.0013, 9404.29.1005, 9404.29.1013, 9404.29.9085, and 9404.29.9087. Products subject to this investigation may also enter under HTSUS subheadings: 9404.21.0095, 9404.29.1095, 9404.29.9095, 9401.40.0000, and 9401.90.5081. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this investigation is dispositive.

[FR Doc. 2021–06187 Filed 3–24–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic From the People's Republic of China: Preliminary Results, Preliminary Rescission, and Final Rescission, In Part, of the 25th Antidumping Duty Administrative Review; 2018–2019

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

SUMMARY: The Department of Commerce (Commerce) is conducting the 25th administrative review of the antidumping duty order on fresh garlic from the People's Republic of China (China). The period of review (POR) for the administrative review is November 1, 2018, through October 31, 2019. Commerce preliminarily determines that the only mandatory respondent for which a request for review remains, Shijiazhuang Goodman Trading Co., Ltd. (Goodman), failed to establish its eligibility for a separate rate and therefore is part of the China-wide entity. We also preliminarily find that the review request made by The Roots Farm Inc. (Roots Farm) was not valid, and accordingly have preliminarily rescinded the review with respect to the other mandatory respondent, Zhengzhou Harmoni Spice Co., Ltd. (Harmoni). We invite interested parties to comment on these preliminary results.

DATES: Applicable March 25, 2021.

FOR FURTHER INFORMATION CONTACT: Leo Ayala or Alex Cipolla, 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 or (202) 482–4956.

SUPPLEMENTARY INFORMATION:

Background

On January 17, 2020, Commerce initiated the twenty-fifth administrative review of fresh garlic from China with respect to eleven companies.[1] On April 24, 2020, and July 21, 2020, Commerce tolled certain deadlines in administrative reviews by 50 days and 60 days, respectively, thereby extending the deadline for these preliminary results to November 19, 2020.[2] On October 20, 2020, Commerce extended the deadline for the preliminary results of this review.[3] The revised deadline for the preliminary results is now March 19, 2021.

Scope of the Order

The products subject to the antidumping duty order are all grades of garlic, whole or separated into

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 85 FR 3014 (January 17, 2020).

[2] *See* Memoranda, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID–19,'' dated April 24, 2020; and ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews,'' dated July 21, 2020.

[3] *See* Memorandum, ''Fresh Garlic from the People's Republic of China—25th Administrative Review (2018–2019): Extension of Deadline for the Preliminary Results of the Review,'' dated October 20, 2020.

constituent cloves. Fresh garlic that are subject to the order are currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) 0703.20.0000, 0703.20.0010, 0703.20.0015, 0703.20.0020, 0703.20.0050, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, 0711.90.6500, 2005.90.9500, 2005.90.9700, and 2005.99.9700. Although the HTSUS numbers are provided for convenience and customs purposes, the written product description remains dispositive. For a full description of the scope of this order, please *see* ''Scope of the Order'' in the accompanying Preliminary Decision Memorandum, hereby adopted by this notice.[4]

Partial Rescission of Administrative Review

On April 15, 2020, the sole review requests were timely withdrawn for five companies.[5] Commerce is, therefore, partially rescinding this administrative review with respect to the companies listed in Appendix I, in accordance with 19 CFR 351.213(d)(1).

Preliminary Rescission of Administrative Review

In addition, as discussed at ''Preliminary Rescission of Administrative Review'' in the accompanying Preliminary Decision Memorandum, Commerce has preliminarily determined that the review request from Roots Farm was invalid, and is preliminarily rescinding the administrative review with respect to one mandatory respondent, Harmoni.

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) and 751(a)(2)(B) of the Tariff Act of 1930, as amended, (the Act) and 19 CFR 351.214.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. 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 *http://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/.* A list of the topics discussed in the Preliminary Decision Memorandum is attached as Appendix IV to this notice.

China-Wide Entity

Commerce's policy regarding conditional review of the China-wide entity applies to this administrative review.[6] Under this policy, the China-wide entity will not be under review unless a party specifically requests, or Commerce self-initiates, a review of the entity. Because no party requested a review of the China-wide entity in this review, the entity is not under review and the entity's rate (*i.e.,* $4.71/kg) is not subject to change. Aside from the companies for which the review is being rescinded or preliminarily rescinded, Commerce considers all other companies[7] for which a review was requested, and which did not preliminarily qualify for a separate rate, to be part of the China-wide entity. For additional information, *see* the Preliminary Decision Memorandum.

Preliminary Determination of Separate Rates for Non-Selected Companies

In accordance with section 777A(c)(2)(B) of the Act, Commerce employed a limited examination methodology, as it determined that it would not be practicable to examine individually all companies for which a review request was made.[8] There were two exporters of subject merchandise from China that have demonstrated their eligibility for a separate rate but were not selected for individual examination in this review. These two exporters are listed in Appendix III.

Neither the Act nor Commerce's regulations address the establishment of the rate applied to individual companies not selected for examination where Commerce limited its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Commerce's practice in cases involving limited selection based on exporters accounting for the largest volume of imports has been to look to section 735(c)(5) of the Act for guidance, which provides instructions for calculating the all-others rate in a market economy investigation. Section 735(c)(5)(A) of the Act instructs Commerce to use rates established for individually investigated producers and exporters, excluding any rates that are zero, *de minimis,* or based entirely on facts available in investigations. In this administrative review, neither reviewed respondent received a weighted-average dumping margin. Therefore, for the preliminary results, Commerce has preliminarily determined to assign the separate-rate from the prior review,[9] which was Goodman's calculated rate, to the non-selected separate-rate companies.

Preliminary Results of Administrative Review

Commerce preliminarily determines that the following weighted-average dumping margins exist for the administrative review covering the period November 1, 2018, through October 31, 2019:

Exporter	Weighted-average margin (dollars per kilogram)
Shandong Happy Foods Co., Ltd	4.34
Jining Alpha Food Co., Ltd	4.34
China-Wide Entity[10]	4.71

Public Comment and Opportunity to Request a Hearing

Pursuant to 19 CFR 351.309(c)(1)(ii), case briefs or other written comments may be submitted within thirty days after the date on which this notice is published in the **Federal Register**, and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[11] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief

[4] *See* Memorandum, ''Decision Memorandum for the Preliminary Results, Preliminary Rescission, and Final Rescission, In Part, of the 2018–2019 Antidumping Duty Administrative Review: Fresh Garlic from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[5] *See* Petitioners' Letter, ''25th Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China—Petitioners' Partial Withdrawal of Review Request,'' dated April 15, 2020.

[6] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[7] The companies that are part of the China-wide entity are Shijiazhuang Goodman Trading Co., Ltd.; Qingdao Maycarrier Import & Export Co., Ltd.; and Weifang Hongqiao International Logistics Co., Ltd.

[8] *See* Memorandum, ''2018–2019 Antidumping Duty Administrative Review of Fresh Garlic from the People's Republic of China: Selection of Respondents for Individual Examination,'' dated February 20, 2020.

[9] *See Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission, of the 24th Antidumping Duty Administrative Review; 2017–2018,* 85 FR 71049 (November 6, 2020).

[10] The companies that are part of the China-wide entity in this review are Shijiazhuang Goodman Trading Co., Ltd.; Qingdao Maycarrier Import & Export Co., Ltd.; and Weifang Hongqiao International Logistics Co., Ltd.

[11] *See* 19 CFR 351.309(d); *see also* 19 CFR 351.303 (for general filing requirements).

summary of the argument; and (3) a table of authorities. All electronically filed documents must be received successfully and timely in their entirety by Commerce's electronic records system, ACCESS.

Pursuant to 19 CFR 351.310, any interested party may request a hearing within 30 days of publication of this notice. Hearing requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the case and rebuttal briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing.

Commerce intends to issue the final results of this review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review, in accordance with 19 CFR 351.212(b). For the companies for which this review is rescinded, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(l)(i). Commerce will direct CBP to assess rates based on the per-unit (*i.e.,* per kilogram) amount on each entry of the subject merchandise during the POR. Commerce intends to issue assessment instructions to CBP 35 days after the publication date of the final results of review.

Commerce announced a refinement to its assessment practice in NME cases. Pursuant to this refinement in practice, for merchandise that was not reported in the U.S. sales databases submitted by an exporter individually examined during this review, but that entered under the case number of that exporter (*i.e.,* at the individually-examined exporter's cash deposit rate), Commerce will instruct CBP to liquidate such entries at the NME-wide rate. In addition, if Commerce determines that an exporter under review had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.,* at that exporter's rate) will be liquidated at the China-wide rate.[12]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this review for shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by sections 751(a)(2) of the Act: (1) For the companies listed above, the cash deposit rate will be the rate established in these final results of review (except, if the rate is zero or *de minimis,* then zero cash deposit will be required for that company); (2) for previously investigated or reviewed Chinese and non-Chinese exporters not listed above that 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 which have not been found to be entitled to a separate rate, the cash deposit rate will be the China-wide rate of 4.71 U.S. dollars per kilogram; 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 the Chinese exporter that supplied that non-Chinese exporter. These requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these preliminary results in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.213(h) and 351.221(b)(4).

[12] For a full discussion of this practice, *see Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

Dated: March 18, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix I

Companies for Which Administrative Reviews Have Been Rescinded

1. China Jiangsu International Economic Technical Cooperation Corporation
2. Hebei Holy Flame International
3. Jinxiang Qingtian Garlic Industries
4. Qingdao Ritai Food Co., Ltd.
5. Yingxin (Wuqiang) International Trade

Appendix II

Companies for Which Administrative Review Has Been Preliminarily Rescinded

1. Zhengzhou Harmoni Spice Co., Ltd.

Appendix III

Non-Selected Separate Rate Companies

1. Jining Alpha Food Co., Ltd.
2. Shandong Happy Foods Co., Ltd.

Appendix IV

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Partial Rescission of Administrative Review
V. Discussion of Methodology
VI. Recommendation

[FR Doc. 2021–06182 Filed 3–24–21; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–140]

Certain Mobile Access Equipment and Subassemblies Thereof From the People's Republic of China: Initiation of Countervailing Duty Investigation

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

DATES: Applicable March 18, 2021.

FOR FURTHER INFORMATION CONTACT: Robert Copyak, 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) 482–3642.

SUPPLEMENTARY INFORMATION:

The Petition

On February 26, 2021, the U.S. Department of Commerce (Commerce) received a countervailing duty (CVD) petition concerning imports of certain mobile access equipment and

subassemblies thereof (mobile access equipment) from the People's Republic of China (China) filed in proper form on behalf of the Coalition of American Manufacturers of Mobile Access Equipment (the petitioner),[1] the members of which are domestic producers of mobile access equipment.[2] The Petition was accompanied by an antidumping duty (AD) petition concerning certain mobile access equipment and subassemblies thereof from China.[3]

On March 2, 9, and 12, 2021, Commerce requested supplemental information pertaining to certain aspects of the Petition.[4] On March 5, 8, 12, and 15, 2021, the petitioner filed responses to these requests for additional information.[5]

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that the Government of China (GOC) is providing countervailable subsidies, within the meaning of sections 701 and 771(5) of the Act, to producers of mobile access equipment in China and that such imports are materially injuring, or threatening material injury to, the domestic industry producing in the United States. Consistent with section 702(b)(1) of the Act and 19 CFR 351.202(b), for those alleged programs on which we are initiating a CVD investigation, the Petition is supported by information reasonably available to the petitioner.

Commerce finds that the petitioner filed the Petition on behalf of the domestic industry because the petitioner is an interested party as defined in section 771(9)(E) of the Act. Commerce also finds that the petitioner demonstrated sufficient industry support with respect to the initiation of the requested CVD investigation.[6]

Period of Investigation

Because the Petition was filed on February 26, 2021, the period of investigation is January 1, 2020, through December 31, 2020.[7]

Scope of the Investigation

The merchandise covered by this investigation is mobile access equipment from China. For a full description of the scope of this investigation, *see* the appendix to this notice.

Comments on Scope of the Investigation

On March 2, 9, 12, and 17, 2021, Commerce requested further information from the petitioner regarding the proposed scope to ensure that the scope language in the Petition is an accurate reflection of the products for which the domestic industry is seeking relief.[8] On March 5, 12, 15, 16, and 18, 2021, the petitioner revised the scope.[9] The description of the merchandise covered by this investigation, as described in the appendix to this notice, reflects these clarifications. In its March 16, 2021, submission, the petitioner revised the scope to add an exclusion for rail line vehicles and certain rail line vehicle subassemblies.[10] In its March 18, 2021, submission, the petitioner further revised the scope to clarify the exclusion for such products as follows: ''The scope also excludes: (1) Rail line vehicles, defined as vehicles with hi-rail gear or track wheels, and a fixed (non-telescopic) main boom, which perform operations on rail lines, such as laying rails, setting ties, or other rail maintenance jobs; and (2) certain rail line vehicle subassemblies, defined as chassis subassemblies and boom turntable subassemblies for rail line vehicles with a fixed (non-telescopic) main boom.'' [11] While Commerce has adopted this provision for purposes of initiation, we note that the petitioner filed the revised scope containing this additional exclusion late in the 20-day period provided for Commerce's analysis of the Petition,[12] and as such, we invite further comments on this exclusion from parties to this proceeding.

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (*i.e.,* scope).[13] Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determination. If scope comments include factual information,[14] all such factual information should be limited to public information. To facilitate preparation of its questionnaires, Commerce requests that all interested parties submit scope comments by 5:00 p.m. Eastern Time (ET) on April 7, 2021, which is 20 calendar days from the signature date of this notice.[15] Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on April 19, 2021, which is the next business day after 10

[1] The members of the Coalition of American Manufacturers of Mobile Access Equipment are: JLG Industries, Inc. and Terex Corporation.

[2] *See* Petitioner's Letter, ''Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Petitions for the Imposition of Antidumping and Countervailing Duties,'' dated February 26, 2021 (the Petition).

[3] *Id.*

[4] *See* Commerce's Letters, ''Petition for the Imposition of Countervailing Duties on Imports of Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Supplemental Questions,'' dated March 2, 2021 and ''Petitions for the Imposition of Antidumping and Countervailing Duties on Imports Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Supplemental Questions,'' dated March 2, 2021 (General Issues Supplemental); *see also* Memorandum, ''Petitions for the Imposition of Antidumping and Countervailing Duties on Imports Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Phone Call with Counsel to the Petitioner,'' dated March 9, 2021 (Phone Call with Petitioner's Counsel Memorandum); and Memorandum, ''Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Phone Call with Counsel to the Petitioner,'' dated March 12, 2021 (Second Phone Call with Petitioner's Counsel Memorandum).

[5] *See* Petitioner's Letters, ''Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Responses to Supplemental Questionnaire on Volume I of the Petition,'' dated March 5, 2021 (General Issues Supplement); ''Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Response to Supplemental Questionnaire on Volume III of the Petition,'' dated March 8, 2021(CVD Supplement); ''Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Responses to the Second Supplemental Questionnaire on Volume I of the Petition,'' dated March 12, 2021 (Second General Issues Supplement); and ''Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Responses to Third Supplemental Questionnaire on Volume I of the Petition,'' dated March 15, 2021 (Third General Issues Supplement).

[6] *See* ''Determination of Industry Support for the Petition'' section, *infra.*

[7] *See* 19 CFR 351.204(b)(2).

[8] *See* General Issues Supplemental at 3–4; *see also* Phone Call with Petitioner's Counsel Memorandum at 1–2; Second Phone Call with Petitioner's Counsel Memorandum at 1–2; and Memorandum, ''Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Phone Call with Counsel to the Petitioner,'' dated March 17, 2021 at 1–2.

[9] *See* General Issues Supplement at 6–8; *see also* Second General Issues Supplement at 1–6; Third General Issues Supplemental at 1–3; and Petitioner's Letters, ''Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Revision to Scope of Antidumping and Countervailing Duty Investigations,'' dated March 16, 2021 (March 16, 2021, Scope Revision) and ''Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Revision to Clarification Request Regarding the Scope of Antidumping and Countervailing Duty Investigations,'' dated March 18, 2021 (March 18, 2021, Scope Revision).

[10] *See* March 16, 2021, Scope Revision at 1–4.

[11] *See* March 18, 2021, Scope Revision at 1–4.

[12] *See* 19 CFR 351.203(b)(1).

[13] *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[14] *See* 19 CFR 351.102(b)(21) (defining ''factual information'').

[15] *See* 19 CFR 351.303(b).

calendar days from the initial comment deadline.[16]

Commerce requests that any factual information the parties consider relevant to the scope of the investigation be submitted during this time period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigation may be relevant, the party may contact Commerce and request permission to submit the additional information. All scope comments must also be filed on the record of the concurrent AD and CVD investigations.

Filing Requirements

All submissions to Commerce must be filed electronically using Enforcement and Compliance (E&C)'s Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS), unless an exception applies.[17] An electronically filed document must be received successfully in its entirety by the time and date it is due.

Consultations

Pursuant to sections 702(b)(4)(A)(i) and (ii) of the Act, Commerce notified the GOC of the receipt of the Petition and provided it the opportunity for consultations with respect to the CVD Petition.[18] The GOC requested consultations,[19] which were held via video conference on March 15, 2021.[20]

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,[21] they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[22]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of the domestic like product distinct from the scope of the investigation.[23] Based on our analysis of the information submitted on the record, we have determined that mobile access equipment, as defined in the scope, constitutes a single domestic like product, and we have analyzed industry support in terms of that domestic like product.[24]

In determining whether the petitioner has standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the ''Scope of the Investigation,'' in the appendix to this notice. To establish industry support, the petitioner provided its own shipments of mobile access equipment in 2020.[25] The petitioner estimated the production of the domestic like product for the entire domestic industry based on shipment data, because production data for the entire domestic industry are not available, and shipments are a close approximation of production in the mobile access equipment industry.[26] The petitioner compared its shipments to the estimated total 2020 shipments of the domestic like product for the entire domestic industry.[27] We relied on data

[16] Commerce's practice dictates that where a deadline falls on a weekend or Federal holiday, the appropriate deadline is the next business day (in this instance, April 17, 2021). *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) (*Next Business Day Rule*); *see also* 19 CFR 351.303(b).

[17] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011); *see also Enforcement and Compliance; Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014), for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook_on_Electronic_Filing_Procedures.pdf.*

[18] *See* Commerce's Letter, ''Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Invitation for Consultations to Discuss the Countervailing Duty Petition,'' dated March 3, 2021.

[19] *See* GOC's Letter, ''Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China, Request for Consultation to Discuss the Countervailing Duty Petition,'' dated March 11, 2021.

[20] *See* Memorandum, '' Consultations with Officials from the Government of China Regarding the Countervailing Duty Petition Concerning Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China,'' dated March 16, 2021.

[21] *See* section 771(10) of the Act.

[22] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

[23] *See* Petition at Volume I at 19–23 and Exhibits I–3, I–17, and I–18; *see also* General Issues Supplement at 8–12 and Exhibits I–Supp–5 through I–Supp 13 and I–Supp–17.

[24] For a discussion of the domestic like product analysis as applied to this case and information regarding industry support, *see* Checklist, ''Countervailing Duty Investigation Initiation Checklist: Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China'' dated concurrently with this **Federal Register** notice (China CVD Initiation Checklist) at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China (Attachment II).

[25] *See* Petition at Volume I at 2–5 and Exhibit I–5 and I–16; *see also* General Issues Supplement at 14; Second General Issues Supplement at 7–8 and Exhibit I–Supp2–1; and Third General Issues Supplement at 3 and Exhibit I–Supp3–1.

[26] *See* Petition at Volume I at 2–5 and Exhibits I–3, I–5, I–6, and I–16; *see also* General Issues Supplement at 13–18 and Exhibit I–Supp–14; Second General Issues Supplement at 7–8 and Exhibit I–Supp2–1; and Third General Issues Supplement at 3 and Exhibit I–Supp3–1.

[27] *See* Petition at Volume I at 2–5 and Exhibits I–3, I–5, I–6, and I–16; *see also* General Issues Supplement at 13–18 and Exhibits I–Supp–14 through I–Supp–16; Second General Issues Supplement at 7–8 and Exhibit I–Supp2–1; and Third General Issues Supplement at 3 and Exhibit I–Supp3–1.

provided by the petitioner for purposes of measuring industry support.[28]

Our review of the data provided in the Petition, the General Issues Supplement, the Second General Issue Supplement, the Third General Issues Supplement, and other information readily available to Commerce indicates that the petitioner has established industry support for the Petition.[29] First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.,* polling).[30] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.[31] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.[32] Accordingly, Commerce determines that the Petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.[33]

Injury Test

Because China is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from China materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that imports of the subject merchandise are benefitting from countervailable subsidies and that such imports threaten to cause material injury to the U.S. industry producing the domestic like product. In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[34]

The petitioner contends that the industry's injured condition is illustrated by a significant and increasing volume of subject imports; reduced market share; underselling and price depression or suppression; lost sales and revenues; declines in production, shipments, net sales, and capacity utilization; decline in employment; and declining financial performance and profitability.[35] We assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as negligibility, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation.[36]

Initiation of CVD Investigation

Based upon our examination of the Petition and supplemental responses, we find that the Petition meets the requirements of section 702 of the Act. Therefore, we are initiating a CVD investigation to determine whether imports of mobile access equipment from China benefit from countervailable subsidies conferred by the GOC. Based on our review of the Petition, we find that there is sufficient information to initiate a CVD investigation on all 35 alleged programs. For a full discussion of the basis for our decision to initiate on each program, *see* China CVD Initiation Checklist. The initiation checklist for this investigation is available on ACCESS. In accordance with section 703(b)(1) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 65 days after the date of this initiation.

Respondent Selection

The petitioner named 19 companies in China as producers and/or exporters of mobile access equipment.[37] Commerce intends to follow its standard practice in CVD investigations and calculate company-specific subsidy rates in this investigation. In the event Commerce determines that the number of companies is large and it cannot individually examine each company based upon Commerce's resources, where appropriate, Commerce intends to select mandatory respondents based on quantity and value (Q&V) questionnaires issued to the potential respondents. Commerce normally selects mandatory respondents in CVD investigations using U.S. Customs and Border Protection (CBP) entry data for U.S. imports under the appropriate Harmonized Tariff Schedule of the United States (HTSUS) numbers listed in the scope of the investigation. However, for this investigation, one of the HTSUS numbers under which the subject merchandise would enter (*i.e.,* 8431.20.0000) is a basket category under which non-subject merchandise may enter. Therefore, we cannot rely on CBP entry data in selecting respondents. We intend instead to issue Q&V questionnaires to each potential respondent for which the petitioner has provided a complete address.

Producers/exporters of mobile access equipment from China that do not receive Q&V questionnaires by mail may still submit a response to the Q&V questionnaire and can obtain the Q&V questionnaire from E&C's website at *https://enforcement.trade.gov/questionnaires/questionnaires-ad.html.* Responses to the Q&V questionnaire must be submitted by the relevant Chinese producers/exporters no later than 5:00 p.m. ET on April 5, 2021. All Q&V responses must be filed electronically via ACCESS. An electronically filed document must be received successfully, in its entirety, by ACCESS no later than 5:00 p.m. ET on the deadline noted above.

Interested parties must submit applications for disclosure under Administrative Protective Order (APO) in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on E&C's website at *http://enforcement.trade.gov/apo.* Commerce intends to finalize its decisions regarding respondent selection within 20 days of publication of this notice.

Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petition has been provided to the GOC via ACCESS. Furthermore, to the extent practicable, Commerce will attempt to provide a copy of the public

[28] *See* Petition at Volume I at 2–5 and Exhibits I–3, I–5, I–6, and I–16; *see also* General Issues Supplement at 13–18 and Exhibits I–Supp–14 through I–Supp–16; Second General Issues Supplement at 7–8 and Exhibit I–Supp2–1; and Third General Issues Supplement at 3 and Exhibit I–Supp3–1.

[29] *See* Attachment II of the China CVD Initiation Checklist.

[30] *Id.; see also* section 732(c)(4)(D) of the Act.

[31] *See* Attachment II of the China CVD Initiation Checklist.

[32] *Id.*

[33] *Id.*

[34] *See* Petition at Volume I at 26–27 and Exhibit I–19.

[35] *Id.* at 18–19, 23–39 and Exhibits I–3, I–6, I–14 through I–16, I–20 through I–26, and I–30 through I–41.

[36] *See* China CVD Initiation Checklist at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China.

[37] *See* Petition at Volume I at Exhibit–11.

version of the Petition to each exporter named in the Petition, as provided under 19 CFR 351.203(c)(2).

ITC Notification

Commerce will notify the ITC of its initiation, as required by section 702(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of mobile access equipment from China are materially injuring, or threatening material injury to, a U.S. industry.[38] A negative ITC determination will result in the investigation being terminated.[39] Otherwise, this investigation will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (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). Section 351.301(b) of Commerce's regulations requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted[40] 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.[41] Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in this investigation.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by Commerce. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301.[42] For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. 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 a letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Parties should review Commerce's regulations concerning the extension of time limits prior to submitting extension requests or factual information in this investigation.[43] Parties should review *Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013), available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in this investigation.

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[44] Parties must use the certification formats provided in 19 CFR 351.303(g).[45] Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305. Parties wishing to participate in this investigation should ensure that they meet the requirements of document submission procedures (*e.g.,* the filing of letters of appearance as discussed at 19 CFR 351.103(d)).[46] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[47]

This notice is issued and published pursuant to sections 702 and 777(i) of the Act, and 19 CFR 351.203(c).

Dated: March 18, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Investigation

The merchandise covered by this investigation consists of certain mobile access equipment, which consists primarily of boom lifts, scissor lifts, and material telehandlers, and subassemblies thereof. Mobile access equipment combines a mobile (self-propelled or towed) chassis, with a lifting device (*e.g.,* scissor arms, boom assemblies) for mechanically lifting persons, tools and/or materials capable of reaching a working height of ten feet or more, and a coupler that provides an attachment point for the lifting device, in addition to other components. The scope of this investigation covers mobile access equipment and subassemblies thereof whether finished or unfinished, whether assembled or unassembled, and whether the equipment contains any additional features that provide for functions beyond the primary lifting function.

Subject merchandise includes, but is not limited to, the following subassemblies:

- Scissor arm assemblies, or scissor arm sections, for connection to chassis and platform assemblies. These assemblies include: (1) Pin assemblies that connect sections to form scissor arm assemblies, and (2) actuators that power the arm assemblies to extend and retract. These assemblies may or may not also include blocks that allow sliding of end sections in relation to frame and platform, hydraulic hoses, electrical cables, and/or other components;
- boom assemblies, or boom sections, for connection to the boom turntable, or to the chassis assembly, or to a platform assembly or to a lifting device. Boom assemblies include telescoping sections where the smallest section (or tube) can be nested in the next larger section (or tube) and can slide out for extension and/or articulated sections joined by pins. These assemblies may or may not include pins, hydraulic cylinders, hydraulic hoses, electrical cables, and/or other components;
- chassis assemblies, for connection to scissor arm assemblies, or to boom assemblies, or to boom turntable assemblies. Chassis assemblies include: (1) Chassis frames, and (2) frame sections. Chassis assemblies may or may not include axles,

[38] *See* section 703(a)(1) of the Act.

[39] *Id.*

[40] *See* 19 CFR 351.301(b).

[41] *See* 19 CFR 351.301(b)(2).

[42] *See* 19 CFR 351.302.

[43] *See* 19 CFR 351; *see also Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013), available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm.*

[44] *See* section 782(b) of the Act.

[45] *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*); *see also* frequently asked questions regarding the *Final Rule,* available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[46] *See Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008).

[47] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

wheel end components, steering cylinders, engine assembly, transmission, drive shafts, tires and wheels, crawler tracks and wheels, fuel tank, hydraulic oil tanks, battery assemblies, and/or other components;

• boom turntable assemblies, for connection to chassis assemblies, or to boom assemblies. Boom turntable assemblies include turntable frames. Boom turntable assemblies may or may not include engine assembly, slewing rings, fuel tank, hydraulic oil tank, battery assemblies, counterweights, hoods (enclosures), and/or other components.

Importation of any of these subassemblies, whether assembled or unassembled, constitutes unfinished mobile access equipment for purposes of this investigation.

Processing of finished and unfinished mobile access equipment and subassemblies such as trimming, cutting, grinding, notching, punching, slitting, drilling, welding, joining, bolting, bending, beveling, riveting, minor fabrication, galvanizing, painting, coating, 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 mobile access equipment does not remove the product from the scope.

The scope excludes forklifts, vertical mast lifts, mobile self-propelled cranes and motor vehicles that incorporate a scissor arm assembly or boom assembly. Forklifts are material handling vehicles with a working attachment, usually a fork, lifted along a vertical guide rail with the operator seated or standing on the chassis behind the vertical mast. Vertical mast lifts are person and material lifting vehicles with a working attachment, usually a platform, lifted along a vertical guide rail with an operator standing on the platform. Mobile self-propelled cranes are material handling vehicles with a boom attachment for lifting loads of tools or materials that are suspended on ropes, cables, and/or chains, and which contain winches mounted on or near the base of the boom with ropes, cables, and/or chains managed along the boom structure. The scope also excludes motor vehicles (defined as a vehicle driven or drawn by mechanical power and manufactured primarily for use on public streets, roads, and highways, but does not include a vehicle operated only on a rail line pursuant to 49 U.S.C. 30102(a)(7)) that incorporate a scissor arm assembly or boom assembly. The scope further excludes vehicles driven or drawn by mechanical power operated only on a rail line that incorporate a scissor arm assembly or boom assembly. The scope also excludes: (1) Rail line vehicles, defined as vehicles with hi-rail gear or track wheels, and a fixed (non-telescopic) main boom, which perform operations on rail lines, such as laying rails, setting ties, or other rail maintenance jobs; and (2) certain rail line vehicle subassemblies, defined as chassis subassemblies and boom turntable subassemblies for rail line vehicles with a fixed (non-telescopic) main boom.

Certain mobile access equipment subject to this investigation is typically classifiable under subheadings 8427.10.8020, 8427.10.8030, 8427.10.8070, 8427.10.8095, 8427.20.8020, 8427.20.8090, 8427.90.0020 and 8427.90.0090 of the Harmonized Tariff Schedule of the United States (HTSUS). Parts of certain mobile access equipment are typically classifiable under subheading 8431.20.0000 of the HTSUS. While the HTSUS subheadings are provided for convenience and customs purposes only, the written description of the merchandise under investigation is dispositive.

[FR Doc. 2021–06181 Filed 3–24–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–128]

Mattresses From the People's Republic of China: Final Affirmative Countervailing Duty Determination

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

SUMMARY: The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of mattresses from the People's Republic of China (China).

DATES: Applicable March 25, 2021.

FOR FURTHER INFORMATION CONTACT: Theodore Pearson 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) 482–2631 or (202) 482–1785, respectively.

SUPPLEMENTARY INFORMATION:

Background

The petitioners in this investigation are Brooklyn Bedding, Corsicana Mattress Company, Elite Comfort Solutions, FXI, Inc., Innocor, Inc., Kolcraft Enterprises, Inc., Leggett & Platt, Incorporated, the International Brotherhood of Teamsters, and United Steel, Paper, and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO (USW). In addition to the Government of China, the selected mandatory respondents in this investigation are Kewei Furniture Co Ltd., Zinus Xiamen, Ningbo Megafeat Bedding Co., Ltd./Megafeat Bedding Co Ltd, and Healthcare Co. Ltd.

On September 11, 2020, Commerce published in the **Federal Register** the *Preliminary Determination* of this investigation.[1] In the *Preliminary Determination*, in accordance with section 705(a)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.210(b)(4), Commerce aligned the final countervailing duty (CVD) determination in this investigation with the final antidumping duty (AD) determination in the companion AD investigations of mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, the Republic of Turkey, and the Socialist Republic of Vietnam. The revised deadline for the final determination of this investigation is now March 18, 2021. We received no comments regarding the *Preliminary Determination*, and, therefore, there is no unpublished Issues and Decision Memorandum accompanying this notice.

Period of Investigation

The period of investigation is January 1, 2019, through December 31, 2019.

Scope of the Investigation

The products covered by this investigation are mattresses from China. For a full description of the scope of this investigation, see the appendix to this notice.

Scope Comments

In Commerce's Preliminary Scope Decision Memorandum, we set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope) in scope case briefs or other written comments on scope issues. Certain interested parties commented on the scope of the investigation as it appeared in the Preliminary Scope Decision Memorandum, unchanged from the *Initiation Notice*.[2] For a summary of the product coverage comments and rebuttal responses submitted to the record for this final determination, and accompanying discussion and analysis of all comments timely received, see the Final Scope Memorandum.[3] In the Final Scope Memorandum, Commerce

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[1] *See Mattresses from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With Final Antidumping Duty Determination,* 85 FR 56216 (September 11, 2020) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See Mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, the Republic of Turkey, and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations*, 85 FR 23002 (April 24, 2020) (*Initiation Notice*).

[3] *See* Memorandum, ''Mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, the Republic of Turkey, the Socialist Republic of Vietnam, and the People's Republic of China: Final Scope Decision Memorandum,'' dated concurrently with, and hereby adopted by, this notice (Final Scope Memorandum).

determined that it is not modifying the scope language as it appeared in the *Initiation Notice*. See the scope in the appendix to this notice.

Analysis of Subsidy Programs—Adverse Facts Available (AFA)

For purposes of this final determination, we relied solely on facts available pursuant to section 776 of the Act, because neither the Government of China, nor any of the selected mandatory respondents, participated in this investigation. Further, because the mandatory respondents and the Government of China did not cooperate to the best of their abilities in responding to our requests for information in this investigation, we drew adverse inferences in selecting from among the facts otherwise available, in accordance with sections 776(a)–(b) of the Act. Therefore, consistent with the *Preliminary Determination*,[4] we continue to apply AFA to the mandatory respondents. No interested party submitted comments on the *Preliminary Determination*. Thus, we made no changes to the subsidy rates for the final determination. A detailed discussion of our application of AFA is provided in the *Preliminary Determination*.[5]

All-Others Rate

As discussed in the *Preliminary Determination*, Commerce based the selection of the all-others rate on the countervailable subsidy rate established for the mandatory respondents, in accordance with section 705(c)(5)(A)(ii) of the Act.[6] We made no changes to the selection of the all-others rate for this final determination.

Final Determination

Commerce determines that the following estimated countervailable subsidy rates exist:

Company	Subsidy rate (percent)
Kewei Furniture Co Ltd	97.78
Zinus Xiamen	97.78
Ningbo Megafeat Bedding Co., Ltd./ Megafeat Bedding Co Ltd	97.78
Healthcare Co. Ltd	97.78
All Others	97.78

Disclosure

The subsidy rate calculations in the *Preliminary Determination* were based on AFA.[7] As noted above, there are no changes to the calculations for the *Final Determination*. Thus, no additional disclosure is necessary for this final determination.

Continuation of Suspension of Liquidation

As a result of our *Preliminary Determination* and pursuant to section 703(d)(1)(B) and (d)(2) of the Act, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in the ''Scope of the Investigation'' section entered, or withdrawn from warehouse, for consumption, on or after September 11, 2020, which is the date of publication of the *Preliminary Determination* in the **Federal Register**. In accordance with section 703(d) of the Act, effective January 9, 2021, we instructed CBP to discontinue the suspension of liquidation of all entries at that time, but to continue the suspension of liquidation of all entries from September 11, 2020 through January 8, 2021.

If the U.S. International Trade Commission (ITC) issues a final affirmative injury determination, we will issue a CVD order, reinstate the suspension of liquidation and require a cash deposit of estimated countervailing duties for such entries of subject merchandise in the amounts indicated above, in accordance with section 706(a) of the Act. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated, and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our final affirmative determination that countervailable subsidies are being provided to producers and exporters of mattresses from China. Because the final determination in this proceeding is affirmative, in accordance with section 705(b) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of corrosion inhibitors from China no later than 45 days after our final determination. If the ITC determines that material injury or threat of material injury does not exist, this proceeding will be terminated and all cash deposits will be refunded. If the ITC determines that such injury does exist, Commerce will issue a CVD order directing CBP to assess, upon further instruction by Commerce, countervailing duties on all imports of the subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the ''Continuation of Suspension of Liquidation'' section.

Notification Regarding Administrative Protective Order (APO)

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act and 19 CFR 351.210(c).

Dated: March 18, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Investigation

The products covered by this investigation are all types of youth and adult mattresses. The term ''mattress'' denotes an assembly of materials that at a minimum includes a ''core,'' which provides the main support system of the mattress, and may consist of innersprings, foam, other resilient filling, or a combination of these materials. Mattresses may also contain: (1) ''upholstery,'' the material between the core and the top panel of the ticking on a single-sided mattress; or between the core and the top and bottom panel of the ticking on a double-sided mattress; and/or (2) ''ticking,'' the outermost layer of fabric or other material (*e.g.,* vinyl) that encloses the core and any upholstery, also known as a cover.

The scope of this investigation is restricted to only ''adult mattresses'' and ''youth mattresses.'' ''Adult mattresses'' are frequently described as ''twin,'' ''extra-long twin,'' ''full,'' ''queen,'' ''king,'' or ''California king'' mattresses. ''Youth mattresses'' are typically described as ''crib,'' ''toddler,'' or ''youth'' mattresses. All adult and youth mattresses are included regardless of size and size description.

The scope encompasses all types of ''innerspring mattresses,'' ''non-innerspring mattresses,'' and ''hybrid mattresses.'' ''Innerspring mattresses'' contain innersprings, a series of metal springs joined together in sizes that correspond to the dimensions of mattresses. Mattresses that

[4] *See Preliminary Determination* PDM at 6–17.

[5] *Id.*

[6] *See Preliminary Determination*, 85 FR at 56217.

[7] *Id.*

contain innersprings are referred to as ''innerspring mattresses'' or ''hybrid mattresses.'' ''Hybrid mattresses'' contain two or more support systems as the core, such as layers of both memory foam and innerspring units.

''Non-innerspring mattresses'' are those that do not contain any innerspring units. They are generally produced from foams (*e.g.,* polyurethane, memory (viscoelastic), latex foam, gelinfused viscoelastic (gel foam), thermobonded polyester, polyethylene) or other resilient filling.

Mattresses covered by the scope of this investigation may be imported independently, as part of furniture or furniture mechanisms (*e.g.,* convertible sofa bed mattresses, sofa bed mattresses imported with sofa bed mechanisms, corner group mattresses, day-bed mattresses, roll-away bed mattresses, high risers, trundle bed mattresses, crib mattresses), or as part of a set in combination with a ''mattress foundation.'' ''Mattress foundations'' are any base or support for a mattress. Mattress foundations are commonly referred to as ''foundations,'' ''boxsprings,'' ''platforms,'' and/or ''bases.'' Bases can be static, foldable, or adjustable. Only the mattress is covered by the scope if imported as part of furniture, with furniture mechanisms, or as part of a set in combination with a mattress foundation.

Excluded from the scope of this investigation are ''futon'' mattresses. A ''futon'' is a bi-fold frame made of wood, metal, or plastic material, or any combination thereof, that functions as both seating furniture (such as a couch, love seat, or sofa) and a bed. A ''futon mattress'' is a tufted mattress, where the top covering is secured to the bottom with thread that goes completely through the mattress from the top through to the bottom, and it does not contain innersprings or foam. A futon mattress is both the bed and seating surface for the futon.

Also excluded from the scope are airbeds (including inflatable mattresses) and waterbeds, which consist of air- or liquid-filled bladders as the core or main support system of the mattress.

Also excluded is certain multifunctional furniture that is convertible from seating to sleeping, regardless of filler material or components, where that filler material or components are upholstered, integrated into the design and construction of, and inseparable from, the furniture framing, and the outermost layer of the multifunctional furniture converts into the sleeping surface. Such furniture may, and without limitation, be commonly referred to as ''convertible sofas,'' ''sofabeds,'' ''sofa chaise sleepers,'' ''futons,'' ''ottoman sleepers'' or a like description.

Also excluded from the scope of this investigation are any products covered by the existing antidumping duty orders on uncovered innerspring units from China or Vietnam. See Uncovered Innerspring Units from the People's Republic of China: Notice of Antidumping Duty Order, 74 FR 7661 (February 19, 2009); Antidumping Duty Order: Uncovered Innerspring Units from the Socialist Republic of Vietnam, 73 FR 75391 (December 11, 2008).

Also excluded from the scope of this investigation are bassinet pads with a nominal length of less than 39 inches, a nominal width less than 25 inches, and a nominal depth of less than 2 inches.

Additionally, also excluded from the scope of this investigation are ''mattress toppers.'' A ''mattress topper'' is a removable bedding accessory that supplements a mattress by providing an additional layer that is placed on top of a mattress. Excluded mattress toppers have a height of four inches or less.

The products subject to this investigation are currently properly classifiable under HTSUS subheadings: 9404.21.0010, 9404.21.0013, 9404.29.1005, 9404.29.1013, 9404.29.9085, and 9404.29.9087. Products subject to this investigation may also enter under HTSUS subheadings: 9404.21.0095, 9404.29.1095, 9404.29.9095, 9401.40.0000, and 9401.90.5081. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this investigation is dispositive.

[FR Doc. 2021–06189 Filed 3–24–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–809]

Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2018–2019

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that circular welded non-alloy steel pipe (CWP) from the Republic of Korea (Korea) were not sold at prices below normal value during the period of review (POR) November 1, 2018, through October 31, 2019. We invite interested parties to comment on these preliminary results.

DATES: Applicable March 25, 2021.

FOR FURTHER INFORMATION CONTACT: Dusten Hom, 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) 482–5075.

SUPPLEMENTARY INFORMATION:

Background

Commerce is conducting an administrative review of the antidumping duty order on CWP from Korea, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).[1] On February 6, 2020, in accordance with 19 CFR 351.221(c)(1)(i), we initiated the administrative review [2] of the *Order* covering 24 producers and/or exporters, including mandatory respondents, Husteel Co., Ltd. (Husteel) and Hyundai Steel Company (Hyundai Steel).[3] The remaining companies were not selected for individual examination and remain subject to this administrative review. For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[4]

On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days, thereby tolling the deadline for the preliminary results of review.[5] On July 21, 2020, Commerce tolled the deadlines in administrative reviews by an additional 60 days, thereby tolling the deadline for the preliminary results of review until November 19, 2020.[6] On October 28, 2020, Commerce extended the time limit for issuing the the preliminary results of this review by 120 days, to no later than March 19, 2021.[7]

Scope of the Order

The merchandise subject to the *Order* is CWP from Korea. A full description of the scope, *see* the Preliminary Decision Memorandum.[8]

Methodology

Commerce is conducting this review in accordance with section 751(a) of the Act. For a full description of the

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[1] *See Notice of Antidumping Duty Orders: Certain Circular Welded Non-Alloy Steel Pipe from Brazil, the Republic of Korea (Korea), Mexico, and Venezuela, and Amendment to Final Determination of Sales at Less Than Fair Value: Certain Circular Welded Non-Alloy Steel Pipe from Korea,* 57 FR 49453 (November 2, 1992) (*Order*).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 85 FR 6869 (February 6, 2020).

[3] *See* Memorandum, ''Respondent Selection,'' dated April 20, 2020.

[4] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments: Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: 2018–2019,'' dated concurrently with these preliminary results and hereby adopted by this notice (Preliminary Decision Memorandum).

[5] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID–19 Government,'' dated April 24, 2020.

[6] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews,'' dated July 21, 2020.

[7] *See* Memorandum, ''Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Extension of Deadline for Preliminary Results of 2018–2019 Antidumping Administrative Review,'' dated October 28, 2020.

[8] For a full description of the scope of the *Order, see* Preliminary Decision Memorandum.

methodology underlying these preliminary results, *see* the Preliminary Decision Memorandum. A list of the topics discussed in the Preliminary Decision Memorandum is included as Appendix I to this notice. The Preliminary Decision Memorandum is a public document and made available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACESS is available to registered users at *http://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.*

Preliminary Determination of No Shipments

One producer and/or exporter properly filed a certification reporting that it made no shipments of subject merchandise during the POR: HiSteel. U.S. Customs and Border Protection (CBP) did not have any information to contradict this claim of no shipments during the POR.[9] Therefore, we preliminarily determine that this company did not have shipments of subject merchandise during the POR. Consistent with Commerce's practice,[10] Commerce finds that it is not appropriate to rescind the review with respect to this company, but rather to complete the review and issue appropriate instructions to CBP based on the final results of this review.

Rate for Non-Selected Companies

The statute and Commerce's regulations do not address the establishment of a rate to be applied to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance when calculating the rate for companies which were not selected for individual examination in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally ''an amount equal to the weighted-average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or de minimis margins, and any margins determined entirely {on the basis of facts available}.''

In this review, we have preliminarily calculated weighted-average dumping margins for Husteel and Hyundai Steel that are zero. For the companies that were not selected for individual review, we preliminarily assigned a rate based on the rates for the respondents that were selected for individual review, excluding rates that are zero, de minimis, or based entirely on facts available.[11] In accordance with the U.S. Court of Appeals for the Federal Circuit's decision in *Albemarle Corp.* v. *United States,* we are applying to the twenty-one companies that had reviewable transactions during the POR the zero percent rates calculated for Husteel and Hyundai Steel.[12] These are the only rates determined in this review for individual respondents and, thus, should be applied to the twenty-one firms not selected for individual review under section 735(c)(5)(B) of the Act.

Preliminary Results of the Administrative Review

Commerce preliminarily determines that the following weighted-average dumping margins exist for the administrative review covering the period November 1, 2018, through October 31, 2019:

Producer/exporter	Weighted-average dumping margin (percent)
Husteel Co., Ltd	* 0.00
Hyundai Steel Company (including Hyundai Steel (Pipe Division))	* 0.00
Review-Specific Average Rate Applicable to the Following Companies	
Other Respondents [13]	* 0.00

* *De minimus.*

Disclosure

We intend to disclose the calculations performed in connection with these preliminary results to interested parties within five days after the date of publication of this notice in accordance with 19 CFR 351.224(b).

Public Comment

Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than seven days after the date for filing case briefs.[14] Commerce modified certain of its requirements for serving documents containing business proprietary information until further notice.[15] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities.[16]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. An electronically filed document must be received successfully in its entirety by the Department's electronic records system, ACCESS, by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice.[17] Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Issues raised in the hearing will be limited to those raised in the briefs. An electronically-filed request for a hearing must be received successfully in its entirety by ACCESS by 5 p.m. Eastern Time within 30 days after the date of publication of this notice.[18]

Unless the deadline is extended, Commerce intends to issue the final results of these reviews, including the results of its analysis of issues raised by parties in their comments, within 120 days after the publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h).

Assessment Rates

Upon issuing the final results, Commerce will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review. If an examined respondent's weighted-average dumping margin is

[9] *See* Preliminary Decision Memorandum at 3–4.

[10] *See, e.g., Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2017–2018,* 84 FR 34863 (July 19, 2019), and accompanying Preliminary Decision Memorandum at 4.

[11] *See* section 735(c)(5)(A) of the Act.

[12] *See Albemarle Corp.* v. *United States,* 821 F.3d 1345 (Fed. Cir. 2016).

[13] *See* Appendix II for a full list of these companies.

[14] *See* 19 CFR 351.309(d).

[15] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[16] *See* 19 CFR 351.309(c)(2) and (d)(2).

[17] *See* 19 CFR 351.310(c).

[18] *Id.; see also* 19 CFR 351.303(b)(1).

above *de minimis* (*i.e.,* 0.5 percent) in the final results of this review, we will calculate importer-specific *ad valorem* antidumping duty assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined U.S. sales and, where possible, the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1).[19] We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific assessment rate calculated in the final results of this review is avove *de minimis.* Where either the respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

For entries of subject merchandise during the POR produced by Husteel or Hyundai Steel for which they did not know that the merchandise was destined to the United States and for all entries attributed to HiSteel, for which we found no shipments during the POR, we will instruct CBP to liquidate those entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[20]

For the companies that were not selected for individual examination, we will instruct CBP to assess antidumping duties at an *ad valorem* rate equal to each company's weighted-average dumping margin determined in the final results of this review.

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).

Cash Deposit Requirements

The following deposit requirements will be effective upon publication in the **Federal Register** of the notice of final results of administrative review for all shipments of CWP from Korea entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for companies subject to this review will be the rates established in the final results of this administrative review; (2) for merchandise exported by a company not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation but the producer is, then the cash deposit rate will be the rate established for the most recent period for the producer of the merchandise; (4) the cash deposit rate for all other producers or exporters will continue to be 4.80 percent,[21] the all-others rate established in the less-than-fair-value investigation. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice 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 POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

Commerce is issuing and publishing the preliminary results of this review in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.221(b)(4).

Dated: March 19, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Preliminary Determination of No Shipments
V. Affiliation
VI. Discussion of the Methodology
VII. Constructed Export Price
VIII. Normal Value
IX. Currency Conversion
X. Recommendation

Appendix II

List of Companies Not Individually Examined

1. Aju Besteel
2. Bookook Steel
3. Chang Won Bending
4. Dae Ryung
5. Daewoo Shipbuilding & Marine Engineering (Dsme)
6. Daiduck Piping
7. Dong Yang Steel Pipe
8. Dongbu Steel
9. Eew Korea Company
10. Hyundai Rb
11. Kiduck Industries
12. Kum Kang Kind
13. Kumsoo Connecting
14. Miju Steel Mfg.
15. Nexteel Co., Ltd.
16. Samkang M&T
17. Seah Fs
18. Seah Steel
19. Steel Flower
20. Vesta Co., Ltd.
21. Ycp Co.

[FR Doc. 2021–06198 Filed 3–24–21; 8:45 am]

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[19] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101, 8103 (February 14, 2012).

[20] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[21] *See Order.*

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–010, C–570–011]

Crystalline Silicon Photovoltaic Products From the People's Republic of China: Final Results of Changed Circumstances Reviews, and Revocation of the Antidumping and Countervailing Duty Orders in Part

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

SUMMARY: The Department of Commerce (Commerce) is revoking, in part, the antidumping duty (AD) and countervailing duty (CVD) orders on crystalline silicon photovoltaic products from the People's Republic of China (China) (*Solar Products Orders*) with respect to certain off-grid portable small panels.

DATES: Applicable March 25, 2021.

FOR FURTHER INFORMATION CONTACT: Thomas Hanna, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0835.

SUPPLEMENTARY INFORMATION:

Background

On February 18, 2015, Commerce published AD and CVD orders on certain crystalline silicon photovoltaic

products from China.[1] On March 16, 2020, Memory Experts Inc., dba PowerTraveller (Memory Experts), an importer of the subject merchandise, requested, through changed circumstances reviews, revocation of the *Solar Products Orders* with respect to certain off-grid portable small panels, pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.216(b).[2] On April 13, 2020, Hanwha Q CELL USA, Inc. (Q CELL USA) and SunPower Manufacturing Oregon, LLC (SPMOR), U.S. producers of the domestic like product, submitted letters stating that they did not oppose the partial revocation proposed by Memory Experts.[3]

On June 5, 2020, Commerce initiated these changed circumstances reviews.[4] Commerce invited interested parties to comment on, and submit factual information regarding, its initiation of changed circumstances reviews pertaining to the partial revocation of the *Solar Products Orders* with respect to certain off-grid portable small panels. Neither domestic party indicated whether it accounts for substantially all of the domestic production of crystalline silicon photovoltaic products; thus, Commerce solicited comments and/or factual information regarding these changed circumstances reviews, including comments on industry support and the proposed partial revocation language.

In light of Memory Experts' Request, Q CELL USA and SPMOR's statement of lack of interest, and the absence of any interested party comments received during the comment period, on August 26, 2020, Commerce preliminarily found that producers accounting for substantially all of the domestic production of the products to which the *Solar Products Orders* pertain lack interest in the relief provided by those orders with respect to certain off-grid portable small panels and announced its intention to revoke, in part, the *Solar Products Orders* with respect to these products.[5]

On September 16, 2020, Memory Experts commented on Commerce's preliminary results of these changed circumstances reviews.[6] Memory Experts agrees with Commerce's preliminary partial rescission of the *Solar Products Orders* with respect to certain off-grid portable small panels, and requests that Commerce apply the revocations retroactively to February 1, 2019, for the AD order and January 1, 2019, for the CVD order. No other interested parties filed comments.

Final Results of Changed Circumstances Reviews and Revocation of the Solar Products Orders, in Part

In light of Memory Experts' Request, and Q CELL USA and SPMOR's lack of interest in the *Solar Products Orders* covering the products under consideration, Commerce continues to find, pursuant to sections 751(d)(1) and 782(h) of the Act and 19 CFR 351.222(g), that changed circumstances exist that warrant revocation of the *Solar Products Orders,* in part. No interested party opposed this partial revocation. Moreover, no parties provided other information or evidence that calls into question the partial revocation described in Commerce's *Preliminary Results.*

Thus, Commerce is revoking, in part, the *Solar Products Orders* with respect to the following products: Off-grid crystalline silicon photovoltaic panels without a glass cover with the following characteristics:

(1) Total power output of 500 watts or less per panel;

(2) Maximum surface area of 8,000 cm^2 per panel;

(3) Unit does not include a built-in inverter;

(4) Unit has visible parallel grid collector metallic wire lines every 2–40 millimeters across each solar panel (depending on model);

(5) Solar cells are encased in laminated frosted PET material without stitching;[7]

(6) The panel is encased in polyester fabric with visible stitching which includes a Velcro-type storage pocket and unit closure, or encased within a Neoprene clamshell (depending on model);

(7) Includes LED indicator.

The scope description below includes this new exclusion.

Scope of the Solar Products Orders

The merchandise covered by these orders is modules, laminates and/or panels consisting of crystalline silicon photovoltaic cells, whether or not partially or fully assembled into other products, including building integrated materials. For purposes of these orders, subject merchandise includes modules, laminates and/or panels assembled in China consisting of crystalline silicon photovoltaic cells produced in a customs territory other than China.

Subject merchandise includes modules, laminates and/or panels assembled in China consisting of crystalline silicon photovoltaic cells of thickness equal to or greater than 20 micrometers, having a p/n junction formed by any means, whether or not the cell has undergone other processing, including, but not limited to, cleaning, etching, coating, and/or addition of materials (including, but not limited to, metallization and conductor patterns) to collect and forward the electricity that is generated by the cell.

Excluded from the scope of these orders are thin film photovoltaic products produced from amorphous silicon (a-Si), cadmium telluride (CdTe), or copper indium gallium selenide (CIGS).

Also excluded from the scope of these orders are modules, laminates and/or panels assembled in China, consisting of crystalline silicon photovoltaic cells, not exceeding 10,000 mm^2 in surface area, that are permanently integrated into a consumer good whose function is other than power generation and that consumes the electricity generated by the integrated crystalline silicon photovoltaic cells. Where more than one module, laminate and/or panel is permanently integrated into a consumer good, the surface area for purposes of this exclusion shall be the total combined surface area of all modules, laminates and/or panels that are integrated into the consumer good.

[1] *See Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Antidumping Duty Order; and Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order,* 80 FR 8592 (February 18, 2015).

[2] *See* Memory Experts' Letter, ''Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from the People's Republic of China; Memory Experts Inc., dba PowerTraveller's Request for a Changed Circumstances Review,'' dated March 16, 2020 (Memory Experts' Request).

[3] *See* Q CELL USA Inc.'s Letter, ''Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from the People's Republic of China; Hanwha Q CELL USA, Inc.'s Comments on Memory Experts Inc.'s Request for a Changed Circumstances Review,'' dated April 13, 2020; *see also* SunPower Manufacturing Oregon, LLC's Letter, ''Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China; SPMOR Comments on Memory Experts Inc.'s Request for a Changed Circumstances Review,'' dated April 13, 2020.

[4] *See Crystalline Silicon Photovoltaic Products from the People's Republic of China: Notice of Initiation of Changed Circumstances Reviews, and Consideration of Revocation of the Antidumping and Countervailing Duty Orders in Part,* 85 FR 35902 (June 12, 2020) (*Initiation Notice*).

[5] *See Crystalline Silicon Photovoltaic Products from the People's Republic of China: Preliminary Results of Changed Circumstances Reviews, and Consideration of Revocation of the Antidumping and Countervailing Duty Orders in Part,* 85 FR 54534 (September 2, 2020) (*Preliminary Results*).

[6] *See* Memory Expert's Letter, ''Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China; Memory Experts Inc., dba PowerTraveller's Comments on Preliminary Results of Changed Circumstances Reviews and Consideration of Revocation of the Antidumping and Countervailing Duty Orders in Part,'' dated September 16, 2020 (Memory Experts' Comments).

[7] Although the polyester material has stitching on the perimeter of the unit, the cells are not stitched into the PET material.

Further, also excluded from the scope of these orders are any products covered by the existing antidumping and countervailing duty orders on crystalline silicon photovoltaic cells, whether or not assembled into modules, laminates and/or panels, from China.[8]

Additionally, excluded from the scope of these orders are solar panels that are: (1) Less than 300,000 mm^2 in surface area; (2) less than 27.1 watts in power; (3) coated across their entire surface with a polyurethane doming resin; and (4) joined to a battery charging and maintaining unit (which is an acrylonitrile butadiene styrene (ABS) box that incorporates a light emitting diode (LED)) by coated wires that include a connector to permit the incorporation of an extension cable. The battery charging and maintaining unit utilizes high-frequency triangular pulse waveforms designed to maintain and extend the life of batteries through the reduction of lead sulfate crystals. The above-described battery charging and maintaining unit is currently available under the registered trademark ''SolarPulse.''

Also excluded from the scope of these orders are off-grid crystalline silicon photovoltaic panels without a glass cover with the following characteristics: (1) Total power output of 500 watts or less per panel; (2) maximum surface area of 8,000 cm^2 per panel; (3) unit does not include a built-in inverter; (4) unit has visible parallel grid collector metallic wire lines every 2–40 millimeters across each solar panel (depending on model); (5) solar cells are encased in laminated frosted PET material without stitching;[9] (6) the panel is encased in polyester fabric with visible stitching which includes a Velcro-type storage pocket and unit closure, or encased within a Neoprene clamshell (depending on model); and (7) includes LED indicator.

Merchandise covered by these orders is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 8501.61.0000, 8507.20.8030, 8507.20.8040, 8507.20.8060, 8507.20.8090, 8541.40.6015, 8541.40.6020, 8541.40.6030, 8541.40.6035 and 8501.31.8000. These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope of these orders is dispositive.[10]

Application of the Final Results of These Reviews

Memory Experts requested retroactive application of the final results of these reviews starting January 1, 2019, for purposes of the CVD proceeding, and February 1, 2019, for purposes of the AD proceeding.[11] Section 751(d)(3) of the Act provides that ''{a} determination under this section to revoke an order . . . shall apply with respect to unliquidated entries of the subject merchandise which are entered, or withdrawn from warehouse, for consumption on or after the date determined by the administering authority.'' Commerce's general practice is to instruct U.S. Customs and Border Protection (CBP) to liquidate without regard to antidumping and countervailing duties, and to refund any estimated antidumping and countervailing duties, on all unliquidated entries of the merchandise covered by a revocation that are not covered by the final results of an administrative review or automatic liquidation.[12]

Commerce can exercise its discretion and deviate from this general practice if the particular facts of a case have implications for the effective date of the partial revocation selected by Commerce.[13] According to Memory Experts, effective dates no later than January 1, 2019, for the CVD proceeding and February 1, 2019, for the AD proceeding are appropriate because: (1) The statute and regulations only require that entries be unliquidated to be covered by a revocation; there is no requirement that the entries were not made during a period covered by a completed/rescinded administrative review; (2) Memory Experts requested these earlier effective dates; (3) Memory Experts requested these changed circumstances reviews before completion/rescission of the most recent administrative reviews of the *Solar Products Orders;* (4) earlier effective dates are supported by the domestic producers participating in these changed circumstances reviews; and (5) there are no administrability concerns with using earlier effective dates because sales of the products at issue during these earlier periods were not used in calculations in the most recent administrative reviews of the *Solar Products Orders.*

We find, based on the facts in this case, that it is appropriate to apply this partial revocation retroactively to unliquidated entries on or after January 1, 2019, for the CVD order, and February 1, 2019, for the AD order. Commerce did not conduct, and thus did not issue final results of, administrative reviews for the periods beginning on January 1, 2019, for the CVD order and February 1, 2019 for the AD order. Also, Commerce had not yet issued any liquidation instructions for the review periods beginning on January 1, 2019, for the CVD order and February 1, 2019, for the AD order at the time that Memory Experts requested these changed circumstances reviews and the U.S. producers of the domestic like product informed Commerce that they did not oppose the proposed partial revocation. Accordingly, we are retroactively applying the partial revocation to unliquidated entries of merchandise subject to the *Solar Products Orders* that were entered or withdrawn from warehouse, for consumption, on or after January 1, 2019, for the CVD order, and February 1, 2019, for the AD order.

Instructions to CBP

Based on these final results, we intend to instruct CBP to liquidate without regard to countervailing and antidumping duties, and to refund any estimated countervailing and antidumping duties collected on, all unliquidated entries of the merchandise covered by the revocation effective

[8] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order,* 77 FR 73018 (December 7, 2012); *see also Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Countervailing Duty Order,* 77 FR 73017 (December 7, 2012).

[9] Although the polyester material has stitching on the perimeter of the unit, the cells are not stitched into the PET material.

[10] *See Solar Products Orders.*

[11] Memory Experts' Comments.

[12] *See, e.g., Certain Pasta from Italy: Final Results of Countervailing Duty Changed Circumstances Review and Revocation, In Part,* 76 FR 27634 (May 12, 2011); *Stainless Steel Bar from the United Kingdom: Notice of Final Results of Changed Circumstances Review and Revocation of Order, in Part,* 72 FR 65706 (November 23, 2007); *Notice of Final Results of Antidumping Duty Changed Circumstances Review and Revocation of Order In Part: Certain Corrosion-Resistant Carbon Steel Flat Products from Germany,* 71 FR 66163 (November 13, 2006); *Notice of Final Results of Antidumping Duty Changed Circumstances Reviews and Revocation of Orders in Part: Certain Corrosion-Resistant Carbon Steel Flat Products from Canada and Germany,* 71 FR 14498 (March 22, 2006); and *Notice of Final Results of Antidumping Duty Changed Circumstances Review, and Determination to Revoke Order in Part: Certain Cased Pencils from the People's Republic of China,* 68 FR 62428 (November 4, 2003).

[13] *See* section 751(d)(3) of the Act; *Itochu Building Products* v. *United States,* Court No. 11–00208, Slip Op. 14–37 (CIT April 8, 2014) *(Itochu Bldg. Prod)* at 12 (''The statutory provision, as discussed above, provides Commerce with discretion in the selection of the effective date for a partial revocation following a changed circumstances review, but that discretion may not be exercised arbitrarily so as to decide the question presented without considering the relevant and competing considerations.'')

January 1, 2019, for the CVD order and February 1, 2019, for the AD order.

Notification to Interested Parties

This notice serves as a final reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

We are issuing and publishing these final results in accordance with sections 751(b) and 777(i) of the Act, as amended, and 19 CFR 351.216, 19 CFR 351.221(c)(3), and 19 CFR 351.222

Dated: March 12, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2021–06186 Filed 3–24–21; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–841]

Mattresses From the Republic of Turkey: Final Affirmative Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances

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

SUMMARY: The Department of Commerce (Commerce) determines that imports of mattresses from the Republic of Turkey (Turkey) are being, or are likely to be, sold in the United States at less than fair value (LTFV) for the period of investigation, January 1, 2019, through December 31, 2019.

DATES: Applicable March 25, 2021.

FOR FURTHER INFORMATION CONTACT: Jacob Keller, 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) 482–4849.

SUPPLEMENTARY INFORMATION:

Background

On November 3, 2020, Commerce published in the **Federal Register** its preliminary affirmative determination in the LTFV investigation of mattresses from Turkey, in which we also postponed the final determination until March 18, 2021.[1] We invited interested parties to comment on the *Preliminary Determination.* A summary of the events that occurred since Commerce published the *Preliminary Determination,* as well as a full discussion of the issues raised by parties for this final determination, may be found in the Issues and Decision Memorandum.[2] The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.*

Scope of the Investigation

The products covered by this investigation are mattresses from Turkey. For a full description of the scope of this investigation, *see* the ''Scope of the Investigation'' in Appendix I.

Scope Comments

In Commerce's Preliminary Scope Decision Memorandum, we set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope) in scope case briefs or other written comments on scope issues.[3] Certain interested parties commented on the scope of the investigation as it appeared in the Preliminary Scope Decision Memorandum, unchanged from the *Initiation Notice.*[4] For a summary of the product coverage comments and rebuttal responses submitted to the record for this final determination, and accompanying discussion and analysis of all comments timely received, *see* the Final Scope Memorandum.[5] In the Final Scope Memorandum, Commerce determined that it is not modifying the scope language as it appeared in the *Initiation Notice. See* the scope at Appendix I.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs that were submitted by parties in this investigation are addressed in the Issues and Decision Memorandum. A list of the issues addressed in the Issues and Decision Memorandum is attached to this notice at Appendix II.

Verification

Commerce was unable to conduct on-site verification of the information relied upon in making its final determination in this investigation. However, we took additional steps in lieu of an on-site verification to verify the information relied upon in making this final determination, in accordance with section 782(i) of the Tariff Act of 1930, as amended (the Act).[6]

Final Negative Determination of Critical Circumstances

Commerce preliminarily determined that critical circumstances do not exist for BRN Yatak Baza Ev Tekstili Insaat Sanayi Ticaret A.S. (BRN) or with respect to all other producers/exporters. No parties submitted comments regarding our negative preliminary critical circumstances determination and the factual basis for the preliminary negative finding remains unchanged for this final determination. Therefore, in accordance with section 735(a)(3) of the Act and 19 CFR 351.206, Commerce finds that critical circumstances do not exist for BRN or all other producers/exporters. For a full description of the methodology and results of Commerce's critical circumstances analysis, *see* the Issues and Decision Memorandum.

All-Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated weighted-

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[1] *See Mattresses from the Republic of Turkey: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Negative Determination of Critical Circumstances, Postponement of Final Determination, and Extension of Provisional Measures,* 85 FR 69571 (November 3, 2020) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Affirmative Determination in the Less-Than-Fair-Value Investigation of Mattresses from the Republic of Turkey,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See* Memorandum, ''Mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, the Republic of Turkey, the Socialist Republic of Vietnam, and the People's Republic of China: Scope Comments Decision Memorandum for the Preliminary Determination,'' dated October 27, 2020 (Preliminary Scope Decision Memorandum).

[4] *See Mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, the Republic of Turkey, and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations,* 85 FR 23002 (April 24, 2020) (*Initiation Notice*).

[5] *See* Memorandum, ''Mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, the Republic of Turkey, the Socialist Republic of Vietnam, and the People's Republic of China: Final Scope Decision Memorandum,'' dated concurrently with, and hereby adopted by, this notice (Final Scope Memorandum).

[6] *See* Commerce's Letter, Questionnaire in Lieu of Verification, dated November 30, 2020; *see also* BRN's Letter, ''Mattresses from the Republic of Turkey; Supplemental Response in Lieu of Verification,'' dated December 7, 2020.

average dumping margin for all other producers and exporters not individually investigated shall be equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated excluding rates that are zero, *de minimis,* or determined entirely under section 776 of the Act. Commerce calculated an individual estimated weighted-average dumping margin for BRN, the only individually examined exporter/producer in this investigation. Because the only individually calculated dumping margin is not zero, *de minimis,* or based entirely on facts otherwise available, the estimated weighted-average dumping margin calculated for BRN is the margin assigned to all other producers and exporters, pursuant to section 735(c)(5)(A) of the Act.

Final Determination

The final estimated weighted-average dumping margins are as follows:

Exporter or producer	Estimated weighted-average dumping margin (percent)
BRN Yatak Baza Ev Tekstili Insaat Sanayi Ticaret A.S	[7] 20.03
All Others	20.03

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, Commerce will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all appropriate entries of subject merchandise, as described in Appendix I of this notice, entered, or withdrawn from warehouse, for consumption on or after November 3, 2020, the date of publication of *Preliminary Determination* in the **Federal Register**.

Pursuant to section 735(c)(1)(B)(ii) of the Act and 19 CFR 351.210(d), upon publication of this notice, Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) The cash deposit rate for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margin determined in this final determination; (2) if the exporter is not a respondent identified above but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin. These suspension-of-liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the International Trade Commission (ITC) of the final affirmative determination of sales at LTFV. Because Commerce's final determination is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of mattresses from Turkey no later than 45 days after this final determination. If the ITC determines that such injury does not exist, this proceeding will be terminated, and all cash deposits posted will be refunded and suspension of liquidation will be lifted. If the ITC determines that such injury does exist, Commerce will issue an antidumping duty order directing CBP to assess, upon further instruction by Commerce, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the ''Continuation of Suspension of Liquidation'' section.

Notification Regarding Administrative Protective Orders (APO)

This notice will serve as a final reminder to the parties subject to APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

This determination and this notice are issued and published pursuant to sections 735(d) and 777(i)(1) of the Act and 19 CFR 351.210(c).

Dated: March 18, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The products covered by this investigation are all types of youth and adult mattresses. The term ''mattress'' denotes an assembly of materials that at a minimum includes a ''core,'' which provides the main support system of the mattress, and may consist of innersprings, foam, other resilient filling, or a combination of these materials. Mattresses may also contain: (1) ''upholstery,'' the material between the core and the top panel of the ticking on a single-sided mattress; or between the core and the top and bottom panel of the ticking on a double-sided mattress; and/or (2) ''ticking,'' the outermost layer of fabric or other material (*e.g.,* vinyl) that encloses the core and any upholstery, also known as a cover.

The scope of this investigation is restricted to only ''adult mattresses'' and ''youth mattresses.'' ''Adult mattresses'' are frequently described as ''twin,'' ''extra-long twin,'' ''full,'' ''queen,'' ''king,'' or ''California king'' mattresses. ''Youth mattresses'' are typically described as ''crib,'' ''toddler,'' or ''youth'' mattresses. All adult and youth mattresses are included regardless of size and size description.

The scope encompasses all types of ''innerspring mattresses,'' ''non-innerspring mattresses,'' and ''hybrid mattresses.'' ''Innerspring mattresses'' contain innersprings, a series of metal springs joined together in sizes that correspond to the dimensions of mattresses. Mattresses that contain innersprings are referred to as ''innerspring mattresses'' or ''hybrid mattresses.'' ''Hybrid mattresses'' contain two or more support systems as the core, such as layers of both memory foam and innerspring units.

''Non-innerspring mattresses'' are those that do not contain any innerspring units. They are generally produced from foams (*e.g.,* polyurethane, memory (viscoelastic), latex foam, gelinfused viscoelastic (gel foam), thermobonded polyester, polyethylene) or other resilient filling.

Mattresses covered by the scope of this investigation may be imported independently, as part of furniture or furniture mechanisms (*e.g.,* convertible sofa bed mattresses, sofa bed mattresses imported with sofa bed mechanisms, corner group mattresses, day-bed mattresses, roll-away bed mattresses, high risers, trundle bed mattresses, crib mattresses), or as part of a set in combination with a ''mattress foundation.'' ''Mattress foundations'' are any base or support for a mattress. Mattress foundations are commonly referred to as ''foundations,'' ''boxsprings,'' ''platforms,'' and/or ''bases.'' Bases can be static, foldable, or adjustable. Only the mattress is covered by the scope if imported as part of furniture, with furniture mechanisms, or as part of a set in combination with a mattress foundation.

[7] We are not disclosing any final margin calculations for BRN because we made no changes to the preliminary margin calculations for BRN and we have not performed any calculations in connection with this final determination. *See* Memorandum, ''Mattresses from the Republic of Turkey—Preliminary Determination Analysis Memorandum for BRN Yatak Baza Ev Tekstili Insaat Sanayi Ticaret A.S.,'' dated October 27, 2020.

Excluded from the scope of this investigation are ''futon'' mattresses. A ''futon'' is a bi-fold frame made of wood, metal, or plastic material, or any combination thereof, that functions as both seating furniture (such as a couch, love seat, or sofa) and a bed. A ''futon mattress'' is a tufted mattress, where the top covering is secured to the bottom with thread that goes completely through the mattress from the top through to the bottom, and it does not contain innersprings or foam. A futon mattress is both the bed and seating surface for the futon.

Also excluded from the scope are airbeds (including inflatable mattresses) and waterbeds, which consist of air- or liquid-filled bladders as the core or main support system of the mattress.

Also excluded is certain multifunctional furniture that is convertible from seating to sleeping, regardless of filler material or components, where that filler material or components are upholstered, integrated into the design and construction of, and inseparable from, the furniture framing, and the outermost layer of the multifunctional furniture converts into the sleeping surface. Such furniture may, and without limitation, be commonly referred to as ''convertible sofas,'' ''sofabeds,'' ''sofa chaise sleepers,'' ''futons,'' ''ottoman sleepers'' or a like description.

Also excluded from the scope of this investigation are any products covered by the existing antidumping duty orders on uncovered innerspring units from China or Vietnam. *See Uncovered Innerspring Units from the People's Republic of China: Notice of Antidumping Duty Order,* 74 FR 7661 (February 19, 2009); *Antidumping Duty Order: Uncovered Innerspring Units from the Socialist Republic of Vietnam,* 73 FR 75391 (December 11, 2008).

Also excluded from the scope of this investigation are bassinet pads with a nominal length of less than 39 inches, a nominal width less than 25 inches, and a nominal depth of less than 2 inches.

Additionally, also excluded from the scope of this investigation are ''mattress toppers.'' A ''mattress topper'' is a removable bedding accessory that supplements a mattress by providing an additional layer that is placed on top of a mattress. Excluded mattress toppers have a height of four inches or less.

The products subject to this investigation are currently properly classifiable under HTSUS subheadings: 9404.21.0010, 9404.21.0013, 9404.29.1005, 9404.29.1013, 9404.29.9085, and 9404.29.9087. Products subject to this investigation may also enter under HTSUS subheadings: 9404.21.0095, 9404.29.1095, 9404.29.9095, 9401.40.0000, and 9401.90.5081. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this investigation is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Final Negative Determination of Critical Circumstances
V. Changes Since the Preliminary Determination
VI. Discussion of the Issues
Comment 1: Whether to Grant a Startup Adjustment to BRN
Comment 2: Whether to Include Foreign Exchange Losses in the Financial Expense Rate Calculation
VII. Recommendation

[FR Doc. 2021–06193 Filed 3–24–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–560–826]

Monosodium Glutamate From the Republic of Indonesia: Preliminary Results of Antidumping Duty Administrative Review; 2018–2019

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that sales of monosodium glutamate (MSG) from the Republic of Indonesia (Indonesia) have been made below normal value during the period of review (POR), November 1, 2018 through October 31, 2019. We invite interested parties to comment on these preliminary results.

DATES: Applicable March 25, 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

Commerce is conducting an administrative review of the antidumping duty order on MSG from Indonesia covering two respondents; PT. Cheil Jedang Indonesia (CJ Indonesia) and PT Miwon Indonesia (Miwon).[1] For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[2] A list of topics included in the Preliminary Decision Memorandum is included as the appendix to this notice.

On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days.[3] On July 21, 2020, Commerce tolled all deadlines for preliminary and final results in administrative reviews by an additional 60 days.[4] On November 3, 2020, we extended the deadline for these preliminary results until no later than March 19, 2021.[5]

Scope of the Order[6]

The merchandise covered by this *Order* is MSG, whether or not blended or in solution with other products. Specifically, MSG that has been blended or is in solution with other product(s) is included in the *Order* when the resulting mix contains 15 percent or more of MSG by dry weight. Products with which MSG may be blended include, but are not limited to, salts, sugars, starches, maltodextrins, and various seasonings. Further, MSG is included in the *Order* regardless of physical form (including, but not limited to, in monohydrate or anhydrous form, or as substrates, solutions, dry powders of any particle size, or unfinished forms such as MSG slurry), end-use application, or packaging. For a full description of the scope of the *Order, see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). Constructed export price is calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum, which is hereby adopted by this notice. A list of topics included in the Preliminary Decision Memorandum is included as an

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[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 85 FR 3014 (January 17, 2020) (*Initiation Notice*).

[2] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the Antidumping Duty Administrative Review: Monosodium Glutamate from the Republic of Indonesia; 2018–2019,'' dated concurrently with this notice (Preliminary Decision Memorandum).

[3] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID–19,'' dated April 24, 2020.

[4] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews,'' dated July 21, 2020.

[5] *See* Memorandum, ''Monosodium Glutamate from Indonesia: Extension of Deadline for Preliminary Results of Review,'' dated November 3, 2020.

[6] *Monosodium Glutamate from the People's Republic of China, and the Republic of Indonesia: Antidumping Duty Orders; and Monosodium Glutamate from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value,* 79 FR 70505 (November 26, 2014) (*Order*).

Appendix to this notice. The Preliminary Decision Memorandum is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.*

Preliminary Results of Review

As a result of our review, we preliminarily determine the following weighted-average dumping margin for the period November 1, 2018, through October 31, 2019:

Manufacturer/exporter	Weighted-average margin (percent)
PT. Cheil Jedang Indonesia	0.00
PT Miwon Indonesia	6.16

Disclosure and Public Comment

Commerce intends to disclose the calculations used in our analysis to parties in this review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties are invited to comment on the preliminary results of this review. Pursuant to 19 CFR 351.309(c)(1)(ii), interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may not be filed later than five days after the time limit for filing case briefs.[7] Parties who submit case briefs or rebuttal briefs in this review are requested to submit with each brief: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[8] Executive summaries should be limited to five pages total, including footnotes.[9]

Pursuant to 19 CFR 351.310(c), any interested party may request a hearing within 30 days of the publication of this notice in the **Federal Register**. If a hearing is requested, Commerce will notify interested parties of the hearing schedule. Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS within 30 days after the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs.

Assessment Rates

Upon completion of the administrative review, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review.[10] If the weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.5 percent), then Commerce will calculate importer-specific *ad valorem* antidumping duty assessment rates based on the ratio of the total amount of dumping calculated for each importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1). If the weighted-average dumping margin is zero or *de minimis* in the final results, or if an importer-specific assessment rate is zero or *de minimis* in the final results, Commerce will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

In accordance with Commerce's ''automatic assessment'' practice, for entries of subject merchandise that entered the United States during the POR that were produced by the respondents for which the respondents did not know that its merchandise was destined to the United States, Commerce will instruct CBP to liquidate unreviewed entries at the all-others rate of 6.19 percent,[11] if there is no rate for the intermediate company(ies) involved in the transaction.[12] The final results of this review shall be the basis for the assessment of antidumping duties on entries of subject merchandise covered by the final results of this review, where applicable.

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).

Cash Deposit Requirements

The following deposit requirements will be effective for all shipments of MSG from Indonesia entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the companies under review will be the rate established in the final results of this review (except, if the rate is zero or *de minimis,* no cash deposit will be required); (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 6.19 percent, the all-others rate established in the investigation.[13] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Final Results of Review

Unless otherwise extended, Commerce intends to issue the final results of this administrative review, including the results of our analysis of issues raised by the parties in the written comments, within 120 days of publication of these preliminary results in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

These preliminary results of administrative 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).

[7] *See* 19 CFR 351.309(d)(1).

[8] *See* 19 CFR 351.309(c)(2), (d)(2).

[9] *Id.*

[10] *See* 19 CFR 351.212(b).

[11] *See Order.*

[12] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[13] *See Order.*

Dated: March 18, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Discussion of Methodology
V. Normal Value
VI. Currency Conversions
VII. Conclusion

[FR Doc. 2021–06179 Filed 3–24–21; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–819]

Steel Concrete Reinforcing Bar From the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review and Intent To Rescind in Part; 2018

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that producers/exporters of steel concrete reinforcing bar (rebar) from the Republic of Turkey (Turkey) received countervailable subsidies during the period of review (POR) January 1, 2018, through December 31, 2018. Interested parties are invited to comment on these preliminary results.

DATES: Applicable March 25, 2021.

FOR FURTHER INFORMATION CONTACT: Nicholas Czajkowski or Konrad Ptaszynski, 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) 482–1395 or (202) 482–6187, respectively.

Background

On January 17, 2020, Commerce published a notice of initiation of an administrative review for the countervailing duty order on rebar from Turkey.[1] On April 24, 2020, Commerce exercised its discretion to toll all deadlines in administrative reviews by 50 days.[2] On July 21, 2020, Commerce tolled all deadlines in preliminary and final results of administrative reviews by an additional 60 days.[3] On October 23, 2020, Commerce further extended the deadline for the preliminary results of this administrative review by 120 days, until March 19, 2021.[4]

For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[5] A list of topics discussed in the Preliminary Decision Memorandum is included as the appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.*

Scope of the Order [6]

The merchandise covered by the order is steel concrete reinforcing bar (rebar) imported in either straight length or coil form regardless of metallurgy, length, diameter, or grade. For a complete description of the scope, *see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this administrative review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each subsidy program found countervailable, we preliminarily find that there is a subsidy, *i.e.,* a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific.[7] For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.

Intent To Rescind Administrative Review, in Part

It is Commerce's practice to rescind an administrative review of a countervailing duty order, pursuant to 19 CFR 351.213(d)(3), when there are no reviewable entries of subject merchandise during the POR for which liquidation is suspended.[8] Normally, upon completion of an administrative review, the suspended entries are liquidated at the countervailing duty assessment rate calculated for the review period.[9] Therefore, for an administrative review of a company to be conducted, there must be a reviewable, suspended entry that Commerce can instruct CBP to liquidate at the calculated countervailing duty assessment rate calculated for the review period.[10] According to the CBP import data, except for the two mandatory respondents Icdas and Kaptan) and two other companies (Colakoglu Dis Ticaret A.S. and Coakoglu Metalurji A.S.), the remaining 21 companies subject to this review did not have reviewable entries of subject merchandise during the POR for which liquidation is suspended. Accordingly, in the absence of reviewable, suspended entries of subject merchandise during the POR, we intend to rescind this administrative review with respect to the 21 additional companies, in accordance with 19 CFR 351.213(d)(3).[11]

Rate for Non-Selected Companies Under Review

There are two companies for which a review was requested, which were not selected as mandatory respondents or

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 85 FR 3014, 3022 (January 17, 2020).

[2] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID–19 Government,'' dated April 24, 2020.

[3] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews,'' dated July 21, 2020.

[4] *See* Memorandum, ''Steel Concrete Reinforcing Bar from the Republic of Turkey: Extension of Deadline for Preliminary Results in 2018 Countervailing Duty Administrative Review,'' dated October 23, 2020.

[5] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of Countervailing Duty Administrative Review: Steel Concrete Reinforcing Bar from the Republic of Turkey; 2018,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[6] *See Steel Concrete Reinforcing Bar from the Republic of Turkey: Countervailing Duty Order,* 79 FR 65926 (November 6, 2014) (*Order*).

[7] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[8] *See, e.g., Lightweight Thermal Paper from the People's Republic of China: Notice of Rescission of Countervailing Duty Administrative Review; 2015,* 82 FR 14349 (March 20, 2017); *see also Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Rescission of Countervailing Duty Administrative Review; 2017,* 84 FR 14650 (April 11, 2019).

[9] *See* 19 CFR 351.212(b)(2).

[10] *See* 19 CFR 351.213(d)(3).

[11] The 21 companies are: Acemar International Limited; A G Royce Metal Marketing; Agir Haddecilik A.S; As Gaz Sinai ve Tibbi Gazlar A.S.; Asil Celik Sanayi ve Ticaret A.S.; Atakas Celik Sanayi ve Ticaret A.S.; Bastug Metalurji Sanayi AS; Demirsan Haddecilik Sanayi Ve Ticaret AS; Diler Dis Ticaret AS; Duferco Investment Services SA; Duferco Celik Ticaret Limited; Ege Celik Endustrisi Sanayi ve Ticaret A.S.; Ekinciler Demir ve Celik Sanayi Anonim Sirketi; Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. (Habas); Izmir Demir Celik Sanayi A.S.; Kibar Dis Ticaret A.S.; Kocaer Haddecilik Sanayi ve Ticar; Mettech Metalurji Madencilik Muhendislik Uretim Danismanlik ve Ticaret Limited Sirketi; MMZ Onur Boru Profil A.S.; Ozkan Demir Celik Sanayi A.S.; and Wilmar Europe Trading B.V.

found to be cross-owned with a mandatory respondent. Because the rate calculated for the mandatory respondent, Kaptan, was above *de minimis* and not based entirely on facts available, we applied the subsidy rate calculated for Kaptan to these two non-selected companies. This methodology for establishing the subsidy rate for the non-selected companies is consistent with our practice and with section 705(c)(5)(A) of the Act.

Preliminary Results of the Review

We preliminarily find that the net countervailable subsidy rates for the period January 1, 2018, through December 31, 2018, are as follows:

Company	Subsidy rate (percent *ad valorem*)
Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S. and its cross-owned affiliates [12]	* 0.32
Kaptan Demir Celik Endustrisi ve Ticaret A.S. and Kaptan Metal Dis Ticaret ve Nakliyat A.S. and their cross-owned affiliates [13]	2.55
Colakoglu Dis Ticaret A.S	2.55
Coakoglu Metalurji A.S	2.55

* De minimis.

Assessment Rates

Consistent with section 751(a)(2)(C) of the Act, upon issuance of the final results, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries covered by this review. If the rate calculated for any respondent, in the final results is zero or *de minimis,* we will instruct CBP to liquidate all appropriate entries of subject merchandise without regard to countervailing duties. 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).

Cash Deposit Requirements

Pursuant to section 751(a)(1) of the Act, Commerce intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown for each of the respective companies listed above, except, where the rate calculated in the final results is zero or *de minimis,* no cash deposit will be required on shipments of the subject merchandise entered or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. For all non-reviewed firms, CBP will continue to collect cash deposits of estimated countervailing duties at the all-others rate or the most recent company-specific rate applicable to the company, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure and Public Comment

Commerce intends to disclose its calculations and analysis performed in reaching the preliminary results within five days of publication of these preliminary results.[14] Because Commerce intends to request additional information after these preliminary results, interested parties will be provided an opportunity to submit written comments (case briefs) at a date to be determined by Commerce and rebuttal comments (rebuttal briefs) within seven days after the time limit for filing case briefs.[15] Pursuant to 19 CFR 351.309(d)(2), rebuttal briefs must be limited to issues raised in the case briefs.[16] Parties who submit arguments are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. All briefs must be filed electronically using ACCESS.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must do so within 30 days after the date of publication of this notice by submitting a written request to the Assistant Secretary for Enforcement and Compliance, using Enforcement and Compliance's ACCESS system. Hearing requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Issues addressed at the hearing will be limited to those raised in the briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a date and time to be determined. Parties should confirm the date and time of the hearing two days before the scheduled date. Parties are reminded that all briefs and hearing requests must be filed electronically using ACCESS and received successfully in their entirety by 5:00 p.m. Eastern Time on the due date.

Unless the deadline is extended, Commerce intends to issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, no later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

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 351.213 and 351.221(b)(4).

Dated: March 19, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Intent To Rescind the Administrative Review, in Part
IV. Non-Selected Rate
V. Scope of the Order
VI. Subsidies Valuation Information
VII. Analysis of Programs
VIII. Recommendation

[FR Doc. 2021–06183 Filed 3–24–21; 8:45 am]

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[12] Commerce preliminarily finds the following companies to be cross-owned with Icdas: Mardas Marmara Deniz Isletmeciligi A.S.; Oraysan Insaat Sanayi ve Ticaret A.S.; Artim Demir Insaat Turizm Sanayi Ticaret Ltd. Sti.; Anka Entansif Hayvancilik Gıda Tarim Sanayi ve Ticaret A.S.; Karsan Gemi Insaa Sanayii Ticaret A.S.; Artmak Denizcilik Ticaret Ve Sanayi A.S.; and Eras Tasimacilik Taahhut Ins.Tic.A.S.

[13] Commerce preliminarily finds the following companies to be cross-owned with Kaptan: Martas Marmara Ereglisi Liman Tesisleri A.S.; Aset Madencilik A.S.; Kaptan Is Makinalari Hurda Alim Satim Ltd. Sti.; Efesan Demir San. Ve Tic. A.S.; and Nur Gemicilik ve Tic. A.S.

[14] *See* 19 CFR 351.224(b).

[15] *See* 19 CFR 351.309(c)(l)(ii) and 351.309(d)(l). Interested parties will be notified through ACCESS regarding the deadline for submitting case briefs. *See also* 19 CFR 351.303 (for general filing requirements); *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)).

[16] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–139]

Certain Mobile Access Equipment and Subassemblies Thereof From the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation

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

DATES: Applicable March 18, 2021.

FOR FURTHER INFORMATION CONTACT: Jacqueline Arrowsmith, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5255.

SUPPLEMENTARY INFORMATION:

The Petition

On February 26, 2021, the U.S. Department of Commerce (Commerce) received an antidumping duty (AD) petition concerning imports of certain mobile access equipment and subassemblies thereof (mobile access equipment) from the People's Republic of China (China) filed in proper form on behalf of the Coalition of American Manufacturers of Mobile Access Equipment [1] (the petitioner), the members of which are domestic producers of mobile access equipment.[2] The Petition was accompanied by a countervailing duty (CVD) petition concerning imports of mobile access equipment from China.[3]

On March 2, 9, and 12, 2021, Commerce requested supplemental information pertaining to certain aspects of the Petition in both general and AD-specific separate supplemental questionnaires and phone calls with the petitioner.[4] On March 4, 5, 12, and 15, 2021, the petitioner filed timely responses to these requests for additional information.[5]

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that imports of mobile access equipment from China are being, or are likely to be, sold in the United States at less than fair value (LTFV) within the meaning of section 731 of the Act and that imports of such products are materially injuring, or threatening material injury to, the domestic mobile access equipment industry in the United States. Consistent with section 732(b)(1) of the Act, the Petition is accompanied by information reasonably available to the petitioner supporting the allegation.

Commerce finds that the petitioner filed the Petition on behalf of the domestic industry because the petitioner is an interested party, as defined in section 771(9)(E) of the Act. Commerce also finds that the petitioner demonstrated sufficient industry support for the initiation of the requested AD investigation.[6]

Period of Investigation

Because China is a non-market economy (NME) country, pursuant to 19 CFR 351.204(b)(1), the period of investigation (POI) is July 1, 2020, through December 31, 2020.

Scope of the Investigation

The product covered by this investigation is mobile access equipment from China. For a full description of the scope of this investigation, *see* the appendix to this notice.

Comments on the Scope of the Investigation

On March 2, 9, 12, and 17, 2021, Commerce requested further information from the petitioner regarding the proposed scope to ensure that the scope language in the Petition is an accurate reflection of the products for which the domestic industry is seeking relief.[7] On March 5, 12, 15, 16, and 18, 2021, the petitioner revised the scope.[8] The description of the merchandise covered by this investigation, as described in the appendix to this notice, reflects these clarifications. In its March 16, 2021, submission, the petitioner revised the scope to add an exclusion for rail line vehicles and certain rail line vehicle subassemblies.[9] In its March 18, 2021, submission, the petitioner further revised the scope to clarify the exclusion for such products as follows: ''The scope also excludes (1) rail line vehicles, defined as vehicles with hi-rail gear or track wheels, and a fixed (non-telescopic) main boom, which perform operations on rail lines, such as laying rails, setting ties, or other rail maintenance jobs; and (2) certain rail line vehicle subassemblies, defined as chassis subassemblies and boom turntable subassemblies for rail line vehicles with a fixed (non-telescopic) main boom.'' [10] While Commerce has adopted this provision for purposes of initiation, we note that the petitioner filed the revised scope containing this additional exclusion late in the 20-day period provided for Commerce's analysis of the Petition,[11] and as such, we invite further comments on this exclusion from parties to this proceeding.

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (*i.e.,* scope).[12] Commerce will consider all comments received from interested parties and, if necessary, will consult

[1] The members of the Coalition of American Manufacturers of Mobile Access Equipment are: JLG Industries, Inc. and Terex Corporation.

[2] *See* Petitioner's Letter, ''Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Petitions for the Imposition of Antidumping and Countervailing Duties,'' dated February 26, 2021 (the Petition) at Volume I and Exhibit I–1.

[3] *Id.*

[4] *See* Commerce's Letters, ''Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Supplemental Questions,'' dated March 2, 2021 (General Issues Supplemental); and ''Petition for the Imposition of Antidumping Duties on Imports of Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Supplemental Questions,'' dated March 2, 2021; *see also* Memorandum, ''Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Phone Call with Counsel to the Petitioner,'' dated March 9, 2021 (Phone Call with Petitioner's Counsel Memorandum); and Memorandum, ''Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Phone Call with Counsel to the Petitioner,'' dated March 12, 2021 (Second Phone Call with Petitioner's Counsel Memorandum).

[5] *See* Petitioner's Letters, ''Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Responses to Supplemental Questionnaire on Volume I of the Petition,'' dated March 5, 2021 (General Issues Supplement); ''Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Response to Supplemental Questionnaire on Volume II of the Petition,'' dated March 4, 2021 (China AD Supplement); ''Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Responses to Second Supplemental Questionnaire on Volume I of the Petition,'' dated March 12, 2021 (Second General Issues Supplement); and Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Responses to Commerce's Questions on Volume I of the Petition,'' dated March 15, 2021 (Third General Issues Supplement).

[6] *See* ''Determination of Industry Support for the Petition'' section, *infra.*

[7] *See* General Issues Supplemental at 3–4; *see also* Phone Call with Petitioner's Counsel Memorandum at 1–2; Second Phone Call with Petitioner's Counsel Memorandum at 1–2; and Memorandum, ''Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Phone Call with Counsel to the Petitioner,'' dated March 17, 2021 (Third Phone Call with Petitioner's Counsel Memorandum) at 1–2.

[8] *See* General Issues Supplement at 6–8; *see also* Second General Issues Supplement at 1–6; Third General Issues Supplement at 2–3; and Petitioner's Letters, ''Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Revision to Scope of Antidumping and Countervailing Duty Investigations,'' dated March 16, 2021 (March 16, 2021, Scope Revision) and ''Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Revision to Clarification Request Regarding the Scope of Antidumping and Countervailing Duty Investigations,'' dated March 18, 2021 (March 18, 2021, Scope Revision).

[9] *See* March 16, 2021, Scope Revision at 1–4.

[10] *See* March 18, 2021, Scope Revision at 1–4.

[11] *See* 19 CFR 351.203(b)(1).

[12] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

with interested parties prior to the issuance of the preliminary determination. If scope comments include factual information, all such factual information should be limited to public information.[13] To facilitate preparation of its questionnaires, Commerce requests that all interested parties submit such comments by 5:00 p.m. Eastern Time (ET) on April 7, 2021, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on April 19, 2021, which is the next business day after 10 calendar days from the initial comment deadline.[14]

Commerce requests that any factual information parties consider relevant to the scope of the investigation be submitted during this period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigation may be relevant, the party may contact Commerce and request permission to submit the additional information. All scope submissions must be filed on the records of the concurrent AD and CVD investigations.

Filing Requirements

All submissions to Commerce must be filed electronically via Enforcement and Compliance's (E&C's) Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS), unless an exception applies.[15] An electronically filed document must be received successfully in its entirety by the time and date it is due.

Comments on Product Characteristics

Commerce is providing interested parties an opportunity to comment on the appropriate physical characteristics of mobile access equipment to be reported in response to Commerce's AD questionnaires. This information will be used to identify the key physical characteristics of the subject merchandise in order to report the relevant factors of production (FOPs) accurately, as well as to develop appropriate product-comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate list of physical characteristics. In order to consider the suggestions of interested parties in developing and issuing the AD questionnaires, all product characteristics comments must be filed by 5:00 p.m. ET on April 7, 2021, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on April 19, 2021, which is the next business day after 10 calendar days after the initial comment deadline. All comments and submissions to Commerce must be filed electronically using ACCESS, as explained above, on the record of the AD investigation.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,[16] they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[17]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of the domestic like product distinct from the scope of the investigation.[18] Based on our analysis of the information submitted on the record, we have determined that mobile access equipment, as defined in the scope, constitutes a single domestic like product, and we have analyzed industry support in terms of that domestic like product.[19]

In determining whether the petitioner has standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the ''Scope of the Investigation,'' in the appendix to this notice. To establish industry support, the petitioner provided its own shipments of mobile access equipment

[13] *See* 19 CFR 351.102(b)(21) (defining ''factual information'').

[14] Commerce's practice dictates that where a deadline falls on a weekend or Federal holiday (in this instance, April 17, 2021), 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) (*Next Business Day Rule*); *see also* 19 CFR 351.303(b).

[15] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011); *see also Enforcement and Compliance; Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on help using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook_on_Electronic_Filing_Procedures.pdf.*

[16] *See* section 771(10) of the Act.

[17] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F. 2d 240 (Fed. Cir. 1989)).

[18] *See* Petition at Volume I at 19–23 and Exhibits I–3, I–17, and I–18; *see also* General Issues Supplement at 8–12 and Exhibits I–Supp–5 through I–Supp 13 and I–Supp–17.

[19] For a discussion of the domestic like product analysis as applied to this case and information regarding industry support, *see* Checklist, ''Antidumping Duty Investigation Initiation Checklist: Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China'' dated concurrently with this **Federal Register** notice (China AD Initiation Checklist) at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China (Attachment II).

in 2020.[20] The petitioner estimated the production of the domestic like product for the entire industry based on shipment data because production data for the entire domestic industry are not available, and shipments are a close approximation of production in the mobile access equipment industry.[21] The petitioner compared its shipments to the estimated total 2020 shipments of the domestic like product for the entire domestic industry.[22] We relied on data provided by the petitioner for purposes of measuring industry support.[23]

Our review of the data provided in the Petition, the General Issues Supplement, the Second General Issues Supplement, the Third General Issues Supplement, and other information readily available to Commerce indicates that the petitioner has established industry support for the Petition.[24] First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.,* polling).[25] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.[26] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.[27] Accordingly, Commerce determines that the Petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.[28]

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at LTFV. In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[29]

The petitioner contends that the industry's injured condition is illustrated by a significant and increasing volume of subject imports; reduced market share; underselling and price depression or suppression; lost sales and revenues; declines in production, shipments, net sales, and capacity utilization; decline in employment; declining financial performance and profitability; and the magnitude of the estimated dumping margin.[30] We assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as negligibility, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation.[31]

Allegations of Sales at LTFV

The following is a description of the allegations of sales at LTFV upon which Commerce based its decision to initiate the AD investigation of imports of mobile access equipment from China. The sources of data for the deductions and adjustments relating to U.S. price and normal value (NV) are discussed in greater detail in the China AD Initiation Checklist.

U.S. Price

The petitioner based constructed export price (CEP) on information from a quoted sales offer for mobile access equipment produced in and exported from China by a Chinese producer.[32] The petitioner made adjustments for movement expenses and constructed export price selling expenses and profit, where appropriate.[33]

Normal Value

Commerce considers China to be an NME country.[34] In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by Commerce. Therefore, we continue to treat China as an NME country for purposes of the initiation of this investigation. Accordingly, NV in China is appropriately based on FOPs valued in a surrogate market economy country, in accordance with section 773(c) of the Act.

The petitioner states that Brazil is an appropriate surrogate country because Brazil is a market economy country that is at a level of economic development comparable to that of China and is a significant producer of comparable merchandise.[35] The petitioner submitted publicly-available information from Brazil to value all FOPs.[36] Based on the information provided by the petitioner, we determine that it is appropriate to use Brazil as a surrogate country for China for initiation purposes.

Interested parties will have the opportunity to submit comments regarding surrogate country selections and, pursuant to 19 CFR 351.301(c)(3)(i), will be provided an opportunity to submit publicly available information to value FOPs within 30 days before the scheduled date of the preliminary determination.

Factors of Production

The petitioner used the product-specific consumption rates of a U.S. producer of mobile access equipment as a surrogate to value Chinese

[20] *See* Petition at Volume I at 2–5 and Exhibit I–5 and I–16; *see also* General Issues Supplement at 14; Second General Issues Supplement at 7–8 and Exhibit I–Supp2–1; and Third General Issues Supplement at 3 and Exhibit I–Supp 3–1.

[21] *See* Petition at Volume I at 2–5 and Exhibits I–3, I–5, I–6, and I–16; *see also* General Issues Supplement at 13–18 and Exhibit I–Supp–14; Second General Issues Supplement at 7–8 and Exhibit I–Supp2–1; and Third General Issues Supplement at 3 and Exhibit I–Supp3–1.

[22] *See* Petition at Volume I at 2–5 and Exhibits I–3, I–5, I–6, and I–16; *see also* General Issues Supplement at 13–18 and Exhibits I–Supp–14 through I–Supp–16; Second General Issues Supplement at 7–8 and Exhibit I–Supp2–1; and Third General Issues Supplement at 3 and Exhibit I–Supp3–1.

[23] *See* Petition at Volume I at 2–5 and Exhibits I–3, I–5, I–6, and I–16; *see also* General Issues Supplement at 13–18 and Exhibits I–Supp–14 through I–Supp–16; Second General Issues Supplement at 7–8 and Exhibit I–Supp2–1; and Third General Issues Supplement at 3 and Exhibit I–Supp3–1.

[24] *See* Attachment II of the China AD Initiation Checklist.

[25] *Id.; see also* section 732(c)(4)(D) of the Act.

[26] *See* Attachment II of the China AD Initiation Checklist.

[27] *Id.*

[28] *Id.*

[29] *See* Petition at Volume I at 26–27 and Exhibit I–19.

[30] *Id.* at 18–19, 23–39 and Exhibits I–3, I–6, I–14 through I–16, I–20 through I–26, and I–30 through I–41.

[31] *See* China AD Initiation Checklist at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China.

[32] *See* the China AD Initiation Checklist.

[33] *Id.*

[34] *See, e.g., Antidumping Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less-Than-Fair Value and Postponement of Final Determination,* 82 FR 50858, 50861 (November 2, 2017), and accompanying Preliminary Decision Memorandum at ''China's Status as a Non-Market Economy,'' unchanged in *Certain Aluminum Foil from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 83 FR 9282 (March 5, 2018).

[35] *See* Volume II of the Petition at 13–14 and Exhibit II–18.

[36] *Id.* at 20 and Exhibit II–24.

manufacturers' FOPs.[37] Additionally, the petitioner calculated factory overhead; selling, general and administrative expenses; and profit based on the experience of a Brazilian producer of comparable merchandise (*i.e.,* commercial and agricultural equipment).[38]

Fair Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that imports of mobile access equipment from China are being, or are likely to be, sold in the United States at LTFV. Based on a comparison of EP to NV, in accordance with sections 772 and 773 of the Act, the estimated dumping margin for mobile access equipment from China is 81.77 percent *ad valorem.*[39]

Initiation of LTFV Investigation

Based upon our examination of the Petition on mobile access equipment from China and supplemental responses, we find that the Petition meets the requirements of section 732 of the Act. Therefore, we are initiating an AD investigation to determine whether imports of mobile access equipment from China are being, or are likely to be, sold in the United States at LTFV. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 140 days after the date of this initiation.

Respondent Selection

In the Petition, the petitioner named 19 companies in China as producers and/or exporters of mobile access equipment.[40]

In accordance with our standard practice for respondent selection in AD investigations involving NME countries, Commerce selects respondents based on quantity and value (Q&V) questionnaires in cases where it has determined that the number of companies is large and it cannot individually examine each company based upon its resources. Therefore, considering the number of producers and exporters identified in the Petition, Commerce will solicit Q&V information that can serve as a basis for selecting exporters for individual examination in the event that Commerce decides to limit the number of respondents individually examined pursuant to section 777A(c)(2) of the Act. Because there are 19 producers and/or exporters identified in the Petition, Commerce has determined that it will issue Q&V questionnaires to each potential respondent for which the petitioner has provided a complete address.

In addition, Commerce will post the Q&V questionnaire along with filing instructions on E&C's website at *https://enforcement.trade.gov/questionnaires/questionnaires-ad.html.* Producers/exporters of mobile access equipment from China that do not receive Q&V questionnaires may still submit a response to the Q&V questionnaire and can obtain a copy of the Q&V questionnaire from E&C's website. In accordance with the standard practice for respondent selection in AD cases involving NME countries, in the event Commerce decides to limit the number of respondents individually investigated, Commerce intends to base respondent selection on the responses to the Q&V questionnaire that it receives.

Responses to the Q&V questionnaire must be submitted by the relevant Chinese producers/exporters no later than 5:00 p.m. ET on April 5, 2021. All Q&V questionnaire responses must be filed electronically via ACCESS. An electronically filed document must be received successfully, in its entirety, by ACCESS no later than 5:00 p.m. ET on the deadline noted above.

Interested parties must submit applications for disclosure under Administrative Protective Order (APO) in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on E&C's website at *http://enforcement.trade.gov/apo.* Commerce intends to finalize its decisions regarding respondent selection within 20 days of publication of this notice.

Separate Rates

In order to obtain separate-rate status in an NME investigation, exporters and producers must submit a separate-rate application.[41] The specific requirements for submitting a separate-rate application in a China investigation are outlined in detail in the application itself, which is available on E&C's website at *http://enforcement.trade.gov/nme/nme-sep-rate.html.* The separate-rate application will be due 30 days after publication of this initiation notice.[42] Producers/exporters who submit a separate-rate application and have been selected as mandatory respondents will be eligible for consideration for separate-rate status only if they respond to all parts of Commerce's AD questionnaire as mandatory respondents. Commerce requires that respondents from China submit a response to both the Q&V questionnaire and the separate-rate application by the respective deadlines in order to receive consideration for separate-rate status. Companies not filing a timely Q&V questionnaire response will not receive separate rate consideration.

Use of Combination Rates

Commerce will calculate combination rates for certain respondents that are eligible for a separate rate in an NME investigation. The Separate Rates and Combination Rates Bulletin states:

> {w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the {Commerce} will now assign in its NME Investigation will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of ''combination rates'' because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question *and* produced by a firm that supplied the exporter during the period of investigation.[43]

Distribution of Copies of the AD Petition

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petition has been provided to the Government of China via ACCESS. Furthermore, to the extent practicable, Commerce will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, as provided under 19 CFR 351.203(c)(2).

[37] *See* Volume II of the Petition at 14–17 and Exhibits II–20 and II–21; *see also* China AD Supplement at Exhibit II–Supp–7.

[38] *See* Volume II of the Petition at 20–21 and Exhibits II–28 and II–29.

[39] *See* China AD Supplement at Exhibit II–Supp–8.

[40] *See* Petition at Volume I at 15 and Exhibit I–10.

[41] *See* Policy Bulletin 05.1: ''Separate-Rates Practice and Application of Combination Rates in Antidumping Investigation involving NME Countries,'' (April 5, 2005), available at *http://enforcement.trade.gov/policy/bull05-1.pdf* (Policy Bulletin 05.1).

[42] Although in past investigations this deadline was 60 days, consistent with 19 CFR 351.301(a), which states that ''the Secretary may request any person to submit factual information at any time during a proceeding,'' this deadline is now 30 days.

[43] *See* Policy Bulletin 05.1 at 6 (emphasis added).

ITC Notification

Commerce will notify the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of mobile access equipment from China are materially injuring, or threatening material injury to, a U.S. industry.[44] A negative ITC determination will result in the investigation being terminated.[45] Otherwise, the investigation will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (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). Section 351.301(b) of Commerce's regulations requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted[46] 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.[47] Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in this investigation.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301 or as otherwise specified by Commerce. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we 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 a letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Parties should review *Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013), available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in this investigation.

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[48] Parties must use the certification formats provided in 19 CFR 351.303(g).[49] Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (*e.g.,* the filing of letters of appearance as discussed at 19 CFR 351.103(d)).[50] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information until further notice.[51]

This notice is issued and published pursuant to sections 732(c)(2) and 777(i) of the Act, and 19 CFR 351.203(c).

Dated: March 18, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Investigation

The merchandise covered by this investigation consists of certain mobile access equipment, which consists primarily of boom lifts, scissor lifts, and material telehandlers, and subassemblies thereof. Mobile access equipment combines a mobile (self-propelled or towed) chassis, with a lifting device (*e.g.,* scissor arms, boom assemblies) for mechanically lifting persons, tools and/or materials capable of reaching a working height of ten feet or more, and a coupler that provides an attachment point for the lifting device, in addition to other components. The scope of this investigation covers mobile access equipment and subassemblies thereof whether finished or unfinished, whether assembled or unassembled, and whether the equipment contains any additional features that provide for functions beyond the primary lifting function.

Subject merchandise includes, but is not limited to, the following subassemblies:

- Scissor arm assemblies, or scissor arm sections, for connection to chassis and platform assemblies. These assemblies include: (1) Pin assemblies that connect sections to form scissor arm assemblies, and (2) actuators that power the arm assemblies to extend and retract. These assemblies may or may not also include blocks that allow sliding of end sections in relation to frame and platform, hydraulic hoses, electrical cables, and/or other components;
- boom assemblies, or boom sections, for connection to the boom turntable, or to the chassis assembly, or to a platform assembly or to a lifting device. Boom assemblies include telescoping sections where the smallest section (or tube) can be nested in the next larger section (or tube) and can slide out for extension and/or articulated sections joined by pins. These assemblies may or may not include pins, hydraulic cylinders, hydraulic hoses, electrical cables, and/or other components;
- chassis assemblies, for connection to scissor arm assemblies, or to boom assemblies, or to boom turntable assemblies. Chassis assemblies include: (1) Chassis frames, and (2) frame sections. Chassis assemblies may or may not include axles, wheel end components, steering cylinders, engine assembly, transmission, drive shafts, tires and wheels, crawler tracks and wheels, fuel tank, hydraulic oil tanks, battery assemblies, and/or other components;
- boom turntable assemblies, for connection to chassis assemblies, or to boom assemblies. Boom turntable assemblies include turntable frames. Boom turntable assemblies may or may not include engine assembly, slewing rings, fuel tank, hydraulic oil tank, battery assemblies, counterweights, hoods (enclosures), and/or other components.

Importation of any of these subassemblies, whether assembled or unassembled,

[44] *See* section 733(a) of the Act.

[45] *Id.*

[46] *See* 19 CFR 351.301(b).

[47] *See* 19 CFR 351.301(b)(2).

[48] *See* section 782(b) of the Act.

[49] *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*). Answers to frequently asked questions regarding the *Final Rule* are available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[50] *See Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008).

[51] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

constitutes unfinished mobile access equipment for purposes of this investigation.

Processing of finished and unfinished mobile access equipment and subassemblies such as trimming, cutting, grinding, notching, punching, slitting, drilling, welding, joining, bolting, bending, beveling, riveting, minor fabrication, galvanizing, painting, coating, 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 mobile access equipment does not remove the product from the scope.

The scope excludes forklifts, vertical mast lifts, mobile self-propelled cranes and motor vehicles that incorporate a scissor arm assembly or boom assembly. Forklifts are material handling vehicles with a working attachment, usually a fork, lifted along a vertical guide rail with the operator seated or standing on the chassis behind the vertical mast. Vertical mast lifts are person and material lifting vehicles with a working attachment, usually a platform, lifted along a vertical guide rail with an operator standing on the platform. Mobile self-propelled cranes are material handling vehicles with a boom attachment for lifting loads of tools or materials that are suspended on ropes, cables, and/or chains, and which contain winches mounted on or near the base of the boom with ropes, cables, and/or chains managed along the boom structure. The scope also excludes motor vehicles (defined as a vehicle driven or drawn by mechanical power and manufactured primarily for use on public streets, roads, and highways, but does not include a vehicle operated only on a rail line pursuant to 49 U.S.C. 30102(a)(7)) that incorporate a scissor arm assembly or boom assembly. The scope further excludes vehicles driven or drawn by mechanical power operated only on a rail line that incorporate a scissor arm assembly or boom assembly. The scope also excludes: (1) Rail line vehicles, defined as vehicles with hi-rail gear or track wheels, and a fixed (non-telescopic) main boom, which perform operations on rail lines, such as laying rails, setting ties, or other rail maintenance jobs; and (2) certain rail line vehicle subassemblies, defined as chassis subassemblies and boom turntable subassemblies for rail line vehicles with a fixed (non-telescopic) main boom.

Certain mobile access equipment subject to this investigation is typically classifiable under subheadings 8427.10.8020, 8427.10.8030, 8427.10.8070, 8427.10.8095, 8427.20.8020, 8427.20.8090, 8427.90.0020 and 8427.90.0090 of the Harmonized Tariff Schedule of the United States (HTSUS). Parts of certain mobile access equipment are typically classifiable under subheading 8431.20.0000 of the HTSUS. While the HTSUS subheadings are provided for convenience and customs purposes only, the written description of the merchandise under investigation is dispositive.

[FR Doc. 2021–06180 Filed 3–24–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–841]

Mattresses From Thailand: Final 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) determines that mattresses from Thailand 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, 2019, through December 31, 2019.

DATES: Applicable March 25, 2021.

FOR FURTHER INFORMATION CONTACT: Paola Aleman Ordaz, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4031.

SUPPLEMENTARY INFORMATION:

Background

On November 3, 2020, Commerce published in the **Federal Register** its preliminary affirmative determination in the LTFV investigation of mattresses from Thailand, in which we also postponed the final determination until March 18, 2021.[1] A summary of the events that occurred since Commerce published the *Preliminary Determination,* as well as a full discussion of the issues raised by parties for this final determination, may be found in the Issues and Decision Memorandum.[2] The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.*

Scope of the Investigation

The products covered by this investigation are mattresses from Thailand. For a full description of the scope of this investigation, *see* Appendix I of this notice.

Scope Comments

In Commerce's Preliminary Scope Decision Memorandum, we set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope) in scope case briefs or other written comments on scope issues.[3] Certain interested parties commented on the scope of the investigation as it appeared in the Preliminary Scope Decision Memorandum, unchanged from the *Initiation Notice.*[4] For a summary of the product coverage comments and rebuttal responses submitted to the record for this final determination, and accompanying discussion and analysis of all comments timely received, *see* the Final Scope Memorandum.[5] In the Final Scope Memorandum, Commerce determined that it is not modifying the scope language as it appeared in the *Initiation Notice. See* the scope in Appendix I to this notice.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs submitted by interested parties in this investigation are addressed in the Issues and Decision Memorandum. For a list of these issues, *see* Appendix II.

Verification

As stated in the *Preliminary Determination,* Commerce preliminary relied upon total adverse facts available (AFA), pursuant to section 776(a) and (b) of the Tariff Act of 1930, as amended (the Act), in determining the weighted-average dumping margins for both mandatory respondents in this investigation, Nisco (Thailand) Co., Ltd. (Nisco) and Saffron Living Co., Ltd. (Saffron). Accordingly, we did not

[1] *See Mattresses from Thailand: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures,* 85 FR 69568 (November 3, 2020) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Determination in the Less-Than-Fair-Value Investigation of Mattresses from Thailand,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See* Memorandum, ''Mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, the Republic of Turkey, the Socialist Republic of Vietnam, and the People's Republic of China: Scope Comments Decision Memorandum for the Preliminary Determination,'' dated October 27, 2020 (Preliminary Scope Decision Memorandum).

[4] *See Mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, the Republic of Turkey, and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations,* 85 FR 23002 (April 24, 2020) (*Initiation Notice*).

[5] *See* Memorandum, ''Mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, the Republic of Turkey, the Socialist Republic of Vietnam, and the People's Republic of China: Final Scope Decision Memorandum,'' dated concurrently with, and hereby adopted by, this notice (Final Scope Memorandum).

conduct verification under section 782(i) of the Act.[6]

For the purposes of this final determination, Commerce is relying on information submitted by Saffron, and applying partial, rather than total, AFA to Saffron.[7] Because Commerce was unable to conduct on-site verification of the information relied upon in making its final determination in this investigation, pursuant to section 776(a)(2)(D) of the Act, we have relied upon the information submitted on the record as facts available in making our final determination.

Changes Since the Preliminary Determination

Based on our review and analysis of the comments received from interested parties, we made certain changes to the margin calculations for Saffron. For a discussion of these changes, *see* the Issues and Decision Memorandum.

Use of Adverse Facts Available

Nisco failed to cooperate in this investigation.[8] Therefore, in the *Prelminary Determination,* pursuant to sections 776(a)(1), 776(a)(2)(A)–(C), and 776(b) of the Act, we assigned Nisco an estimated weighted-average dumping margin based on AFA. No parties filed comments concerning the *Preliminary Determination* with respect to Nisco, and there is no new information on the record that would cause us to revisit the *Preliminary Determination.* Accordingly, we continue to find that the application of total AFA pursuant to sections 776(a) and (b) of the Act is warranted with respect to Nisco. In applying total AFA, we continue to determine an estimated weighted-average dumping margin for Nisco of 763.28 percent, the highest dumping margin alleged in the Petition,[9] and which Commerce corroborated to the extent practicable within the meaning of section 776(c) of the Act.[10]

In the *Preliminary Determination,* Commerce determined that Saffron significantly impeded this investigation and failed to cooperate to the best of its ability through its participation in a scheme to evade the payment of cash deposits, and (in part) on that basis applied total AFA to Saffron.[11] As discussed in the accompanying Issues and Decision Memorandum, we continue to find that the application of AFA to Saffron is warranted with respect to its participation in that scheme. However, for this final determination, Commerce is applying partial, rather than total, AFA to Saffron. Specifically, as partial AFA, we have applied the highest petition dumping margin of 763.28 percent only to the sales of mattresses affected by Saffron's scheme to misrepresent the true producers of certain mattresses to avoid payment of cash deposits, weight averaged with the dumping margin calculated for Saffron's other sales using the reported data.[12]

All-Others Rate

In accordance with section 705(c)(5)(A) of the Act, Commerce shall determine an estimated all-others rate for companies not individually examined. Generally, under section 705(c)(5)(A)(i) of the Act, this rate shall be an amount equal to the average of the estimated dumping rates established for those companies individually examined, excluding any zero and *de minimis* rates and any rates based entirely under section 776 of the Act. However, section 705(c)(5)(A)(ii) of the Act provides that if the antidumping rates established for all companies individually examined are zero or *de minimis* rates, or are determined entirely under section 776 of the Act, then Commerce may use ''any reasonable method'' to establish an all others rate.

As explained above, the sole estimated weighted-average dumping margin calculated for Saffron is based entirely on facts available. In the specific circumstances of this case, we find that a reasonable method to determine the all-others rate under section 735(c)(5)(B) of the Act here is to apply Saffron's individual estimated antidumping rate as the all-others rate for companies not individually examined.

Final Determination

Commerce determines that the weighted-average dumping margins are as follows:

Exporter/producer	Estimated weighted-average dumping margin (percent)
Nisco (Thailand) Co., Ltd	763.28
Saffron Living Co., Ltd	37.48
All Others	37.48

Disclosure

We intend to disclose the calculations performed in this final determination within five days of the date of publication of this notice to parties in the proceeding, in accordance with 19 CFR 351.224 (b).

Continuation of Suspension of Liquidation

In accordance with section 733(c)(1)(B) of the Act, Commerce will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after November 3, 2020, the date of the publication in the **Federal Register** of the affirmative *Preliminary Determination.*

Pursuant to section 735(c)(1)(B)(ii) of the Act and 19 CFR 351.210(d), we will instruct CBP to require a cash deposit for entries of subject merchandise equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) The cash deposit rate for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this final determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin. These suspension of liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the U.S. International Trade Commission (ITC) of the final affirmative determination of sales at LTFV. Because the final determination in this proceeding is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with

[6] *See Preliminary Determination.*

[7] *See* Issues and Decisions Memorandum.

[8] *See Preliminary Determination* PDM at 8–10.

[9] *See Initiation Notice; see also* Checklist, ''Antidumping Duty Investigation Checklist,'' dated April 20, 2020 (Initiation Checklist).

[10] *See Preliminary Determination* PDM at 8–10.

[11] *See* Memorandum, ''Preliminary Results Memorandum: Application of Adverse Facts Available to Saffron Living Co., Ltd.,'' dated October 27, 2020 at 4.

[12] *See* Memorandum, ''Final Determination Analysis Memorandum for Saffron Living Co., Ltd.,'' dated concurrently with this memorandum.

material injury, by reason of imports of mattresses from Thailand no later than 45 days after this final determination. If the ITC determines that material injury, or threat of material injury, does not exit, the proceeding will be terminated, and all cash deposits will be refunded. If the ITC determines that such injury does exist, Commerce will issue an AD duty order directing CBP to assess, upon further instruction by Commerce, AD duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Order (APO)

This notice serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act, and 19 CFR 351.210(c).

Dated: March 18, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The products covered by this investigation are all types of youth and adult mattresses. The term ''mattress'' denotes an assembly of materials that at a minimum includes a ''core,'' which provides the main support system of the mattress, and may consist of innersprings, foam, other resilient filling, or a combination of these materials. Mattresses may also contain: (1) ''upholstery,'' the material between the core and the top panel of the ticking on a single-sided mattress; or between the core and the top and bottom panel of the ticking on a double-sided mattress; and/or (2) ''ticking,'' the outermost layer of fabric or other material (*e.g.,* vinyl) that encloses the core and any upholstery, also known as a cover.

The scope of this investigation is restricted to only ''adult mattresses'' and ''youth mattresses.'' ''Adult mattresses'' are frequently described as ''twin,'' ''extra-long twin,'' ''full,'' ''queen,'' ''king,'' or ''California king'' mattresses. ''Youth mattresses'' are typically described as ''crib,'' ''toddler,'' or ''youth'' mattresses. All adult and youth mattresses are included regardless of size and size description.

The scope encompasses all types of ''innerspring mattresses,'' ''non-innerspring mattresses,'' and ''hybrid mattresses.'' ''Innerspring mattresses'' contain innersprings, a series of metal springs joined together in sizes that correspond to the dimensions of mattresses. Mattresses that contain innersprings are referred to as ''innerspring mattresses'' or ''hybrid mattresses.'' ''Hybrid mattresses'' contain two or more support systems as the core, such as layers of both memory foam and innerspring units.

''Non-innerspring mattresses'' are those that do not contain any innerspring units. They are generally produced from foams (*e.g.,* polyurethane, memory (viscoelastic), latex foam, gel- infused viscoelastic (gel foam), thermobonded polyester, polyethylene) or other resilient filling.

Mattresses covered by the scope of this investigation may be imported independently, as part of furniture or furniture mechanisms (*e.g.,* convertible sofa bed mattresses, sofa bed mattresses imported with sofa bed mechanisms, corner group mattresses, day-bed mattresses, roll-away bed mattresses, high risers, trundle bed mattresses, crib mattresses), or as part of a set in combination with a ''mattress foundation.'' ''Mattress foundations'' are any base or support for a mattress. Mattress foundations are commonly referred to as ''foundations,'' ''boxsprings,'' ''platforms,'' and/or ''bases.'' Bases can be static, foldable, or adjustable. Only the mattress is covered by the scope if imported as part of furniture, with furniture mechanisms, or as part of a set in combination with a mattress foundation.

Excluded from the scope of this investigation are ''futon'' mattresses. A ''futon'' is a bi-fold frame made of wood, metal, or plastic material, or any combination thereof, that functions as both seating furniture (such as a couch, love seat, or sofa) and a bed. A ''futon mattress'' is a tufted mattress, where the top covering is secured to the bottom with thread that goes completely through the mattress from the top through to the bottom, and it does not contain innersprings or foam. A futon mattress is both the bed and seating surface for the futon.

Also excluded from the scope are airbeds (including inflatable mattresses) and waterbeds, which consist of air- or liquid-filled bladders as the core or main support system of the mattress.

Also excluded is certain multifunctional furniture that is convertible from seating to sleeping, regardless of filler material or components, where that filler material or components are upholstered, integrated into the design and construction of, and inseparable from, the furniture framing, and the outermost layer of the multifunctional furniture converts into the sleeping surface. Such furniture may, and without limitation, be commonly referred to as ''convertible sofas,'' ''sofabeds,'' ''sofa chaise sleepers,'' ''futons,'' ''ottoman sleepers'' or a like description.

Also excluded from the scope of this investigation are any products covered by the existing antidumping duty orders on uncovered innerspring units from China or Vietnam. *See Uncovered Innerspring Units from the People's Republic of China: Notice of Antidumping Duty Order,* 74 FR 7661 (February 19, 2009); *Antidumping Duty Order: Uncovered Innerspring Units from the Socialist Republic of Vietnam,* 73 FR 75391 (December 11, 2008).

Also excluded from the scope of this investigation are bassinet pads with a nominal length of less than 39 inches, a nominal width less than 25 inches, and a nominal depth of less than 2 inches.

Additionally, also excluded from the scope of this investigation are ''mattress toppers.'' A ''mattress topper'' is a removable bedding accessory that supplements a mattress by providing an additional layer that is placed on top of a mattress. Excluded mattress toppers have a height of four inches or less.

The products subject to this investigation are currently properly classifiable under HTSUS subheadings: 9404.21.0010, 9404.21.0013, 9404.29.1005, 9404.29.1013, 9404.29.9085, and 9404.29.9087. Products subject to this investigation may also enter under HTSUS subheadings: 9404.21.0095, 9404.29.1095, 9404.29.9095, 9401.40.0000, and 9401.90.5081. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this investigation is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Discussion of the Methodology
V. Discussion of the Issue
  Comment: Whether Commerce Lawfully Applied Facts Available and Adverse Facts Available
VI. Recommendation

[FR Doc. 2021–06191 Filed 3–24–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket Number DARS–2021–0006; OMB Control Number 0704–0397]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Requests for Equitable Adjustment

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed revision and extension of an approved information collection requirement.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, DoD

announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. *DoD invites comments on:* Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; the accuracy of the estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection for use through June 30, 2021. DoD proposes that OMB extend its approval for use for three additional years beyond the current expiration date.

DATES: DoD will consider all comments received by May 24, 2021.

ADDRESSES: You may submit comments, identified by OMB Control Number 0704–0397, using any of the following methods:

○ *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.

Email: osd.dfars@mail.mil. Include OMB Control Number 0704–0397 in the subject line of the message.

Mail: Defense Acquisition Regulations System, Attn: Ms. Kimberly Ziegler, OUSD(A&S)DPC/DARS, 3060 Defense Pentagon, Room 3B938, Washington, DC 20301–3060.

Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly Ziegler, 571–372–6095.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS), Contract Modifications and related clause at DFARS 252.243–7002; OMB Control Number 0704–0397.

Type of Request: Revision and extension.

Affected Public: Businesses or other for-profit and not-for profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

Respondents: 131.

Responses per Respondent: 1.

Annual Responses: 131.

Hours per Response: 14.3, approximately.

Estimated Hours: 1,879.

Reporting Frequency: On occasion.

Needs and Uses: The information collection required by the clause at DFARS 252.243–7002, Requests for Equitable Adjustment, implements 10 U.S.C. 2410(a). The clause requires contractors to certify that requests for equitable adjustment exceeding the simplified acquisition threshold are made in good faith and that the supporting data are accurate and complete. The clause also requires contractors to fully disclose all facts relevant to the requests for equitable adjustment. DoD contracting officers and auditors use this information to evaluate contractor requests for equitable adjustments to contracts.

Jennifer D. Johnson,

Regulatory Control Officer, Defense Acquisition Regulations System.

[FR Doc. 2021–06231 Filed 3–24–21; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC21–65–000.

Applicants: AEP Generation Resources Inc., Eagle Creek Racine Hydro, LLC.

Description: AEP Generation Resources Inc. and Eagle Creek Racine Hydro, LLC submit Supplemental Information Regarding Authorization to Transfer Racine Hydroelectric Station.

Filed Date: 3/17/21.

Accession Number: 20210317–5181.

Comments Due: 5 p.m. ET 3/26/21.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER14–1594–003; ER14–1596–003.

Applicants: Lone Valley Solar Park I LLC, Lone Valley Solar Park II LLC.

Description: Notice of Change in Status of Lone Valley Solar Park I LLC, et al.

Filed Date: 3/17/21.

Accession Number: 20210317–5203.

Comments Due: 5 p.m. ET 4/7/21.

Docket Numbers: ER20–1455–003.

Applicants: Cordova Energy Company LLC.

Description: Compliance filing: Reactive Power Compliance Filing to be effective 4/1/2020.

Filed Date: 3/18/21.

Accession Number: 20210318–5162.

Comments Due: 5 p.m. ET 4/8/21.

Docket Numbers: ER21–1462–000.

Applicants: Midcontinent Independent System Operator, Inc., American Transmission Company LLC.

Description: § 205(d) Rate Filing: 2021–03–18_SA 2802 ATC-City of Two Rivers 1st Rev CFA to be effective 5/18/2021.

Filed Date: 3/18/21.

Accession Number: 20210318–5047.

Comments Due: 5 p.m. ET 4/8/21.

Docket Numbers: ER21–1463–000.

Applicants: The Dayton Power and Light Company.

Description: § 205(d) Rate Filing: DP&L-Ghormley Facilities Agreement Filing to be effective 5/18/2021.

Filed Date: 3/18/21.

Accession Number: 20210318–5051.

Comments Due: 5 p.m. ET 4/8/21.

Docket Numbers: ER21–1464–000.

Applicants: AEP Texas Inc.

Description: § 205(d) Rate Filing: AEPTX-Monte Alto Windpower 2nd A&R GIA to be effective 3/12/2021.

Filed Date: 3/18/21.

Accession Number: 20210318–5053.

Comments Due: 5 p.m. ET 4/8/21.

Docket Numbers: ER21–1465–000.

Applicants: Pacific Gas and Electric Company.

Description: Notice of Termination of Service Agreement No. 363 with Alamo Springs I, LLC of Pacific Gas and Electric Company.

Filed Date: 3/17/21.

Accession Number: 20210317–5198.

Comments Due: 5 p.m. ET 4/7/21.

Docket Numbers: ER21–1466–000.

Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: Letter Agreement Banning Energy Storage Project SA No. 1137 to be effective 3/19/2021.

Filed Date: 3/18/21.

Accession Number: 20210318–5091.

Comments Due: 5 p.m. ET 4/8/21.

Docket Numbers: ER21–1467–000.

Applicants: Pacific Gas and Electric Company.

Description: Notice of Termination of Service Agreement No. 364 with Alamo Springs II, LLC of Pacific Gas and Electric Company.

Filed Date: 3/17/21.

Accession Number: 20210317–5200.

Comments Due: 5 p.m. ET 4/7/21.

Docket Numbers: ER21–1468–000.

Applicants: Midcontinent Independent System Operator, Inc., ITC Midwest LLC.

Description: § 205(d) Rate Filing: 2021–03–18_SA 3643 ITC Midwest-Ledyard Windpower E&P (J836) to be effective 3/16/2021.

Filed Date: 3/18/21.

Accession Number: 20210318–5098.
Comments Due: 5 p.m. ET 4/8/21.

Docket Numbers: ER21–1469–000.
Applicants: California Independent System Operator Corporation.
Description: § 205(d) Rate Filing: 2021–03–18 Maximum Import Capability Filing to be effective 6/1/2021.
Filed Date: 3/18/21.
Accession Number: 20210318–5114.
Comments Due: 5 p.m. ET 4/8/21.

Docket Numbers: ER21–1470–000.
Applicants: Mid-Atlantic Interstate Transmission, LLC, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: MAIT submits ECSA, SA No. 5928 to be effective 5/18/2021.
Filed Date: 3/18/21.
Accession Number: 20210318–5117.
Comments Due: 5 p.m. ET 4/8/21.

Docket Numbers: ER21–1471–000.
Applicants: Public Service Company of Colorado.
Description: § 205(d) Rate Filing: 2021–03–18 PSCo-Sun Mtn Solar-E&P–630–0.0.0 to be effective 3/19/2021.
Filed Date: 3/18/21.
Accession Number: 20210318–5136.
Comments Due: 5 p.m. ET 4/8/21.

Docket Numbers: ER21–1472–000.
Applicants: Old Dominion Electric Cooperative.
Description: § 205(d) Rate Filing: ODEC Submission of Revised Cost-of-Service Rate Schedule to be effective 5/18/2021.
Filed Date: 3/18/21.
Accession Number: 20210318–5143.
Comments Due: 5 p.m. ET 4/8/21.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 18, 2021.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2021–06101 Filed 3–24–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP21–622–000.
Applicants: Equinor Natural Gas LLC, The Brooklyn Union Gas Company.
Description: Joint Petition For Temporary Waiver of Capacity Release Regulations, et al. of Equinor Natural Gas LLC, et al.
Filed Date: 3/16/21.
Accession Number: 20210316–5141.
Comments Due: 5 p.m. ET 3/29/21.

Docket Numbers: RP21–573–001.
Applicants: Columbia Gulf Transmission, LLC.
Description: Tariff Amendment: Amendment TRA 2021 to be effective 4/1/2021.
Filed Date: 3/17/21.
Accession Number: 20210317–5156.
Comments Due: 5 p.m. ET 3/24/21.

Docket Numbers: RP21–623–000.
Applicants: Midcontinent Express Pipeline LLC.
Description: Compliance filing 2021 Annual Penalty Revenue Crediting Report.
Filed Date: 3/17/21.
Accession Number: 20210317–5030.
Comments Due: 5 p.m. ET 3/29/21.

Docket Numbers: RP21–624–000.
Applicants: Greylock Production, LLC, PENN PRODUCTION GROUP LLC.
Description: Joint Petition For Temporary Waiver of Capacity Release Regulations, et al. of Greylock Production, LLC, et al.
Filed Date: 3/17/21.
Accession Number: 20210317–5072.
Comments Due: 5 p.m. ET 3/26/21.

Docket Numbers: RP21–625–000.
Applicants: Venture Global Calcasieu Pass, LLC.
Description: Petition For Temporary Waiver of Capacity Release Regulations, et al. of Venture Global Calcasieu Pass, LLC.
Filed Date: 3/17/21.
Accession Number: 20210317–5182.
Comments Due: 5 p.m. ET 3/29/21.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 18, 2021.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2021–06103 Filed 3–24–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL21–59–000]

Brookfield Asset Management Inc.; Notice of Petition for Declaratory Order

Take notice that on March 12, 2021, pursuant to Rule 207 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 292.203(d)(2) and 292.204(a)(3), Brookfield Asset Management Inc. (Petitioner), filed a petition for declaratory order (Petition) requesting that the Commission issue an order granting limited waiver of the filing requirements applicable to qualifying cogeneration facilities set forth in 18 CFR 292.203(a)(3) of the Commission's regulations, as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://*

www.ferc.gov) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Comment Date: 5:00 p.m. Eastern time on April 12, 2021.

Dated: March 18, 2021.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2021–06105 Filed 3–24–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for electronic review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. 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.

Docket Nos.	File date	Presenter or requester
Prohibited:		
1. P–178–000	3–5–2021	FERC Staff [1].
2. P–10853–000	3–5–2021	FERC Staff [2].
3. CP17–458–000	3–17–2021	FERC Staff [3].
Exempt:		
1. CP17–494–000	3–2–2021	State of Oregon, Governor Kate Brown.
2. ER21–1111–000	3–15–2021	South Carolina Senator Tom Davis.
3. ER20–2878–000	3–16–2021	U.S.Congress [4].

[1] Telephone Memorandum dated March 1, 2021 regarding call between Commission staff and Ted Sorenson, Kern & Tule Hydro.
[2] Email dated 3/2/21 regarding communication between Commission staff and Laura Cowan, Klein Schmidt Group.
[3] Email dated 03/08/2021 regarding communication between Commission staff and Mark Morris.
[4] U.S. Representatives Jim Costa, Josh Harder, and John Garamendi.

Dated: March 18, 2021.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2021–06104 Filed 3–24–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM21–14–000]

Participation of Aggregators of Retail Demand Response Customers in Markets Operated by Regional Transmission Organizations and Independent System Operators

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of inquiry.

SUMMARY: In this Notice of Inquiry, the Federal Energy Regulatory Commission seeks comment on whether to revise its regulations that require a Regional Transmission Organization or Independent System Operator not to accept bids from an aggregator of retail customers that aggregates the demand response of the customers of utilities that distributed more than 4 million megawatt-hours in the previous fiscal year, where the relevant electric retail

regulatory authority prohibits such customers' demand response to be bid into organized markets by an aggregator of retail customers.

DATES: Initial Comments are due June 23, 2021, and Reply Comments are due July 23, 2021.

ADDRESSES: Comments, identified by docket number, may be filed in the following ways:

- Electronic Filing through *http://www.ferc.gov.* Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.
- *Mail/Hand Delivery:* Those unable to file electronically may mail comments via the U.S. Postal Service to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426. Hand-delivered comments or comments sent via any other carrier should be delivered to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.
- *Instructions:* For detailed instructions on submitting comments, see the Comment Procedures Section of this document.

FOR FURTHER INFORMATION CONTACT:

Joseph Baumann (Technical Information), Office of Energy Policy and Innovation, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–8373

Christopher Chaulk (Legal Information), Office of the General Counsel—Energy Markets, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–6720

SUPPLEMENTARY INFORMATION:

1. In this Notice of Inquiry (NOI), the Federal Energy Regulatory Commission (Commission) seeks comment on whether to revise its regulations that require a Regional Transmission Organization (RTO) or Independent System Operator (ISO) (RTO/ISO) not to accept bids from an aggregator of retail customers (ARC) that aggregates the demand response of the customers of utilities that distributed more than four million megawatt-hours (MWh) in the previous fiscal year, where the relevant electric retail regulatory authority (RERRA) prohibits such customers' demand response to be bid into organized markets by an ARC (Demand Response Opt-Out).[1]

2. It has been over a decade since the Commission established the Demand Response Opt-Out in Order Nos. 719 and 719–A.[2] In that time, there have been significant legal, policy, and technological developments that may warrant reconsideration of the Demand Response Opt-Out. In light of those developments and the records compiled in various proceedings before the Commission, we seek comment on the potential impacts of removing the Demand Response Opt-Out from the Commission's regulations. We also seek comment on other changes relating to demand response since the Commission established the Demand Response Opt-Out.

I. Background

A. Final Rules on Demand Response Participation in Organized Wholesale Electric Markets

3. As relevant here, in Order Nos. 719 and 719–A the Commission directed each RTO/ISO to amend its market rules as necessary to: (1) Accept bids from ARCs [3] that aggregate the demand response of the customers of utilities that distributed more than four million MWh in the previous fiscal year; and (2) not accept bids from ARCs that aggregate the demand response of the customers of utilities that distributed more than four million MWh in the previous fiscal year, where the RERRA prohibits such customers' demand response to be bid into organized markets by an ARC (*i.e.,* the Demand Response Opt-Out).[4] The Commission used a four million MWh cut-off to distinguish small utilities, which the Commission addressed through additional regulations.[5] The Commission explained that the term RERRA meant the entity that establishes the retail electric prices and any retail competition policies for customers, such as the city council for a municipal utility, the governing board of a cooperative utility, or the state public utility commission.[6]

4. The Commission found that allowing an ARC to act as an intermediary for many small retail loads that cannot individually participate in the organized markets would improve the competitiveness of RTO/ISO markets to fulfill the Commission's statutory mandate to ensure supplies of electric energy at just, reasonable, and not unduly discriminatory or preferential rates.[7] The Commission explained that aggregating small retail customers into larger pools of resources would expand the amount of resources available to the market, increase competition, help reduce prices to consumers, and enhance reliability.[8] The Commission also stated that the proposal could encourage the development of demand response programs and thus provide retail customers more opportunities available through larger markets.[9] Moreover, the Commission noted that experiences with existing aggregation programs in some RTOs/ISOs showed that these programs had increased demand responsiveness in these regions.[10] The Commission stated that its intent was not to interfere with the operation of successful retail demand response programs, place an undue burden on state and local retail regulatory entities, or raise new jurisdictional concerns.[11] The Commission further found that this action properly balanced the Commission's goal of removing barriers to the development of demand response resources in the RTO/ISO markets with the interests and concerns of state and local regulatory authorities.[12]

5. Subsequently, in Order No. 745,[13] the Commission adopted revised regulations addressing compensation and cost allocation for demand response in RTO/ISO energy markets. On appeal, in *EPSA,* the United States Supreme Court upheld the Commission's jurisdiction over the participation of demand response resources in RTO/ISO markets.[14]

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[1] *See* 18 CFR 35.28(g)(1)(iii). The Commission is not seeking comment on the portion of this regulatory text requiring the RTO/ISO not to accept bids from an ARC that aggregates the demand response of the customers of utilities that distributed four million MWh or less in the previous fiscal year, unless the relevant electric retail regulatory authority permits such customers' demand response to be bid into organized markets by an ARC (Small Utility Opt-In).

[2] *Wholesale Competition in Regions with Organized Electric Markets,* Order No. 719, 125 FERC ¶ 61,071 (2008), *order on reh'g,* Order No. 719–A, 128 FERC ¶ 61,059, *order on reh'g,* Order No. 719–B, 129 FERC ¶ 61,252 (2009).

[3] The Commission stated that it would ''use the phrase 'aggregator of retail customers,' or ARC, to refer to an entity that aggregates demand response bids (which are mostly from retail loads).'' *Id.* P 3 n.3.

[4] Order No. 719–A, 128 FERC ¶ 61,059 at P 60; *see* Order No. 719, 125 FERC ¶ 61,071 at P 154.

[5] Order No. 719–A, 128 FERC ¶ 61,059 at PP 59–60.

[6] Order No. 719, 125 FERC ¶ 61,071 at P 158.

[7] *Id.* P 1.

[8] *Id.* P 154.

[9] *Id.*

[10] *Id.*

[11] *Id.* P 155.

[12] *Id.* P 156.

[13] *Demand Response Compensation in Organized Wholesale Energy Markets,* Order No. 745, 134 FERC ¶ 61,187, *order on reh'g and clarification,* Order No. 745–A, 137 FERC ¶ 61,215 (2011), *reh'g denied,* Order No. 745–B, 138 FERC ¶ 61,148 (2012), *vacated sub nom. Elec. Power Supply Ass'n* v. *FERC,* 753 F.3d 216 (D.C. Cir. 2014), *rev'd & remanded sub nom. FERC* v. *Elec. Power Supply Ass'n,* 136 S. Ct. 760 (2016) (*EPSA*).

[14] *EPSA,* 136 S. Ct. at 773–82.

B. Participation in RTO/ISO Markets of Other Resources Located on the Distribution System or Behind a Retail Meter

6. Since *EPSA,* the Commission and the U.S. Court of Appeals for the D.C. Circuit (D.C. Circuit) have addressed the Commission's jurisdiction over the participation in RTO/ISO markets of other types of demand-side resources and resources located on the distribution system or behind a retail customer meter. In those proceedings, the Commission has declined requests for states or RERRAs to determine the eligibility of these resources to participate in RTO/ISO markets.

1. Energy Efficiency Resources

7. In *Advanced Energy Economy,* the Commission determined that it has exclusive jurisdiction to regulate the participation of energy efficiency resources in RTO/ISO markets as a practice directly affecting wholesale markets, rates, and prices.[15] Consequently, the Commission found that a RERRA may not bar, restrict, or otherwise condition the participation of energy efficiency resources in RTO/ISO markets unless the Commission expressly gives RERRAs such authority.[16] The Commission further found that any incidental effects on the retail markets from energy efficiency resource participation in wholesale markets are not substantial, including the effects on a load-serving entity's day-to-day operations.[17] The Commission also found that the potential for increasing competition faced by retail utility programs or concerns with double counting are not sufficient justifications for barring certain types of resources from the market.[18]

8. On rehearing, the Commission found that a provision directly restricting retail customers' participation in organized wholesale markets, even if contained in the terms of retail service, nonetheless intrudes on the Commission's jurisdiction over those markets and prevents the Commission from carrying out its statutory authority to ensure that wholesale electricity markets produce just and reasonable rates.[19] The Commission also disagreed that RERRAs have the authority to prevent energy efficiency resources from participating in RTO/ISO markets because of RERRAs' concerns about such participation, such as the potential impacts on retail load forecasting.[20] The Commission reasoned that, even if a RERRA seeks legitimate ends, it still may not seek to achieve such ends through regulatory means that intrude upon the Commission's authority over wholesale rates.[21]

2. Electric Storage Resources

9. In Order No. 841,[22] the Commission adopted regulations to remove barriers to the participation of electric storage resources in RTO/ISO markets. The Commission denied a request that the Commission allow states to decide whether electric storage resources in their state that are located behind a retail meter or on the distribution system are permitted to participate in RTO/ISO markets.[23]

10. In Order No. 841–A, the Commission found that the FPA and relevant precedent did not legally compel the Commission to adopt an opt-out with respect to participation in RTO/ISO markets by electric storage resources interconnected on a distribution system or located behind a retail meter.[24] The Commission also maintained that the Court's jurisdictional conclusion in *EPSA* did not rest upon the fact that states were granted the Demand Response Opt-Out.[25] The Commission disagreed that states could dictate whether resources are allowed to participate in RTO/ISO markets through conditions on the receipt of retail service. While acknowledging that states can include conditions in their own retail programs that prohibit any participating resources from also selling into RTO/ISO markets, the Commission found that a condition broadly prohibiting all retail customers from participating in RTO/ISO markets, even if contained in the terms of retail service, is aimed *directly* at RTO/ISO markets and would intrude on the Commission's jurisdiction over those markets.[26]

11. The Commission declined to exercise its discretion to grant an opt-out, finding that the benefits of allowing electric storage resources broader access to wholesale markets outweighed any policy considerations in favor of an opt-out.[27] The Commission explained that it considered effects on the distribution system in reaching this decision.[28]

The Commission disagreed that its decision not to exercise its discretion and adopt an opt-out in Order No. 841 was an unexplained departure from the Demand Response Opt-Out adopted in Order No. 719. The Commission stated that Order No. 719 expressly provided that the Demand Response Opt-Out only applies to demand response resources; that the resources at issue in Order No. 841 differed significantly from the demand response resources at issue in Order No. 719, *i.e.,* that unlike demand response resources, electric storage resources are capable of engaging in sales for resale of electricity; and that, unlike in the case of demand response resources, RERRAs and distribution utilities do not have a longstanding history of managing and regulating programs for electric storage resources within their boundaries.[29]

12. In *NARUC,* the D.C. Circuit upheld the Commission's decision in Order Nos. 841 and 841–A not to provide a RERRA opt-out with respect to the RTO/ISO market participation of electric storage resources located behind a retail meter or on the distribution system.[30] The D.C. Circuit concluded that the Commission's prohibition of state-imposed participation bans directly affected wholesale rates because Order No. 841 solely targeted the manner in which an electric storage resource may participate in RTO/ISO markets.[31] The court then found that Order No. 841 did not directly regulate states' distribution systems and did not '' 'usurp[ ] state power.' '' [32] Furthermore, the D.C. Circuit explained, the Commission's statement in Order No. 841–A that states may not block RTO/ISO market participation '' 'through conditions on the receipt of

[15] 161 FERC ¶ 61,245, at PP 60–61 (2017) (AEE Declaratory Order), *order on reh'g,* 163 FERC ¶ 61,030 (2018) (AEE Rehearing Order).

[16] *Id.* P 61.

[17] *Id.* P 63.

[18] *Id.* P 64.

[19] AEE Rehearing Order, 163 FERC ¶ 61,030 at P 37 (citing *Oneok, Inc.* v. *Learjet, Inc.,* 135 S. Ct. 1591, 1600 (2015) (finding that the proper test for determining whether a state action is preempted is ''whether the challenged measures are 'aimed directly at interstate purchasers and wholesalers for resale' or not'') (*Oneok*) (quoting *N. Natural Gas Co.* v. *State Corp. Comm'n of Kan.,* 372 U.S. 84, 94 (1963)); *Nantahala Power & Light Co.* v. *Thornburg,* 476 U.S. 953, 970 (1986) (finding that ''a State may not exercise its undoubted jurisdiction over retail sales to prevent the wholesaler-as-seller from recovering the costs of paying the FERC-approved rate'')).

[20] *Id.* P 38.

[21] *Id.* (citing *Hughes* v. *Talen Energy Mktg., LLC,* 136 S. Ct. 1288, 1298 (2016)).

[22] *Electric Storage Participation in Markets Operated by Regional Transmission Organizations and Independent System Operators,* Order No. 841, 162 FERC ¶ 61,127 (2018), *order on reh'g,* Order No. 841–A, 167 FERC ¶ 61,154 (2019), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs* v. *FERC,* 964 F.3d 1177 (D.C. Cir. 2020) (*NARUC*).

[23] *Id.* P 35.

[24] Order No. 841–A, 167 FERC ¶ 61,154 at P 32.

[25] *Id.* P 40.

[26] *Id.* P 41 (emphasis in original).

[27] *Id.* P 56.

[28] *Id.*

[29] *Id.* PP 50–52.

[30] 964 F.3d at 1186–89.

[31] *Id.* at 1186.

[32] *Id.* at 1187; *id.* at 1188 (quoting *EPSA,* 136 S. Ct. at 777).

retail service,' '' or impose any '' 'condition[ ] aimed *directly* at the RTO/ISO markets, even if contained in the terms of retail service,' '' was simply a restatement of the well-established principles of federal preemption.[33]

13. The D.C. Circuit next concluded that the Commission's decision not to adopt a state opt-out was adequately explained.[34] The D.C. Circuit explained that the Commission addressed concerns that states may bear additional administrative burdens associated with enabling the participation of energy storage resources in RTO/ISO markets, but the Commission decided that such negative effects were outweighed by the benefits of the final rule.[35] The D.C. Circuit further noted that, in not adopting the opt-out, the Commission was ''acutely aware'' of the Demand Response Opt-Out in Order No. 719.[36] The court stated that the Supreme Court described the Demand Response Opt-Out in *EPSA* as ''cooperative federalism,'' demonstrating the Commission's ''recognition of the linkage between wholesale and retail markets and the [s]tates' role in overseeing retail sales.'' [37] The D.C. Circuit also agreed with the Commission that *EPSA* did not condition its holdings on the existence of the Demand Response Opt-Out.[38]

3. Distributed Energy Resource Aggregations

14. Subsequently, in Order No. 2222,[39] the Commission adopted regulations to remove barriers to the participation of distributed energy resource aggregations in RTO/ISO markets. The Commission declined to include a mechanism for all RERRAs to prohibit all distributed energy resources from participating in RTO/ISO markets through distributed energy resource aggregations (*i.e.,* an opt-out).[40] The Commission stated that the final rule '' 'addresses—and addresses only—transactions occurring on the wholesale market.'' [41] The Commission thus found that the FPA and relevant precedent does not legally compel the Commission to adopt an opt-out with respect to participation in RTO/ISO markets by all resources interconnected on a distribution system or located behind a retail meter.[42] The Commission found that the benefits of allowing distributed energy resource aggregators broader access to the RTO/ISO market outweigh the policy considerations in favor of an opt-out.[43] The Commission explained that it was not persuaded that concerns about potential effects on the distribution system justify adopting an opt-out that could substantially limit that participation.[44]

15. The Commission also explained that because demand response falls under the definition of distributed energy resource, an aggregator of demand response could participate as a distributed energy resource aggregator in RTO/ISO markets.[45] However, the Commission clarified that the final rule did not affect existing demand response rules.[46] The Commission explained that the final rule did not affect the ability of RERRAs to prohibit retail customers' demand response from being bid into RTO/ISO markets by aggregators, consistent with the Demand Response Opt-Out established in Order No. 719.[47]

16. In Order No. 2222–A, issued concurrently with this NOI, the Commission sets aside in part the conclusion that the participation of demand response in distributed energy resource aggregations is subject to the opt-out requirements of Order Nos. 719 and 719–A.[48] The Commission declines to extend this opt-out to demand response resources that participate in heterogeneous distributed energy resource aggregations—*i.e.,* those that are made up of different types of resources including demand response as opposed to those made up entirely of demand response. The Commission finds that the Demand Response Opt-Out will continue to apply to aggregations made up *solely* of resources that participate as demand response resources, consistent with the Commission's regulations.[49] The Commission finds that heterogeneous distributed energy resource aggregations that include demand response resources do not fall squarely within the Demand Response Opt-Out, as set forth in the Commission's regulations, because they are not solely aggregations of retail customers.[50] The Commission finds that extending the opt-out to demand response resources in heterogeneous distributed energy resource aggregations would undermine the potential of Order No. 2222 to break down barriers to competition, interfering with the Commission's responsibility to ensure that wholesale rates are just and reasonable.[51] The Commission also states that applying the Demand Response Opt-Out to aggregations that contain a combination of demand response and other types of distributed energy resources could prevent distributed energy resource aggregators from incorporating the complementary capabilities of existing and future demand response technologies.[52]

C. Voltus v. MISO Complaint

17. On October 20, 2020, Voltus, Inc. (Voltus) filed a complaint arguing that the Demand Response Opt-Out provisions in Midcontinent Independent System Operator, Inc.'s (MISO) tariff are inconsistent with the jurisdictional provisions of the FPA and are not just and reasonable.[53] Voltus also requested that the Commission issue a notice of proposed rulemaking to repeal the Demand Response Opt-Out.[54]

II. Discussion

18. In this proceeding, we seek to examine whether changing circumstances warrant revising the Commission's regulations providing for the Demand Response Opt-Out

[33] *Id.* at 1187 (quoting Order No. 841–A, 167 FERC ¶ 61,154 at P 41) (emphasis in original).

[34] *Id.* at 1189.

[35] *Id.* at 1190.

[36] *Id.*

[37] *Id.* at 1189–90 (quoting *EPSA,* 136 S. Ct. at 779–80) (internal quotation marks omitted).

[38] *Id.*

[39] *Participation of Distributed Energy Resource Aggregations in Markets Operated by Regional Transmission Organizations and Independent System Operators,* Order No. 2222, 85 FR 67094 (Oct. 21, 2020), 172 FERC ¶ 61,247 (2020), *corrected,* 85 FR 68450 (Oct. 29, 2020), *order on reh'g,* Order No. 2222–A, 174 FERC ¶ 61,197 (2021).

[40] *Id.* P 56.

[41] *Id.* P 58 (quoting *EPSA,* 136 S. Ct. at 776).

[42] *Id.*

[43] *Id.* P 60.

[44] *Id.* In Order No. 2222, the Commission recognized the potentially greater burden on small utility systems, and exercised its discretion to include an opt-in mechanism for small utilities similar to that provided in Order No. 719–A. *See id.* P 64.

[45] *Id.* P 118.

[46] *Id.*

[47] *Id.* P 59 (citing Order No. 719, 125 FERC ¶ 61,071 at PP 154–55).

[48] Order No. 2222–A, 174 FERC ¶ 61,197 at P 22.

[49] *Id.*

[50] *Id.* P 23 n.70 (citing 18 CFR 35.28(g)(1)(iii) (expressly limiting the application of the Order No. 719 opt-out to ''an aggregator of retail customers that aggregates the demand response of the customers of utilities''); 18 CFR 35.28(b)(10), (g)(12) (requiring RTOs/ISOs to establish market rules applicable to entities that aggregate one or more resources located on the distribution system, any subsystem thereof or behind a customer meter); Order No. 2222, 172 FERC ¶ 61,247 at P 114 (finding that distributed energy resources may include, but are not limited to, resources that are in front of and behind the customer meter, electric storage resources, intermittent generation, distributed generation, demand response, energy efficiency, thermal storage, and electric vehicles and their supply equipment)).

[51] *Id.* P 23; *see also id.* (concluding that extending the Order No. 719 opt-out to demand response resources that seek to participate in heterogeneous distributed energy resource aggregations would undermine the ability of such aggregations to take advantage of different resources' operational attributes and complementary capabilities).

[52] *Id.* P 26.

[53] Voltus, Complaint, Docket No. EL21–12–000, at 1 (filed Oct. 20, 2020); *see* MISO, FERC Electric Tariff, Module C, 38.6.A.iii.1(a) (34.0.0).

[54] Complaint at 2. The Complaint is pending.

established in Order Nos. 719 and 719–A, and more specifically, whether RTO/ISO markets would significantly benefit from the increased participation of aggregated demand response resources that are currently barred by RERRAs exercising the Demand Response Opt-Out.

19. Over a decade ago, the Commission required RTOs/ISOs to amend their market rules as necessary to permit ARCs to bid demand response on behalf of retail customers directly into RTO/ISO markets, subject to the Demand Response Opt-Out. The Commission found that permitting ARC participation in RTO/ISO markets would increase competition, help reduce prices to consumers, and enhance reliability.[55] In support of its decision, the Commission stated that its intent was not to interfere with the operation of successful retail demand response programs, place an undue burden on state and local retail regulatory entities, or raise new jurisdictional concerns.[56] The Commission found that its decision properly balanced the interests and concerns of state and local regulatory authorities with the Commission's goal of removing barriers to the development of demand response resources in RTO/ISO markets.[57]

20. Since the issuance of Order No. 719, there have been significant legal, policy, and technological developments that may warrant reconsideration of the Demand Response Opt-Out. The Commission has subsequently issued rules relating to other types of demand-side resources and resources located on the distribution system or behind a retail customer meter. In those proceedings, the Commission has consistently declined to adopt a mechanism similar to the Demand Response Opt-Out.[58] In so doing, the Commission has explained that the benefits of allowing electric storage resources and distributed energy resource aggregations broader access to RTO/ISO markets outweighed any policy considerations in favor of an opt-out.[59] Further, there have been significant improvements in the technology that ARCs offer to retail customers, including instant communication of dispatches, real-time visibility and control of load curtailment, immediate settlement of dispatch performance, and automated financial transactions between markets and customers, in part due to the proliferation of broadband, high-speed wireless communication.[60] More broadly, the adoption of emerging consumer technologies, such as smart thermostats, electric water heaters and smart meters, now allows for load to be managed through geographically-targeted demand reductions, load building and system balancing.[61] Through the use of state-of-the-art sensors and controls, grid-interactive efficient buildings[62] can reduce 10–20% of commercial building peak load.[63]

21. Accordingly, we are exploring whether to revise the Commission's regulations to remove the Demand Response Opt-Out, recognizing that the Commission, when it established the Demand Response Opt-Out, balanced the interests and concerns of state and local regulatory authorities with the Commission's goal of removing barriers to demand response resource participation in RTO/ISO markets. Circumstances may have changed in the years since the issuance of Order Nos. 719 and 719–A, such that the balance reflected in those orders adopting the Demand Response Opt-Out may have shifted and the RTO/ISO market rules reflecting the Demand Response Opt-Out may no longer be just and reasonable. For example, we note that, in its complaint, Voltus alleges that the Demand Response Opt-Out has become a barrier to competition. Specifically, Voltus argues that the Demand Response Opt-Out: (1) Makes gatekeepers of utilities that lack the correct incentives to maximize the contribution of demand response to market value; (2) disconnects customers and market prices; (3) blocks innovation; and (4) results in a costly patchwork of program requirements and incentives.[64] Voltus also alleges that the absence of demand response competition contributes to threats to reliability in MISO.[65] Through the questions below, we seek information to help us examine the potential costs/burdens and benefits, both quantitative and qualitative, of removing the Demand Response Opt-Out, as well as other changes relating to demand response since the Commission issued Order Nos. 719 and 719–A. We are not seeking comment on the Small Utility Opt-In.

22. We invite interested persons to submit comments on the following questions, and we encourage commenters to provide specific examples and refer to recent, relevant studies or data, as necessary. Commenters need not answer every question below.

A. Questions Regarding Changed Circumstances Relevant to the Demand Response Opt-Out Since Issuance of Order Nos. 719 and 719–A

23. First, we seek comment on whether and how circumstances have changed since the Commission established the Demand Response Opt-Out in Order Nos. 719 and 719–A.

(Q1) To what extent have the type and capabilities of demand response technologies and aggregations available to parties seeking to participate in RTO/ISO markets changed since 2009?[66]

(Q2) To what extent have advances in communications, controls, and information technology created new demand response capabilities available to parties seeking to participate in RTO/ISO markets since 2009?

(a) For example, what impact, if any, has broader deployment of advanced metering infrastructure (AMI) had on the availability and utilization of demand response for aggregators seeking to participate in RTO/ISO markets?

(b) Has experience with RTO/ISO deployment of demand response resources demonstrated any system-

[55] Order No. 719, 125 FERC ¶ 61,071 at P 154; Order No. 719–A, 128 FERC ¶ 61,059 at P 65.

[56] Order No. 719, 125 FERC ¶ 61,071 at P 155; Order No. 719–A, 128 FERC ¶ 61,059 at PP 49, 54, 56–57, 67.

[57] Order No. 719, 125 FERC ¶ 61,071 at P 156.

[58] *E.g.,* AEE Declaratory Order, 161 FERC ¶ 61,245 at P 57 (finding that RERRAs may not bar the participation of energy efficiency resources in wholesale markets unless the Commission gives RERRAs such authority, and declining to opine on the requirements the Commission would impose in the event that a RERRA requests such authority).

[59] Order No. 841–A, 167 FERC ¶ 61,154 at P 56; Order No. 2222, 172 FERC ¶ 61,247 at P 60.

[60] *See* Voltus, Complaint, Exhibit B (Testimony of Gregg Dixon) at 4–7.

[61] The Brattle Group, *The National Potential for Load Flexibility* 1 (June 2019), *https://brattlefiles.blob.core.windows.net/files/16639_national_potential_for_load_flexibility_-_final.pdf.*

[62] Grid-interactive efficient buildings are energy efficient buildings with smart technologies characterized by the active use of distributed energy resources to optimize energy use for grid services, occupant needs and preferences, and cost reductions in a continuous and integrated way. U.S. Department of Energy, *Grid-interactive Efficient Buildings* 20 (April 2019), *https://www.energy.gov/sites/prod/files/2019/04/f61/bto-geb_overview-4.15.19.pdf.*

[63] *Id.* at 10–11.

[64] Voltus, Complaint at 58–59.

[65] *Id.* at 64. We also acknowledge that parties in that proceeding opposed these arguments. For example, Organization of MISO States argues that Order No. 719 and MISO's tariff provisions implementing it remain just and reasonable. Organization of MISO States, Inc., Motion to Dismiss Complaint and Protest, Docket No. EL21–12–000, at 14 (filed Nov. 19, 2020); *see also* Midwest TDUs, Motion to Intervene, Protest, and Motion to Dismiss, Docket No. EL21–12–000, at 13 (filed Nov. 19, 2020) (arguing that Voltus does not demonstrate that MISO has concluded that its reliability is at risk unless states rescind their Order No. 719 Demand Response Opt-Out).

[66] In 2009, the Commission issued Order No. 719–A.

wide value or operational benefits that accrue, more efficiently and effectively, via RTO/ISO dispatch through aggregators than would be available otherwise?

(Q3) To what extent have changes in the resource mix since 2009 increased the need for aggregations of demand response in RTO/ISO markets, particularly demand response that can respond to operator instructions in real time? Have impacts of these trends been different in states that have adopted the Demand Response Opt-Out?

(Q4) The North American Electric Reliability Corporation (NERC) has stated that demand response provides transmission system operators with additional system-balancing tools to maintain bulk-power system reliability.[67] NERC has also stated that, as the resource mix changes, flexible resources that can be called upon on short notice, including demand response, are needed to ensure resource adequacy and meet ramping needs.[68] To what extent can demand response aggregations provide real-time balancing and essential grid services, such as frequency response and ramping capability, to support bulk-power system operations? Are third-party demand response aggregators equally able to provide real-time balancing and essential grid services, or are utility-operated programs better suited to provide them? Are transmission system operators better able to leverage these capabilities given developments in technology and infrastructure since 2009?

B. Questions Regarding Potential Benefits of Removing the Demand Response Opt-Out

24. We seek comment on the potential benefits of revising our regulations to remove the Demand Response Opt-Out. We also seek comment on reasons why the balance between the Commission's goal of removing barriers to the development of demand response resources in RTO/ISO markets and the interests and concerns of state and local regulatory authorities may have shifted such that the market rules reflecting the Demand Response Opt-Out may no longer be just and reasonable.

(Q5) What are the potential benefits of removing the Demand Response Opt-Out, including any benefits not considered by the Commission in Order Nos. 719 and 719–A, and considering any changed circumstances that may be relevant? Please note if such benefits were not previously highlighted in Order Nos. 719 and 719–A.[69] Please provide quantitative estimates, if possible. In addition, please describe the types of entities to which any benefits would accrue.

(Q6) What are the potential benefits of creating more consistency between the participation models for ARCs and distributed energy resource aggregators by removing the Demand Response Opt-Out? In light of market participation opportunities for energy efficiency resources, electric storage resources, and distributed energy resource aggregations, would eliminating the Demand Response Opt-Out established in Order Nos. 719 and 719–A enhance clarity for market participants and prevent disputes regarding the eligibility of resource aggregations to participate in wholesale markets?

(Q7) Is there any evidence to suggest that removing the Demand Response Opt-Out would result in additional demand response resources participating through aggregations in RTO/ISO markets? Similarly, is there any evidence to suggest that removing the Demand Response Opt-Out would result in additional demand response services or flexibility to address system needs? If so, are there ways to quantify these benefits to RTO/ISO markets? Do the benefits of permitting increased third-party demand response aggregations in RTO/ISO markets exceed those provided by utilities bidding demand response into such markets?

(Q8) Is there any other evidence to suggest that RTO/ISO market rules reflecting the Demand Response Opt-Out are no longer just and reasonable?

C. Questions Regarding Potential Resulting Burdens From Removing the Demand Response Opt-Out

25. We also seek comment on the potential resulting burdens from removing the Demand Response Opt-Out based on experience gained since 2009. In Order No. 719, the Commission described the various concerns commenters expressed about the Commission's proposed Demand Response Opt-Out. Commenters alleged that the proposed Demand Response Opt-Out would place the burden on local authorities to take action to disallow participation of ARCs in RTO/ISO markets. Another commenter argued that, under the Commission's proposal, ARCs would effectively be allowed to cherry-pick the best load response resources out of existing load-serving entity demand response programs, depriving those load-serving entities of important resources used to keep rates down for all consumers.[70] The Commission explained its decision to establish the Demand Response Opt-Out in part by stating that it did not seek to interfere with the operation of successful retail demand response programs or place an undue burden on state and local retail regulatory authorities.[71]

(Q9) To what extent has the Demand Response Opt-Out prevented interference with the operation of existing retail demand response programs, or avoided placing an undue burden on state and local retail regulatory entities, as noted in Order No. 719?

(Q10) What potential costs and burdens might result from removing the Demand Response Opt-Out, considering any of the changed circumstances explored above? Please note any burdens that were not previously mentioned in Order Nos. 719 and 719–A. Please provide quantitative estimates, if possible.

(Q11) Are there any downsides to increased participation of aggregators of demand response in RTO/ISO markets from states currently exercising the Demand Response Opt-Out that may warrant the Commission's consideration? If so, please describe the potential downsides and the types of entities that would bear these burdens.

(Q12) Is there a significant difference between any costs and burdens from complying with Order No. 2222 and those that might result from removal of the Demand Response Opt-Out? If so, why would removal of the Demand Response Opt-Out create more costs and burdens?

III. Comment Procedures

26. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due June 23, 2021 and Reply Comments are due July 23, 2021. Comments must refer to Docket No. RM21–14–000 and must include the commenter's name, the

[67] North American Electric Reliability Corporation, *Essential Reliability Services Task Force Measures Framework Report* 63 (Nov. 2015), *https://www.nerc.com/comm/Other/essntlrlbltysrvcstskfrcDL/ERSTF%20Framework%20Report%20-%20Final.pdf.*

[68] North American Electric Reliability Corporation, *2020 State of Reliability* 49 (July 2020), *https://www.nerc.com/pa/RAPA/PA/Performance%20Analysis%20DL/NERC_SOR_2020.pdf.*

[69] *See supra* PP 4, 19.

[70] Order No. 719, 125 FERC ¶ 61,071 at PP 139, 141.

[71] *See supra* P 19.

organization they represent, if applicable, and their address.

27. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's website at *http://www.ferc.gov.* The Commission accepts most standard word-processing formats. Documents created electronically using word-processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

28. Those unable to file electronically may mail comments via the U.S. Postal Service to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426. Hand-delivered comments or comments sent via any other carrier should be delivered to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

29. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

IV. Document Availability

30. 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*). At this time, the Commission has suspended access to the Commission's Public Reference Room due to the President's March 13, 2020 proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19).

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

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

By direction of the Commission.

Commissioner Danly is concurring a separate statement attached.

Commissioner Christie is dissenting with a separate statement attached.

Issued: March 18, 2021.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

United States of America

Federal Energy Regulatory Commission

Participation of Aggregators of Retail Demand Response Customers in Markets Operated by Regional Transmission Organizations and Independent System Operators—Docket No. RM21–14–000

DANLY, Commissioner, *concurring:*

1. I disagree that we should eliminate the Commission's rule establishing states' rights to opt out of wholesale demand response aggregation programs.[1] The Commission, however, always has the discretion to issue a Notice of Inquiry (NOI) on any topic within its purview. I therefore concur in the issuance of the NOI but oppose the measures it anticipates.

2. It is my understanding that eighteen states have opted out [2] of the Commission's demand response aggregation mandate in Order No. 719.[3] Any Commission action to now revoke the states' authority to opt-out would thus do significant violence to the statutory and regulatory regimes these eighteen states have enacted, in addition to the harm it would cause to the long-established division between federal and state regulation of electricity.[4]

3. I invite these states and any other parties interested in preserving the traditional and current role of the states in exercising jurisdiction over retail electricity and distribution systems, including oversight over demand response programs, to respond to the NOI and provide appropriate record evidence.

4. Some of the most important evidence I would like to see submitted concerns whether wholesale demand response aggregation programs are providing reliability benefits commensurate with their costs. Before we force everyone to join them, we ought to see if they work. We often see statistics of the quantity of resources that participate or join wholesale demand response programs. We rarely see statistics that quantify the actual performance of these demand response resources during critical events.

5. Anecdotal evidence suggests their performance during times of strain may be poor, and perhaps terrible. Commission staff reviewed preliminary analyses in response to the 2020 California reliability crisis and observed that dispatched ''Proxy Demand Response'' in CAISO had 50% availability over the six days of the 2020 California reliability crisis, while dispatched ''Reliability Demand Response Resources'' had 71% availability.[5] The Commission staff further observed that ''while [Proxy Demand Response] has been regularly dispatched, its performance varies dramatically,'' and that for Reliability Demand Response Resources, ''[t]here are neither established performance metrics nor comparable historical data to evaluate'' its performance.[6] It would be an unacceptable failure of regulatory oversight if we do not have basic performance metrics for demand response given that these wholesale programs have been authorized for over a decade—and that customers have been paying for them all the while.

6. I welcome, indeed, encourage a searching inquiry into how much demand response actually contributes to reliability during critical reliability events. Ideally, comments would rest upon detailed analyses of whether demand response is worth both the costs a resource saves when it does not purchase energy (when demand responds to requests to reduce consumption) and the marginal price it receives in payment. Again, these seem like threshold questions before we upend eighteen separate states' regulatory regimes enacted to accommodate the opt-out we currently require but now may eliminate.

For these reasons, I respectfully concur.

James P. Danly,

Commissioner.

[1] *See* 18 CFR 35.28(g)(1)(iii) (2020).

[2] The states are Arkansas, Iowa, Indiana, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Missouri, Mississippi, Montana, North Carolina, North Dakota, Nebraska, New Mexico, Oklahoma, South Dakota, and Wisconsin.

[3] *Wholesale Competition in Regions with Organized Electric Markets,* Order No. 719, 125 FERC ¶ 61,071 (2008), *order on reh'g,* Order No. 719–A, 128 FERC ¶ 61,059, *reh'g denied,* Order No. 719–B, 129 FERC ¶ 61,252 (2009).

[4] I discuss these jurisdictional issues in my dissent today to Order No. 2222–A. *See Participation of Distributed Energy Res. Aggregations in Mkts. Operated by Reg'l Transmission Orgs. and Indep. Sys. Operators,* Order No. 2222–A, 174 FERC ¶ 61,197 (2021) (Danly, Comm'r, dissenting).

[5] *See Preliminary Observations on the August 2020 California Heat Storm (AD21–3–000),* FERC, 15–16 (Dec. 17, 2020), *https://cms.ferc.gov/sites/default/files/2020-12/California%20Heat%20Storm%20Inquiry%20Presentation%2C%20December%2017%2C%202020%20--%20Script.pdf.*

[6] *Id.*

United States of America

Federal Energy Regulatory Commission

Participation of Aggregators of Retail Demand Response Customers in Markets Operated by Regional Transmission Organizations and Independent System Operators—Docket No. RM21–14–000

CHRISTIE, Commissioner, *dissenting:*

1. As Bob Dylan said, you don't need a weatherman to know which way the wind blows, and while styled as a Notice of Inquiry (NOI), it is apparent that this order's end game is to repeal or severely restrict the ''opt-out'' provisions of Order Nos. 719 and 719–A.[1]

2. Since those orders were issued, eighteen states have chosen to use the opt-out provision.[2] Presumably those states made those decisions for reasons that were consistent with their own public policy needs and preferences. FERC should respect those state policy decisions; however, because those states (and potentially others in the future) have exercised their own policy choices, the majority now seeks to block states from making such choices.

3. I therefore dissent for the same fundamental reasons expressed in my dissent today to Order No. 2222–A:[3] At a time when we hear many voices—including some on this Commission—demanding that FERC 'respect' state public policies in RTO/ISO capacity markets when it comes to the MOPR cases, this order goes in the exact opposite direction. We see in this NOI another example that for some, 'respecting' state public policies only applies when the states are doing what they want.

4. I further note, as I discussed today in my dissent to Order No. 2222–A, that combined with that order this one substantially raises the costs to states of participating in RTOs/ISOs.[4] Some states not in RTOs/ISOs may well choose to continue to stay out; those in RTOs/ISOs may well choose to reconsider their participation, if the cost of participation is to be blocked by FERC from exercising significant portions of their historic powers over the retail side of regulation.

For these reasons, I respectfully dissent.

Mark C. Christie,

Commissioner.

[FR Doc. 2021–06106 Filed 3–24–21; 8:45 am]

BILLING CODE 6717–01–P

[1] *See, e.g,* NOI at PP 2, 18, 20, 21, 24.

[2] *See Participation of Distributed Energy Resource Aggregations in Markets Operated by Regional Transmission Organizations and Independent System Operators,* Order No. 2222, 85 FR 67094, 172 FERC ¶ 61,247, *on reh'g,* Order No. 2222–A, 174 FERC ¶ 61,197 (2021) (Danly, Comm'r, dissenting at n. 2).

[3] *See* Order No. 2222–A (Christie, Comm'r, dissenting).

[4] *Id.* at P 7. Technically speaking, states approve participation by state-regulated utilities in RTOs/ISOs.

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2021–0081; FRL–10022–00]

Eastern Research Group, Inc.; Transfer of Data (March 2021)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that pesticide related information submitted to EPA's Office of Pesticide Programs (OPP) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be transferred to Eastern Research Group, Inc. in accordance with the CBI regulations. Eastern Research Group, Inc. has been awarded a contract to perform work for OPP, and access to this information will enable Eastern Research Group, Inc. to fulfill the obligations of the contract.

DATES: Eastern Research Group, Inc. will be given access to this information on or before March 30, 2021.

FOR FURTHER INFORMATION CONTACT: William Northern, Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703) 305–6478 email address: *northern.william@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Does this action apply to me?

This action applies to the public in general. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action.

II. Contractor Requirements

Under these contract numbers, the contractor will perform the following:

Under Contract No. 68HERC21D0007. The Contractor shall prepare and deliver reports, including plans, evaluations, studies, analyses, and manuals in accordance with Attachment 1—Performance Work Statement. Each report shall cite the contract number, identify the U.S. Environmental Protection Agency as the sponsoring agency, and identify the name of the Contractor preparing the report.

This contract involves no subcontractors.

OPP has determined that the contract described in this notice involve work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under this contract. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under FIFRA sections 3, 4, 6, and 7 and under FFDCA sections 408 and 409.

In accordance with the requirements of 40 CFR 2.307(h)(3), the contract with Eastern Research Group, Inc. prohibits use of the information for any purpose not specified in these contract; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the *FIFRA Information Security Manual.* In addition, Eastern Research Group, Inc. is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to Eastern Research Group, Inc. until the requirements in this document have been fully satisfied. Records of information provided to Eastern Research Group, Inc. will be maintained by EPA Project Officers for this contract. All information supplied to Eastern Research Group, Inc. by EPA for use in connection with this contract will be returned to EPA when Eastern Research Group, Inc. has completed its work.

Authority: 7 U.S.C. 136 *et seq.;* 21 U.S.C. 301 *et seq.*

Dated: March 19, 2021.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Program Support.

[FR Doc. 2021–06173 Filed 3–24–21; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Request for Candidates To Serve as a Non-Federal Member of the Federal Accounting Standards Advisory Board

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Ms. Monica R. Valentine, Executive Director, 441 G Street NW, Suite 1155, Washington, DC 20548, or call (202) 512–7350.

SUPPLEMENTARY INFORMATION: Pursuant to 31 U.S.C. 3511(d), the Federal Advisory Committee Act as amended (5 U.S.C. App.), and the FASAB Rules of Procedure, as amended in October 2010, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) is currently seeking candidates (candidates must not currently be federal employees) to serve as a non-federal member of FASAB. FASAB is the body designated to establish generally accepted accounting principles for federal government entities. Generally, non-federal Board members are selected from the general financial community, the accounting and auditing community, or the academic community.

The Board generally meets for two days every other month in Washington, DC, however due to the ongoing COVID–19 pandemic, the Board is meeting virtually. Members are compensated for 24 days per year based on current federal executive salaries. Travel expenses are reimbursed in accordance with federal travel regulations.

Responses may be submitted by email to *fasab@fasab.gov*. Please submit your resume by April 30, 2021. Additional information about FASAB can be obtained from its website at *https://www.fasab.gov*.

Authority: Federal Advisory Committee Act, 5 U.S.C. App.

Dated: March 19, 2021.

Monica R. Valentine,

Executive Director.

[FR Doc. 2021–06108 Filed 3–24–21; 8:45 am]

BILLING CODE 1610–02–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank 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 April 26, 2021.

A. Federal Reserve Bank of Atlanta (Kathryn Haney, Assistant Vice President) 1000 Peachtree Street NE, Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org:*

1. *BOA Financial Corporation, Abbeville, Louisiana;* to become a bank holding company by acquiring Bank of Abbeville & Trust Company, Abbeville, Louisiana.

Board of Governors of the Federal Reserve System, March 22, 2021.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2021–06216 Filed 3–24–21; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank 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 April 9, 2021.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Steven C. Bell, as trustee of the Paula Bell 2009 Grantor Trust No. 1 fbo Rebecca L. Kettleson, the Paula Bell 2009 Grantor Trust No. 1 fbo Elizabeth Bell Killian, the Paula Bell 2009 Grantor Trust No. 1 fbo Margaret S. Bell; all of Wisconsin Rapids, Wisconsin; and Chad D. Kane, as trustee of The Kane 2020 Investment Trust; Sarah L. Kane Investment Trust; Alison R. Kane Investment Trust; and the Jack C. Kane Investment Trust, all of Wausau, Wisconsin;* to become members of the Bell Family Control Group, a group acting concert, to retain voting shares of WoodTrust Financial Corporation, and thereby indirectly retain voting shares of WoodTrust Bank, both of Wisconsin Rapids, Wisconsin.

B. Federal Reserve Bank of Minneapolis (Chris P. Wangen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Michael P. Kampmeyer, Kristi Erickson Kampmeyer, as trustee of the Michael Kampmeyer Irrevocable Trust dated 2021, all of Sunfish Lake, Minnesota;*

James C. Kron, Marilyn J. Kron, as trustee of the James C. Kron Irrevocable Trust dated 2021, Gary Vander Vorst, as trustee of both the Marilyn J. Kron Irrevocable Trust dated 2021, all of Hudson, Wisconsin and of the Kristi Erickson Kampmeyer Irrevocable Trust dated 2021, Sunfish Lake, Minnesota; and

Kristi Erickson Kampmeyer and Gary Vander Vorst, as co-trustees of the Claire L. Erickson Irrevocable Trust fbo Kristi Erickson Kampmeyer and Descendants dated July 16, 2020, and the Claire L. Erickson Irrevocable Trust II fbo Kristi Erickson Kampmeyer and Descendants dated July 16, 2020, both trusts of Sunfish Lake, Minnesota;

to retain voting shares of Waseca Bancshares, Inc., Waseca, Minnesota, and indirectly retain voting shares of Roundbank, Waseca, Minnesota, and Lake Area Bank, Lindstrom, Minnesota, and to join the Kampmeyer group acting in concert.

Board of Governors of the Federal Reserve System, March 19, 2021.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2021–06136 Filed 3–24–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Matching Program

AGENCY: Centers for Medicare & Medicaid Services, Department of Health and Human Services.

ACTION: Notice of a new matching program.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS) is providing notice of a new matching program between CMS and the Department of Veterans Affairs (VA), Veterans Health Administration (VHA), ''Verification of Eligibility for Minimum Essential Coverage Under the Patient Protection and Affordable Care Act Through a Veterans Health Administration Plan.''

DATES: The deadline for comments on this notice is April 26, 2021. The re-established matching program will commence not sooner than 30 days after publication of this notice, provided no comments are received that warrant a change to this notice. The matching program will be conducted for an initial term of 18 months (from approximately May 2021 to November 2022) and within 3 months of expiration may be renewed for one additional year if the parties make no change to the matching program and certify that the program has been conducted in compliance with the matching agreement.

ADDRESSES: Interested parties may submit written comments as follows:

1. Electronically. You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. By Regular Mail. You may mail written comments to the following address: Centers for Medicare & Medicaid Services, Division of Security, Privacy Policy & Governance, Information Security & Privacy Group, Office of Information Technology, Location: N1–14–56, 7500 Security Blvd., Baltimore, MD 21244–1850.

FOR FURTHER INFORMATION CONTACT: If you have questions about the matching program, you may contact Anne Pesto, Senior Advisor, Marketplace Eligibility and Enrollment Group, Center for Consumer Information and Insurance Oversight, Centers for Medicare & Medicaid Services, at 410–786–3492, by email at *anne.pesto@cms.hhs.gov,* or by mail at 7500 Security Blvd., Baltimore, MD 21244.

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974, as amended (5 U.S.C. 552a) provides certain protections for individuals applying for and receiving federal benefits. The law governs the use of computer matching by federal agencies when records in a system of records (meaning, federal agency records about individuals retrieved by name or other personal identifier) are matched with records of other federal or non-federal agencies. The Privacy Act requires agencies involved in a matching program to:

1. Enter into a written agreement, which must be prepared in accordance with the Privacy Act, approved by the Data Integrity Board of each source and recipient federal agency, provided to Congress and the Office of Management and Budget (OMB), and made available to the public, as required by 5 U.S.C. 552a(o), (u)(3)(A), and (u)(4).

2. Notify the individuals whose information will be used in the matching program that the information they provide is subject to verification through matching, as required by 5 U.S.C. 552a(o)(1)(D).

3. Verify match findings before suspending, terminating, reducing, or making a final denial of an individual's benefits or payments or taking other adverse action against the individual, as required by 5 U.S.C. 552a(p).

4. Report the matching program to Congress and the OMB, in advance and annually, as required by 5 U.S.C. 552a(o) (2)(A)(i), (r), and (u)(3)(D).

5. Publish advance notice of the matching program in the **Federal Register** as required by 5 U.S.C. 552a(e)(12).

This matching program meets these requirements.

Barbara Demopulos,

Privacy Advisor, Division of Security, Privacy Policy and Governance, Office of Information Technology, Centers for Medicare & Medicaid Services.

Participating Agencies

The Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS) is the recipient agency, and the Department of Veterans Affairs (VA), Veterans Health Administration (VHA) is the source agency.

Authority for Conducting the Matching Program

The statutory authority for the matching program is 42 U.S.C. 18001 *et seq.*

Purpose(s)

The purpose of the matching program is to assist CMS in determining individuals' eligibility for financial assistance in paying for private health insurance coverage. In this matching program, VHA provides CMS with data when a state administering entity (AE) requests it and VHA is authorized to release it, verifying whether an individual who is applying for or is enrolled in private health insurance coverage under a qualified health plan through a federally-facilitated health insurance exchange is eligible for coverage under a VHA health plan. CMS makes the data provided by VHA available to the requesting AE through a data services hub to use in determining the applicant's or enrollee's eligibility for financial assistance (including an advance tax credit and cost-sharing reduction, which are types of insurance affordability programs) in paying for private health insurance coverage. VHA health plans provide minimum essential coverage, and eligibility for such plans precludes eligibility for financial assistance in paying for private coverage. The data provided by VHA under this matching program will be used by CMS and AEs to authenticate identity, determine eligibility for financial assistance, and determine the amount of the financial assistance.

Categories of Individuals

The categories of individuals whose information is involved in the matching program are:

• Veterans whose records at VHA match identifying data provided to VHA by CMS (submitted by AEs) about individuals who are applying for or are enrolled in private insurance coverage under a qualified health plan through a federally-facilitated health insurance exchange or state-based exchange.

Categories of Records

The categories of records used in this matching program are identity records and minimum essential coverage period records, consisting of the following data elements:

Data provided by CMS to VHA

a. first name (required).

b. middle name/initial (if provided by applicant).

c. surname (applicant's last name) (required).

d. date of birth (required).

e. gender (required).

f. social security number (SSN) (required).

g. requested qualified health plan (QHP) coverage effective date (required).

h. requested QHP coverage end date (required).

i. State identification (required).

j. transaction ID (required).

Data provided by VHA to CMS

a. SSN (required).

b. start/end date(s) of enrollment period(s) (when match occurs).

c. a blank date response when a non-match occurs.

d. a blank date when a match is made but VA's record contains a date of death.

e. enrollment period(s) is/are defined as the timeframe during which the individual was enrolled in a VHA health care program.

System(s) of Records

The records used in this matching program will be disclosed from the following systems of records, as authorized by routine uses published in the system of records notices (SORNs) cited below:

A. System of Records Maintained by CMS

CMS Health Insurance Exchanges System (HIX), CMS System No. 09–70–0560, last published in full at 78 FR 63211 (Oct. 23, 2013), as amended at 83 FR. 6591 (Feb. 14, 2018). Routine use 3 authorizes CMS' disclosures to VHA.

B. Systems of Records Maintained by VHA

54VA10NB3 Veterans and Beneficiaries Purchased Care Community Health Care Claims, Correspondence, Eligibility, Inquiry and Payment Files—VA, published at 80 FR 11527 (Mar. 3, 2015). Routine use 25 authorizes VHA's disclosures to CMS.

[FR Doc. 2021–05178 Filed 3–24–21; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–10147]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by April 26, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html*

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Reinstatement without change of a previously approved collection; *Title of Information Collection:* Medicare Prescription Drug Coverage and Your Rights; *Use:* Section 423.562(a)(3) and an associated regulatory provision at § 423.128(b)(7)(iii) require that Part D plan sponsors' network pharmacies provide Part D enrollees with a printed copy of our standardized pharmacy notice ''Medicare Prescription Drug Coverage and Your Rights'' (hereafter, ''notice'') if an enrollee's prescription cannot be filled.

The purpose of this notice is to provide enrollees with information about how to contact their Part D plans to request a coverage determination, including a request for an exception to the Part D plan's formulary. The notice reminds enrollees about certain rights and protections related to their Medicare prescription drug benefits, including the right to receive a written explanation from the drug plan about why a prescription drug is not covered. Through delivery of this standardized notice, a Part D plan sponsor's network pharmacies are in the best position to inform enrollees at point of sale about how to contact their Part D plan if the prescription cannot be filled. *Form*

Number: CMS–10147 (OMB control number 0938–0975); *Frequency:* Annually; *Affected Public:* Private Sector, Business or other for-profits; *Number of Respondents:* 70,000; *Number of Responses:* 49,681,292; *Total Annual Hours:* 827,690. (For questions regarding this collection, contact Trevor Rose at (410) 786 7768.)

Dated: March 22, 2021.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2021–06209 Filed 3–24–21; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–N–0008]

Request for Nominations for Individuals and Consumer Organizations for Advisory Committees

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is requesting that any consumer organizations interested in participating in the selection of voting and/or nonvoting consumer representatives to serve on its advisory committees or panels notify FDA in writing. FDA is also requesting nominations for voting and/or nonvoting consumer representatives to serve on advisory committees and/or panels for which vacancies currently exist or are expected to occur in the near future. Nominees recommended to serve as a voting or nonvoting consumer representative may be self-nominated or may be nominated by a consumer organization. FDA seeks to include the views of women and men, members of all racial and ethnic groups, and individuals with and without disabilities on its advisory committees and, therefore, encourages nominations of appropriately qualified candidates from these groups.

DATES: Any consumer organization interested in participating in the selection of an appropriate voting or nonvoting member to represent consumer interests on an FDA advisory committee or panel may send a letter or email stating that interest to FDA (see **ADDRESSES**) by April 26, 2021, for vacancies listed in this notice. Concurrently, nomination materials for prospective candidates should be sent to FDA (see **ADDRESSES**) by April 26, 2021. Nominations will be accepted for current vacancies and for those that will or may occur through December 31, 2021.

ADDRESSES: All statements of interest from consumer organizations interested in participating in the selection process should be submitted electronically to *ACOMSSubmissions@fda.hhs.gov or* by mail to Advisory Committee Oversight and Management Staff, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5122, Silver Spring, MD 20993–0002.

Consumer representative nominations should be submitted electronically by logging into the FDA Advisory Committee Membership Nomination Portal: *https://www.accessdata.fda.gov/scripts/FACTRSPortal/FACTRS/index.cfm,* or by mail to Advisory Committee Oversight and Management Staff, 10903 New Hampshire Ave., Bldg. 32, Rm. 5122, Silver Spring, MD 20993–0002. Additional 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: *For questions relating to participation in the selection process:* Kimberly Hamilton, Advisory Committee Oversight and Management Staff, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5122, Silver Spring, MD 20993–0002, 301–796–8220, *kimberly.hamilton@fda.hhs.gov.*

For questions relating to specific advisory committees or panels, contact the appropriate Contact Person listed in table 1.

TABLE 1—ADVISORY COMMITTEE CONTACTS

Contact person	Committee/panel
Rakesh Raghuwanshi, Office of the Chief Scientist, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 3309, Silver Spring, MD 20993–0002, 301–796–4769, *Rakesh.Raghuwanshi@fda.hhs.gov*.	FDA Science Board Advisory Committee.
Christina Vert, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 6268, Silver Spring, MD 20993–0002, 240–402–8054, *Christina.Vert@fda.hhs.gov*.	Blood Products Advisory Committee.
Jarrod Collier, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Silver Spring, MD 20993–0002, 202–906–0043, *Jarrod.Collier@fda.hhs.gov*.	Cellular, Tissue and Gene Therapies Advisory Committee.
Kathleen Hayes, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 6307C, Silver Spring, MD 20993–0002, 301–796–7864, *Kathleen.Hayes@fda.hhs.gov*.	Vaccines and Related Biological Products Advisory Committee.
LaToya Bonner, Center for Drugs Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2428, Silver Spring, MD 20992–0002, 301–796–2855, *Latoya.Bonner@fda.hhs.gov*.	Dermatologic and Ophthalmic Drugs Advisory Committee.
Yvette Waples, Center for Drugs Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2510, Silver Spring, MD 20993–0002, 301–796–9034, *Yvette.Waples@fda.hhs.gov*.	Gastrointestinal Drugs Advisory Committee, Pharmaceutical Science and Clinical Pharmacology Advisory Committee, Psychopharmacologic Drugs Advisory Committee.
James Swink, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5211, Silver Spring, MD 20993–0002, 301–796–6313, *James.Swink@fda.hhs.gov*.	Anesthesiology and Respiratory Therapy Devices Panel, Circulatory Systems Devices Panel, Dental Products Devices Panel, General Hospital and Personal Use Devices Panel, Hematology and Pathology Devices Panel, Radiological Devices Panel.

TABLE 1—ADVISORY COMMITTEE CONTACTS—Continued

Contact person	Committee/panel
Patricio Garcia, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5216, Silver Spring, MD 20993–0002, 301–796–6875, *Patricio.Garcia@fda.hhs.gov*.	Clinical Chemistry and Clinical Toxicology Devices Panel, Gastroenterology and Urology Devices Panel, General and Plastic Surgery Devices Panel, Obstetrics and Gynecology Devices Panel.
Aden Asefa, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5214, Silver Spring, MD 20993–0002, 301–796–0400, *Aden.Asefa@fda.hhs.gov*.	Immunology Devices Panel, Microbiology Devices Panel, Molecular and Clinical Genetics Devices Panel, Neurological Devices Panel.
Aden Asefa, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5214, Silver Spring, MD 20993–0002, 301–796–0400, *Aden.Asefa@fda.hhs.gov*.	National Mammography Quality Assurance Advisory Committee.
Letise Williams, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5407, Silver Spring, MD 20993–0002, 301–796–8398, *Letise.Williams@fda.hhs.gov*.	Patient Engagement Advisory Committee.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for voting and/or nonvoting consumer representatives for the vacancies listed in table 2:

TABLE 2—COMMITTEE DESCRIPTIONS, TYPE OF CONSUMER REPRESENTATIVE VACANCY, AND APPROXIMATE DATE NEEDED

Committee/panel/areas of expertise needed	Type of vacancy	Approximate date needed
FDA Science Board Advisory Committee—The Science Board provides advice to the Commissioner of Food and Drugs (Commissioner) and other appropriate officials on specific complex scientific and technical issues important to FDA and its mission, including emerging issues within the scientific community. Additionally, the Science Board provides advice that supports the Agency in keeping pace with technical and scientific developments, including in regulatory science; and input into the Agency's research agenda, and on upgrading its scientific and research facilities and training opportunities. It also provides, where requested, expert review of Agency-sponsored intramural and extramural scientific research programs.	1—Voting	Immediately.
Blood Products Advisory Committee—Knowledgeable in the fields of clinical and administrative medicine, hematology, immunology, blood banking, surgery, internal medicine, biochemistry, engineering, biological and physical sciences, biotechnology, computer technology, statistics, epidemiology, sociology/ethics, and other related professions.	1—Voting	October 1, 2021.
Cellular, Tissue and Gene Therapies Advisory Committee—Knowledgeable in the fields of cellular therapies, tissue transplantation, gene transfer therapies and xenotransplantation (biostatistics, bioethics, hematology/oncology, human tissues and transplantation, reproductive medicine, general medicine, and various medical specialties, including surgery and oncology, immunology, virology, molecular biology, cell biology, developmental biology, tumor biology, biochemistry, rDNA technology, nuclear medicine, gene therapy, infectious diseases, and cellular kinetics).	1—Voting	April 1, 2021.
Vaccines and Related Biologic Advisory Committee—Knowledgeable in the fields of immunology, molecular biology, rDNA, virology, bacteriology, epidemiology or biostatistics, allergy, preventive medicine, infectious diseases, pediatrics, microbiology, and biochemistry.	1—Voting	Immediately.
Dermatologic and Ophthalmic Drugs Advisory Committee—Knowledgeable in the fields of dermatology, ophthalmology, internal medicine, pathology, immunology, epidemiology or statistics, and other related professions.	1—Voting	September 1, 2021.
Gastrointestinal Drugs Advisory Committee—Knowledgeable in the fields of gastroenterology, endocrinology, surgery, clinical pharmacology, physiology, pathology, liver function, motility, esophagitis, and statistics.	1—Voting	July 1, 2021.
Pharmaceutical Science and Clinical Pharmacology Advisory Committee—Knowledgeable in the fields of pharmaceutical manufacturing, clinical pharmacology, pharmacokinetics, bioavailability and bioequivalence research, the design and evaluation of clinical trials, laboratory analytical techniques, pharmaceutical chemistry, physiochemistry, biochemistry, biostatistics, and related biomedical and pharmacological specialties.	1—Voting	November 1, 2021.
Psychopharmacologic Drugs Advisory Committee—Knowledgeable in the fields of psychopharmacology, psychiatry, epidemiology or statistics, and related specialties.	1—Voting	Immediately.
Anesthesiology and Respiratory Therapy Devices Panel—Anesthesiologists, pulmonary medicine specialists, or other experts who have specialized interests in ventilator support, pharmacology, physiology, or the effects and complications of anesthesia.	1—Nonvoting	December 1, 2021.
Circulatory Systems Devices Panel—Interventional cardiologists, electrophysiologists, invasive (vascular) radiologists, vascular and cardiothoracic surgeons, and cardiologists with special interest in congestive heart failure.	1—Nonvoting	Immediately.
Dental Products Devices Panel—Dentists, engineers, and scientists who have expertise in the areas of dental implants, dental materials, periodontology, tissue engineering, and dental anatomy.	1—Nonvoting	Immediately.

TABLE 2—COMMITTEE DESCRIPTIONS, TYPE OF CONSUMER REPRESENTATIVE VACANCY, AND APPROXIMATE DATE NEEDED—Continued

Committee/panel/areas of expertise needed	Type of vacancy	Approximate date needed
General Hospital and Personal Use Devices Panel—Internists, pediatricians, neonatologists, endocrinologists, gerontologists, nurses, biomedical engineers, or microbiologists/infection control practitioners or experts.	1—Nonvoting	Immediately.
Hematology and Pathology Devices Panel—Hematologists (benign and/or malignant hematology), hematopathologists (general and special hematology, coagulation and hemostasis, and hematological oncology), gynecologists with special interests in gynecological oncology, cytopathologists, and molecular pathologists with special interests in development of predictive biomarkers.	1—Nonvoting	March 1, 2021.
Radiological Devices Panel—Physicians with experience in general radiology, mammography, ultrasound, magnetic resonance, computed tomography, other radiological subspecialties and radiation oncology; scientists with experience in diagnostic devices, radiation physics, statistical analysis, digital imaging, and image analysis.	1—Nonvoting	Immediately.
Clinical Chemistry and Clinical Toxicology Devices Panel—Doctor of Medicine or Philosophy with experience in clinical chemistry (*e.g.,* cardiac markers), clinical toxicology, clinical pathology, clinical laboratory medicine, and endocrinology.	1—Nonvoting	Immediately.
Gastroenterology and Urology Devices Panel—Gastroenterologists, urologists, and nephrologists.	1—Nonvoting	Immediately.
General and Plastic Surgery Devices Panel—Surgeons (general, plastic, reconstructive, pediatric, thoracic, abdominal, pelvic, and endoscopic); dermatologists; experts in biomaterials, lasers, wound healing, and quality of life; and biostatisticians.	1—Nonvoting	Immediately.
Obstetrics and Gynecology Devices Panel—Experts in perinatology, embryology, reproductive endocrinology, pediatric gynecology, gynecological oncology, operative hysteroscopy, pelviscopy, electrosurgery, laser surgery, assisted reproductive technologies, contraception, postoperative adhesions, and cervical cancer and colposcopy; biostatisticians and engineers with experience in obstetrics/gynecology devices; urogynecologists; experts in breast care; experts in gynecology in the older patient; experts in diagnostic (optical) spectroscopy; experts in midwifery; labor and delivery nursing.	1—Nonvoting	Immediately.
Immunology Devices Panel—Persons with experience in medical, surgical, or clinical oncology, internal medicine, clinical immunology, allergy, molecular diagnostics, or clinical laboratory medicine.	1—Nonvoting	Immediately.
Microbiology Devices Panel—Clinicians with an expertise in infectious disease, *e.g.,* pulmonary disease specialists, sexually transmitted disease specialists, pediatric infectious disease specialists, experts in tropical medicine and emerging infectious diseases, mycologists; clinical microbiologists and virologists; clinical virology and microbiology laboratory directors, with expertise in clinical diagnosis and in vitro diagnostic assays, *e.g.,* hepatologists; molecular biologists.	1—Nonvoting	Immediately.
Molecular and Clinical Genetics Devices Panel—Experts in human genetics and in the clinical management of patients with genetic disorders, *e.g.,* pediatricians, obstetricians, neonatologists. The Agency is also interested in considering candidates with training in inborn errors of metabolism, biochemical and/or molecular genetics, population genetics, epidemiology, and related statistical training. Additionally, individuals with experience in genetic counseling, medical ethics, as well as ancillary fields of study will be considered.	1—Nonvoting	June 1, 2021.
Neurological Devices Panel—Neurosurgeons (cerebrovascular and pediatric), neurologists (stroke, pediatric, pain management, and movement disorders), interventional neuroradiologists, psychiatrists, and biostatisticians.	1—Nonvoting	December 1, 2021.
National Mammography Quality Assurance Advisory Committee—Physician, practitioner, or other health professional whose clinical practice, research specialization, or professional expertise includes a significant focus on mammography.	4—Voting	Immediately.
Patient Engagement Advisory Committee—Experts who are knowledgeable in areas such as clinical research, primary care patient experience, and healthcare needs of patient groups in the United States. Selected Committee members may also be experienced in the work of patient and health professional organizations; methodologies for eliciting patient preferences; and strategies for communicating benefits, risks, and clinical outcomes to patients and research subjects.	1—Voting	May 1, 2021.

I. Functions and General Description of the Committee Duties

A. FDA Science Board Advisory Committee

The Science Board Advisory Committee (Science Board) provides advice to the Commissioner of Food and Drugs (Commissioner) and other appropriate officials on specific complex scientific and technical issues important to FDA and its mission, including emerging issues within the scientific community. Additionally, the Science Board provides advice that supports the Agency in keeping pace with technical and scientific developments, including in regulatory science, and input into the Agency's research agenda and on upgrading its scientific and research facilities and training opportunities. It also provides, where requested, expert review of Agency-sponsored intramural and extramural scientific research programs.

B. Blood Products Advisory Committee

The Blood Products Advisory Committee reviews and evaluates available data concerning the safety, effectiveness, and appropriate use of blood products derived from blood and serum or biotechnology which is

intended for use in the diagnosis, prevention, or treatment of human diseases, as well as the safety, effectiveness, and labeling of the products, on clinical and laboratory studies involving such products, on the affirmation or revocation of biological product licenses, and on the quality and relevance of FDA's research program that provides the scientific support for regulating these products.

C. Cellular, Tissue, and Gene Therapies Advisory Committee

The Cellular, Tissue, and Gene Therapies Advisory Committee reviews and evaluates available data relating to the safety, effectiveness, and appropriate use of human cells, human tissues, gene transfer therapies and xenotransplantation products that are intended for transplantation, implantation, infusion and transfer in the prevention and treatment of a broad spectrum of human diseases, and in the reconstruction, repair, or replacement of tissues for various conditions. The Committee also considers the quality and relevance of FDA's research program that provides scientific support for the regulation of these products.

D. Vaccines and Related Biologic Products Advisory Committee

The Vaccines and Related Biologic Products Advisory Committee reviews and evaluates data concerning the safety, effectiveness, and appropriate use of vaccines and related biological products that are intended for use in the prevention, treatment, or diagnosis of human diseases, as well as considers the quality and relevance of FDA's research program that provides scientific support for the regulation of these products.

E. Dermatologic and Ophthalmic Drugs Advisory Committee

The Dermatologic and Ophthalmic Drugs Advisory Committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of dermatologic and ophthalmic disorders.

F. Gastrointestinal Drugs Advisory Committee

The Gastrointestinal Drugs Advisory Committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of gastrointestinal diseases.

G. Pharmaceutical Science and Clinical Pharmacology Advisory Committee

The Pharmaceutical Science and Clinical Pharmacology Advisory Committee provides advice on scientific and technical issues concerning the safety and effectiveness of human generic drug products for use in the treatment of a broad spectrum of human diseases and, as required, any other product for which FDA has regulatory responsibility. The Committee may also review Agency-sponsored intramural and extramural biomedical research programs in support of FDA's generic drug regulatory responsibilities.

H. Psychopharmacologic Drugs Advisory Committee

The Psychopharmacologic Drugs Advisory Committee reviews and evaluates data concerning the safety and effectiveness of marketed and investigational human products for use in the practice of psychiatry and related fields.

I. Certain Panels of the Medical Devices Advisory Committee

The Medical Devices Advisory Committee has established certain panels to review and evaluate data on the safety and effectiveness of marketed and investigational devices and make recommendations for their regulation. With the exception of the Medical Devices Dispute Resolution Panel, each panel, according to its specialty area: (1) Advises on the classification or reclassification of devices into one of three regulatory categories and advises on any possible risks to health associated with the use of devices; (2) advises on formulation of product development protocols; (3) reviews premarket approval applications for medical devices; (4) reviews guidelines and guidance documents; (5) recommends exemption of certain devices from the application of portions of the Federal Food, Drug, and Cosmetic Act; (6) advises on the necessity to ban a device; and (7) responds to requests from the Agency to review and make recommendations on specific issues or problems concerning the safety and effectiveness of devices. With the exception of the Medical Devices Dispute Resolution Panel, each panel, according to its specialty area, may also make appropriate recommendations to the Commissioner on issues relating to the design of clinical studies regarding the safety and effectiveness of marketed and investigational devices.

The Dental Products Panel also functions at times as a dental drug panel. The functions of the dental drug panel are to evaluate and recommend whether various prescription drug products should be changed to over-the-counter status and to evaluate data and make recommendations concerning the approval of new dental drug products for human use.

The Medical Devices Dispute Resolution Panel provides advice to the Commissioner on complex or contested scientific issues between FDA and medical device sponsors, applicants, or manufacturers relating to specific products, marketing applications, regulatory decisions and actions by FDA, and Agency guidance and policies. The Panel makes recommendations on issues that are lacking resolution, are highly complex in nature, or result from challenges to regular advisory panel proceedings or Agency decisions or actions.

J. National Mammography Quality Assurance Advisory Committee

The National Mammography Quality Assurance Advisory Committee advises the Agency on the following: Development of appropriate quality standards and regulations for mammography facilities; standards and regulations for bodies accrediting mammography facilities under this program; regulations with respect to sanctions; procedures for monitoring compliance with standards; establishing a mechanism to investigate consumer complaints; and reporting new developments concerning breast imaging that should be considered in the oversight of mammography facilities. The Committee also advises the Agency on determining whether there exists a shortage of mammography facilities in rural and health professional shortage areas and determining the effects of personnel on access to the services of such facilities in such areas; determining whether there will exist a sufficient number of medical physicists after October 1, 1999; and determining the costs and benefits of compliance with these requirements.

K. Patient Engagement Advisory Committee

The Patient Engagement Advisory Committee advises the Agency on complex issues relating to medical devices, the regulation of devices, and their use by patients. The Committee may consider topics such as Agency guidance and policies, clinical trial or registry design, patient preference study design, benefit-risk determinations, device labeling, unmet clinical needs, available alternatives, patient reported outcomes and device-related quality of life or health status issues, and other

patient-related topics. The Committee will provide relevant skills and perspectives to improve communication of benefits, risks, and clinical outcomes and increase integration of patient perspectives into the regulatory process for medical devices. The Committee will perform its duties by discussing and providing advice and recommendation in ways such as identifying new approaches, promoting innovation, recognizing unforeseen risks or barriers, and identifying unintended consequences that could result from FDA policy.

II. Criteria for Members

Persons nominated for membership as consumer representatives on committees or panels should meet the following criteria: (1) Demonstrate an affiliation with and/or active participation in consumer or community-based organizations, (2) be able to analyze technical data, (3) understand research design, (4) discuss benefits and risks, and (5) evaluate the safety and efficacy of products under review. The consumer representative should be able to represent the consumer perspective on issues and actions before the advisory committee; serve as a liaison between the committee and interested consumers, associations, coalitions, and consumer organizations; and facilitate dialogue with the advisory committees on scientific issues that affect consumers.

III. Selection Procedures

Selection of members representing consumer interests is conducted through procedures that include the use of organizations representing the public interest and public advocacy groups. These organizations recommend nominees for the Agency's selection. Representatives from the consumer health branches of Federal, State, and local governments also may participate in the selection process. Any consumer organization interested in participating in the selection of an appropriate voting or nonvoting member to represent consumer interests should send a letter stating that interest to FDA (see **ADDRESSES**) within 30 days of publication of this document.

Within the subsequent 30 days, FDA will compile a list of consumer organizations that will participate in the selection process and will forward to each such organization a ballot listing at least two qualified nominees selected by the Agency based on the nominations received, together with each nominee's current curriculum vitae or résumé. Ballots are to be filled out and returned to FDA within 30 days. The nominee receiving the highest number of votes ordinarily will be selected to serve as the member representing consumer interests for that particular advisory committee or panel.

IV. Nomination Procedures

Any interested person or organization may nominate one or more qualified persons to represent consumer interests on the Agency's advisory committees or panels. Self-nominations are also accepted. Nominations must include a current, complete résumé or curriculum vitae for each nominee and a signed copy of the *Acknowledgement and Consent* form available at the FDA Advisory Nomination Portal (see **ADDRESSES** section of this document), and a list of consumer or community-based organizations for which the candidate can demonstrate active participation.

Nominations must also specify the advisory committee(s) or panel(s) for which the nominee is recommended. In addition, nominations must also acknowledge that the nominee is aware of the nomination unless self-nominated. FDA will ask potential candidates to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflicts of interest. Members will be invited to serve for terms of up to 4 years.

FDA will review all nominations received within the specified timeframes and prepare a ballot containing the names of qualified nominees. Names not selected will remain on a list of eligible nominees and be reviewed periodically by FDA to determine continued interest. Upon selecting qualified nominees for the ballot, FDA will provide those consumer organizations that are participating in the selection process with the opportunity to vote on the listed nominees. Only organizations vote in the selection process. Persons who nominate themselves to serve as voting or nonvoting consumer representatives will not participate in the selection process.

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: March 22, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–06206 Filed 3–24–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–D–0369]

Product-Specific Guidances; Draft and Revised Draft Guidances for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of additional draft and revised draft product-specific guidances. The guidances provide product-specific recommendations on, among other things, the design of bioequivalence (BE) studies to support abbreviated new drug applications (ANDAs). In the **Federal Register** of June 11, 2010, FDA announced the availability of a guidance for industry entitled ''Bioequivalence Recommendations for Specific Products'' that explained the process that would be used to make product-specific guidances available to the public on FDA's website. The guidances identified in this notice were developed using the process described in that guidance.

DATES: Submit either electronic or written comments on the draft guidances by May 24, 2021 to ensure that the Agency considers your comment on these draft guidances before it begins work on the final versions of the guidances.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2007–D–0369 for ''Product-Specific Guidances; Draft and Revised Draft Guidances for Industry.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidances to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance documents.

FOR FURTHER INFORMATION CONTACT: Kris Andre, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 4728, Silver Spring, MD 20993–0002, 240–402–7959.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 11, 2010 (75 FR 33311), FDA announced the availability of a guidance for industry entitled ''Bioequivalence Recommendations for Specific Products'' that explained the process that would be used to make product-specific guidances available to the public on FDA's website at *https://www.fda.gov/Drugs/GuidanceCompliance RegulatoryInformation/Guidances/default.htm.*

As described in that guidance, FDA adopted this process as a means to develop and disseminate product-specific guidances and provide a meaningful opportunity for the public to consider and comment on those guidances. Under that process, draft guidances are posted on FDA's website and announced periodically in the **Federal Register**. The public is encouraged to submit comments on those recommendations within 60 days of their announcement in the **Federal Register**. FDA considers any comments received and either publishes final guidances or publishes revised draft guidances for comment. Guidances were last announced in the **Federal Register** on November 19, 2020. This notice announces draft product-specific guidances, either new or revised, that are posted on FDA's website.

II. Drug Products for Which New Draft Product-Specific Guidances Are Available

FDA is announcing the availability of new draft product-specific guidances for industry for drug products containing the following active ingredients:

TABLE 1—NEW DRAFT PRODUCT-SPECIFIC GUIDANCES FOR DRUG PRODUCTS

Active ingredient(s)
Bremelanotide acetate.
Calcifediol.
Cysteamine bitartrate.
Degarelix acetate.
Elexacaftor, Ivacaftor, Tezacaftor; Ivacaftor.
Entrectinib.
Ethinyl estradiol; levonorgestrel (multiple referenced listed drugs).
Fedratinib hydrochloride.
Ferric maltol.
Guanfacine hydrochloride.
Istradefylline.
Ledipasvir; Sofosbuvir.
Monomethyl fumarate.
Octreotide acetate (multiple referenced listed drugs).
Penicillin G benzathine.
Selinexor.
Siponimod fumaric acid.
Sofosbuvir.
Solriamfetol hydrochloride.
Testosterone undecanoate.

III. Drug Products For Which Revised Draft Product-Specific Guidances Are Available

FDA is announcing the availability of revised draft product-specific guidances for industry for drug products containing the following active ingredients:

TABLE 2—REVISED DRAFT PRODUCT-SPECIFIC GUIDANCES FOR DRUG PRODUCTS

Active ingredient(s)
Cannabidiol.
Ciclesonide.
Doxycycline hyclate.
Fenoprofen calcium.
Ipratropium bromide.
Ivacaftor; Ivacaftor, Tezacaftor.
Labetalol hydrochloride.
Nitazoxanide (multiple referenced listed drugs).
Pazopanib hydrochloride.
Regorafenib.
Rucaparib camsylate.
Ursodiol (multiple referenced listed drugs).

For a complete history of previously published **Federal Register** notices related to product-specific guidances, go to *https://www.regulations.gov* and enter Docket No. FDA–2007–D–0369.

These draft guidances are being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). These draft guidances, when finalized, will represent the current thinking of FDA on, among other things, the product-specific design of BE studies to support ANDAs. They do not establish any rights for any person and are not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

IV. Paperwork Reduction Act of 1995

FDA tentatively concludes that these draft guidances contain no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

V. Electronic Access

Persons with access to the internet may obtain the draft guidances at either *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs* or *https://www.regulations.gov.*

Dated: March 22, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–06202 Filed 3–24–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2020–E–1269, FDA–2020–E–1273, and FDA–2020–E–1272]

Determination of Regulatory Review Period for Purposes of Patent Extension; BAROSTIM NEO

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for BAROSTIM NEO and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that medical device.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by May 24, 2021. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by September 21, 2021. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before May 24, 2021. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of May 24, 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 Nos. FDA–2020–E–1269, FDA–2020–E–1273, and FDA–2020–E–1272 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; BAROSTIM NEO.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the

docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA has approved for marketing the medical device BAROSTIM NEO. BAROSTIM NEO is indicated for the improvement of symptoms of heart failure, quality of life, six-minute hall walk and functional status, for patients who remain symptomatic despite treatment with guideline-directed medical therapy, are New York Heart Association Class III or Class II (who had a recent history of Class III), have a left ventricular ejection fraction <=35%, a NT-proBNP <1,600 picograms/milliliter and excluding patients indicated for Cardiac Resynchronization Therapy according to American Heart Association/American College of Cardiology/European Society of Cardiology Committee guidelines. Subsequent to this approval, the USPTO received patent term restoration applications for BAROSTIM NEO (U.S. Patent Nos. 8,606,359; 9,044,609; and 9,427,583) from CVRx, Inc., and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated July 14, 2020, FDA advised the USPTO that this medical device had undergone a regulatory review period and that the approval of BAROSTIM NEO represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for BAROSTIM NEO is 2,550 days. Of this time, 2,310 days occurred during the testing phase of the regulatory review period, while 240 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption for this device, under section 520(g) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360j(g)), became effective:* August 24, 2012. The applicant claims that the investigational device exemption (IDE) required under section 520(g) of the FD&C Act for human tests to begin became effective on October 10, 2012. However, FDA records indicate that the IDE was determined substantially complete for clinical studies to have begun on August 24, 2012, which represents the IDE effective date.

2. *The date an application was initially submitted with respect to the device under section 515 of the FD&C Act (21 U.S.C. 360e):* December 20, 2018. The applicant claims December 19, 2018, as the date the premarket approval application (PMA) for BAROSTIM NEO (PMA 180050) was initially submitted. However, FDA records indicate that PMA 180050 was submitted on December 20, 2018.

3. *The date the application was approved:* August 16, 2019. FDA has verified the applicant's claim that PMA 180050 was approved on August 16, 2019.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 541 days, 768 days, or 1,038 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: March 19, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–06210 Filed 3–24–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request; Information Collection Request Title: Radiation Exposure Screening and Education Program, OMB No. 0906–0012—EXTENSION

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with of the Paperwork Reduction Act of 1995, HRSA has submitted an Information Collection Request (ICR) to the Office of

Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period. OMB may act on HRSA's ICR only after the 30 day comment period for this notice has closed.

DATES: Comments on this ICR should be received no later than April 26, 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 Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email Lisa Wright-Solomon, the HRSA Information Collection Clearance Officer at *paperwork@hrsa.gov* or call (301) 443–1984.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: Radiation Exposure Screening and Education Program, OMB No. 0906–0012, Extension.

Abstract: The Radiation Exposure Screening and Education Program (RESEP) is authorized by section 417C of the Public Health Service Act (42 U.S.C. 285a–9). The purpose of RESEP is to assist individuals who live (or lived) in areas where U.S. nuclear weapons testing occurred and who are diagnosed with cancer and other radiogenic diseases caused by exposure to nuclear fallout or nuclear materials such as uranium. RESEP funds support eligible health care organizations in implementing cancer screening programs; developing education programs; disseminating information on radiogenic diseases and the importance of early detection; screening eligible individuals for cancer and other radiogenic diseases; providing appropriate referrals for medical treatment; and facilitating documentation of radiation exposure.

A 60-day notice was published in the **Federal Register** on October 30, 2020, vol. 85, No. 211, p. 68889–90. There were no public comments.

Need and Proposed Use of the Information: For this program, performance measures were drafted to provide data useful to the program and to enable HRSA to provide aggregate program data required by Congress under the Government Performance and Results Act of 1993 (Pub. L. 103–62). These measures cover the principal topic areas of interest to the Federal Office of Rural Health Policy, including: (a) Demographics for the RESEP program user population; (b) medical screening activities for cancers and other radiogenic diseases; (c) exposure and presentation types for eligible radiogenic malignant and nonmalignant diseases; (d) referrals for appropriate medical treatment; (e) eligibility counseling and referral assistance for the Radiation Exposure Compensation Act; and (f) program outreach and education activities. These measures will speak to the Office's progress toward meeting the goals set.

Likely Respondents: Radiation Exposure Screening and Education Program award recipients.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Radiation Expose Screening and Education Program	8	1	8	12	96
Total	8		8		96

HRSA specifically requests comments on: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2021–06141 Filed 3–24–21; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Recharter for the Advisory Committee on Training in Primary Care Medicine and Dentistry

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, HHS is hereby giving notice that the Advisory Committee on Training in Primary Care Medicine and Dentistry (ACTPCMD) has been rechartered. The effective date of the recharter is March 24, 2021.

FOR FURTHER INFORMATION CONTACT: Shane Rogers, Designated Federal Official, Division of Medicine and Dentistry, Bureau of Health Workforce, HRSA, 5600 Fishers Lane, Rockville, Maryland 20857; 301–443–5260; or email *BHWACTPCMD@hrsa.gov.*

SUPPLEMENTARY INFORMATION: ACTPCMD provides advice and recommendations to the Secretary of HHS (Secretary) on policy, program development, and other matters of significance concerning the activities under section 747 of Title VII of the Public Health Service (PHS) Act, as it existed upon the enactment of Section 749 of the PHS Act in 1998. ACTPCMD

prepares an annual report describing the activities of the Committee, including findings and recommendations made by the Committee concerning the activities under section 747, as well as training programs in oral health and dentistry. The annual report is submitted to the Secretary and Chairman and ranking members of the Senate Committee on Health, Education, Labor and Pensions, and the House of Representatives Committee on Energy and Commerce. The Committee also develops, publishes, and implements performance measures and guidelines for longitudinal evaluations of programs authorized under Title VII, Part C, of the PHS Act, and recommends appropriation levels for programs under this Part. Meetings are held at least twice a year.

The renewed charter for the ACTPCMD was approved on March 5, 2021. The filing date is March 24, 2021, which gives authorization for the ACTPCMD to operate until March 24, 2023. A copy of the ACTPCMD charter is available on the ACTPCMD website at: *https://www.hrsa.gov/advisory-committees/primarycare-dentist/about.html.* A copy of the charter can also be obtained by accessing the Federal Advisory Committee Act (FACA) database that is maintained by the Committee Management Secretariat under the General Services Administration. The website for the FACA database is *http://www.facadatabase.gov/.*

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2021–06114 Filed 3–24–21; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Recharter for the Advisory Committee for Interdisciplinary, Community-Based Linkages

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act (FACA), HHS is hereby giving notice that the Advisory Committee on Interdisciplinary, Community-Based Linkages (ACICBL or Advisory Committee) is rechartered. The effective date of the renewed charter is March 24, 2021.

FOR FURTHER INFORMATION CONTACT: Shane Rogers, (DFO), Bureau of Health Workforce, HRSA, 5600 Fishers Lane, Rockville, Maryland 20857; 301–443–5260; or *BHWACICBL@hrsa.gov.*

SUPPLEMENTARY INFORMATION: The Advisory Committee provides advice and recommendations on policy, program development, and other matters of significance to the Secretary of Health and Human Services (Secretary) concerning the activities under Title VII, Part D of the Public Health Service Act, and is responsible for submitting an annual report to the Secretary and Congress describing the activities of the Committee, including findings and recommendations made by the Committee concerning the activities under Part D of Title VII. In addition, the ACICBL develops, publishes, and implements performance measures and guidelines for longitudinal evaluations, as well as recommends appropriation levels for programs under this part.

The renewed charter for the ACICBL was approved on March 5, 2021. The filing date is March 24, 2021. Recharter of the ACICBL gives authorization for the Committee to operate until March 24, 2023.

A copy of the charter is available on the ACICBL website at: *https://www.hrsa.gov/advisory-committees/interdisciplinary-community-linkages/index.html.* A copy of the charter can also be obtained by accessing the FACA database that is maintained by the Committee Management Secretariat under the General Services Administration. The website address for the FACA database is *http://www.facadatabase.gov/.*

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2021–06113 Filed 3–24–21; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0313]

Agency Information Collection Request (ICR); 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services (HHS), is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before May 24, 2021.

ADDRESSES: You may submit comments with the document identifier 0990–0313–60D to *Sherrette.Funn@hhs.gov.*

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the survey instrument or information collection plan, send your request to Sherrette Funn, Reports Clearance Officer, at *sherrette.funn@hhs.gov,* or call 202–795–7714. Please reference the document identifier 0990–0313–60D and project title.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: National Blood Collection & Utilization Survey (NBCUS).

Type of Collection: Revision.

OMB No. 0990–0313 Office of the Assistant Secretary for Health OASH/HHS.

Abstract

The Office of the Assistant Secretary for Health (OASH) is requesting approval for a three-year revised information collection request (ICR) titled ''National Blood Collection & Utilization Survey (NBCUS).'' The NBCUS is a biennial survey that includes a core of standard questions on blood collection, processing, and utilization practices. Questions on transfusion transmitted infections, transfusion associated circulatory overload, acute hemolysis, delayed hemolysis, and severe allergic reactions are also included in the survey. The rapidly changing environment in blood supply and demand makes it important to have regular, periodic data describing the state of U.S. blood collections and transfusions for understanding the dynamics of blood safety and availability. Two sections were added to the survey to capture information on the impact of the COVID–19 pandemic on the blood supply during the course of 2020 only. These data will be valuable, when compared to previous years, for

understanding the effects of a major pandemic on the health system.

Survey respondents will consist of blood collection centers, cord blood banks and hospitals that perform blood transfusions, except those reporting fewer than 100 inpatient surgeries per year. For the purposes of this ICR, federal burden is only being placed on facilities located within the fifty states and the District of Columbia. Total estimated burden is 9,064 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
Transfusing Hospitals	2,140	1	4	8,560
Hospital Blood Banks	76	1	4	304
Community-based blood center	50	1	4	200
Total	2,266			9,064

Dated: March 19, 2021.

Sherrette A. Funn,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2021–06138 Filed 3–24–21; 8:45 am]

BILLING CODE 4150–41–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Board on Medical Rehabilitation Research. The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Advisory Board on Medical Rehabilitation Research.

Date: May 3, 2021.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: NICHD Director's report; NCMRR Director's report; Discussion of NCMRR priorities; Concept Clearance; Telerehabilitation Research Approaches; Health Disparities in Rehabilitation Research; Brief Remarks from Parting Board Members and Selection of New Board Chair; Agenda Planning for Next Board Meeting in December.

Place: National Institutes of Health, Eunice Kennedy Shriver National Institute of Child Health and Human Development, 6710B Rockledge Drive, Bethesda, MD 20892–7510 (Virtual Meeting).

Contact Person: Ralph M. Nitkin, Ph.D., Director, Biological Sciences and Career Development Program, National Center for Medical Rehabilitation Research, Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health, 6710B Rockledge Drive, Room 2116, Bethesda, MD 20892–7510, (301) 402–4206, *nitkinr@mail.nih.gov.*

The meeting will be NIH Videocast. Please select the following link for Videocast on the day of the meeting: *https://videocast.nih.gov/default.asp.*

Information is also available on the Institute's/Center's home page: *http://www.nichd.nih.gov/about/advisory/nabmrr/Pages/index.aspx* where the current roster and minutes from past meetings are posted.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: March 19, 2021.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–06112 Filed 3–24–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7040–N–06; OMB Control No. 2577–0191]

60-Day Notice of Proposed Information Collection: Application for the Community Development Block Grant (ICDBG) Program for Indian Tribes and Alaska Native Villages

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, PIH, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* May 24, 2021.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Dacia Rogers, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street SW, (Room 3178), Washington, DC 20410; telephone 202–708–3000, extension 3374, (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Rogers.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Indian Community Development Block Grant Information Collection.

OMB Approval Number: 2577–0191.

Type of Request: Extension of currently approved collection.

Form Number: HUD–4123, HUD–4125. SF–424, HUD–2880, HUD–2993, SF–425, HUD–2516.

Description of the need for the information and proposed use: Title I of the Housing and Community Development Act of 1974 authorizes Indian Community Development Block Grants (ICDBG) and requires that grants be awarded annually on a competitive basis (or in the case of Imminent Threat grants, on an as-needed basis). The purpose of the ICDBG program is to develop viable Indian and Alaska Native communities by creating decent housing, suitable living environments, and economic opportunities primarily for low- and moderate-income persons. Consistent with this objective, not less than 70 percent of the expenditures are to benefit low- and moderate-income persons. Eligible applicants include Federally-recognized tribes, which includes Alaska Native communities, and tribally authorized tribal organizations. Eligible categories of funding include housing rehabilitation, land acquisition to support new housing, homeownership assistance, public facilities and improvements, economic development, and microenterprise programs. For a complete description of eligible activities, please refer to 24 CFR part 1003, subpart C.

The ICDBG program regulations are at 24 CFR part 1003. The ICDBG program requires eligible applicants to submit information to enable HUD to select the best projects for funding during annual competitions. Additionally, the information submitted is essential for HUD in monitoring grants to ensure that grantees are complying with applicable statutes and regulations and implementing activities as approved.

ICDBG applicants must submit a complete application package which includes an Application for Federal Assistance (SF–424), Applicant/Recipient Disclosure/Update Report (HUD–2880), Cost Summary (HUD–4123), and Implementation Schedule (HUD–4125). If the applicant has a waiver of the electronic submission requirement and is submitting a paper application, an Acknowledgement of Application Receipt (HUD–2993) must also be submitted. If the applicant is a tribal organization, a resolution from the tribe stating that the tribal organization is submitting an application on behalf of the tribe must also be included in the application package.

ICDBG recipients are required to submit a quarterly Federal Financial Report (SF–425) that describes the use of grant funds drawn from the recipient's line of credit. The reports are used to monitor cash transfers to the recipients and obtain expenditure data from the recipients. (2 CFR 200.328)

The regulations at 24 CFR part 200 require that grantees and sub-grantees take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Consistent with these regulations, 24 CFR 1003.506(b) requires that ICDBG grantees report on these activities on an annual basis, with Contract and Subcontract Activity Report being due to HUD on October 10 of each year (HUD–2516).

The regulations at 24 CFR 1003.506(a) instruct recipients to submit to HUD an Annual Status and Evaluation Report (ASER) that describes the progress made in completing approved activities with a listing of work to be completed; a breakdown of funds expended; and when the project is completed, a program evaluation expressing the effectiveness of the project in meeting community development needs. The ASER is due by November 15 each year and at grant closeout.

The information collected will allow HUD to accurately audit the program.

Respondents: Federally recognized Native American Tribes, Alaska Native communities and corporations, and tribal organizations.

ESTIMATED NUMBER OF RESPONDENTS, RESPONSES, AND BURDEN HOURS PER ANNUM

Type of submission	Number of respondents	Frequency of submissions	Total responses	Estimate average time (hours)	Estimate annual burden (hours)	Hourly rate *	Total annual cost
Grant Application (Includes SF–424, HUD–2880, HUD–2993, HUD–4123, HUD–4125)	240	1	240	30	7,200	$19.23	$138,456
Federal Financial Report (SF–425)	75	4	300	0.5	150	19.23	2,885
Contract and Subcontract Activity Report (HUD–2516)	75	1	75	1	75	19.23	1,442
Annual Status and Evaluation Report (ASER)	75	1.25	94	4	375	19.23	7,211
Total	240		709		7,800		149,994

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: March 12, 2021.

Merrie Nichols-Dixon,

Director, Office of Policy, Programs and Legislative Initiatives.

[FR Doc. 2021–06171 Filed 3–24–21; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7034–N–16]

30-Day Notice of Proposed Information Collection: Relocation & Real Property Acquisition Recordkeeping Requirements; OMB Control No. 2506–0121

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is

requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 30 days of public comment.

DATES: *Comments Due Date:* April 26, 2021.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_submission@omb.eop.gov* or *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: Anna P. Guido, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email her at *Anna.P.Guido@hud.gov* or telephone 202–402–5535. This is not a toll-free number. Person with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on December 17, 2020, at 85 FR 81948.

A. Overview of Information Collection

Title of Information Collection: Relocation & Real Property Acquisition Recordkeeping Requirements.

OMB Approval Number: 2506–0121.

Type of Request: Revision of currently approved collection.

Form Number: N/A.

Description of the need for the information and proposed use: HUD funded projects involving the acquisition of real property or the displacement of persons as a result of acquisition, rehabilitation or demolition are subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA).

Information collection	Frequency of responses	Number of respondents	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per hour *	Total
Displacements	2,000.00	10.00	20,000.00	5.00	100,000.00	$26.09	$2,609,000.00
Non-Displacements	2,000.00	20.00	40,000.00	2.00	80,000.00	26.09	2,087,200.00
Acquisitions	2,000.00	10.00	20,000.00	5.00	100,000.00	26.09	2,609,000.00
Total			80,000.00		280,000.00		7,305,200.00

* Substantially equivalent to a GS–8 step 1 based on OPM pay scale.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) If the information will be processed and used in a timely manner;

(3) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(4) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(5) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Anna P. Guido,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2021–06190 Filed 3–24–21; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7036–N–02]

60-Day Notice of Proposed Information Collection: Self-Help Homeownership Opportunity Program (SHOP); OMB Control No.: 2506–0157

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comment Due Date:* May 24, 2021.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street SW, Room 4176, Washington, DC 20410–4500; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Person with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Jackie L. Williams, Ph.D., Office of Rural Housing and Economic Development, U.S. Department of Housing and Urban Development, 451 Seventh Street SW, Room 7240, Washington, DC 20410–4500; email *Jackie.Williams@hud.gov;* telephone 202–708–2290. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Pollard. Copies of available

documents submitted to OMB for the information collection described in Section A.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Self-Help Homeownership Opportunity Program (SHOP).

OMB Approval Number: 2506–0157.

Type of Request: Extension of currently approved collection.

Form Number: HUD–424CB, HUD–2880, HUD–2993, HUD–2995, HUD–96011.

Description of the need for the information and proposed use: This is a proposed information collection for submission requirements under the SHOP Notice of Funding Availability (NOFA). HUD requires information in order to ensure the eligibility of SHOP applicants and the compliance of SHOP proposals, to rate and rank SHOP applications, and to select applicants for grant awards. Information is collected on an annual basis from each applicant that responds to the SHOP NOFA. The SHOP NOFA requires applicants to submit specific forms and narrative responses.

Respondents: National and regional non-profit self-help housing organizations (including consortia) that apply for funds in response to the SHOP NOFA.

Frequency of Submission: Annually in response to the issuance of a SHOP NOFA.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, hours per response, frequency of response, and total hours of response for all respondents.

The estimates of the average hours needed to prepare the information collection are based on information provided by previous applicants. Actual hours will vary depending on the proposed scope of the applicant's program, the applicant's geographic service area and the number of affiliate organizations. The information burden is generally greater for national organizations with numerous affiliates.

Information collection	Number of respondents	Frequency of response	Responses per annual	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
SF–424	10.00	0.00	0.00	0.00	00.00	$0.00	$0.00
HUD–424CB	10.00	1.00	10.00	10.00	100.00	69.75	6,975.00
HUD–424CBW	10.00	1.00	10.00	30.00	300.00	69.75	20,925.00
SF–LLL	10.00	0.00	0.00	0.00	0.00	0.00	0.00
HUD–2880	10.00	1.00	10.00	.50	5.00	69.75	348.75.00
HUD–2993	10.00	1.00	10.00	.50	5.00	69.75	348.75.00
HUD–2995	10.00	1.00	10.00	.50	5.00	69.75	348.75.00
HUD–96011	10.00	1.00	10.00	.50	5.00	69.75	348.75.00
Applicant Eligibility	10.00	1.00	10.00	10.00	100.00	69.75	6,975.00
SHOP Program Design and Scope of Work	10.00	1.00	10.00	30.00	300.00	69.75	20,925.00
Rating Factor1	10.00	1.00	10.00	25.00	250.00	69.75	17,437.50
Rating Factor 2	10.00	1.00	10.00	25.00	250.00	69.75	17,437.50
Rating Factor 3	10.00	1.00	10.00	55.00	550.00	69.75	38,362.50
Rating Factor 4	10.00	1.00	10.00	30.00	300.00	69.75	20,925.00
Rating Factor 5	10.00	1.00	10.00	25.00	250.00	69.75	17,437.50
Total Annual Hour Burden	10.00	1.00	10.00	242.00	2,420.00		168,795.00

B. Solicitation of Public Comments

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Principal Deputy Assistant Secretary for Community Planning and Development, James A. Jemison II, having reviewed and approved this document, is delegating the authority to electronically sign this document to submitter, Nacheshia Foxx, who is the Federal Register Liaison for HUD, for purposes of publication in the **Federal Register.**

Nacheshia Foxx,

Federal Liaison for the Department of Housing and Urban Development.

[FR Doc. 2021–06203 Filed 3–24–21; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–MB–2021–0030; FF09M22000–212–FXMB1231099BPP0]

RIN 1018–BF07

Migratory Bird Hunting; Service Regulations Committee and Flyway Council Meetings

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; announcement of meetings.

SUMMARY: The U.S. Fish and Wildlife Service (Service or we) Migratory Bird Regulations Committee (SRC) will conduct an open meeting on April 6, 2021, to identify and discuss preliminary issues concerning the 2022–2023 migratory bird hunting regulations. We will conduct a second SRC meeting

in September/October 2021 to review information on the status of migratory game birds and develop 2022–2023 migratory game bird regulation recommendations for these species. In accordance with departmental policy, these meetings are open to public observation.

DATES: *SRC meeting:* The Service Regulations Committee meeting will be held April 6, 2021. The meeting will commence at approximately 12:00 p.m. (Eastern Time) and is open for public observation. The Department of the Interior will post the September/October SRC meeting on the Service's Migratory Bird Program website as a method to notify the public of these meetings in the future (*https://www.fws.gov/birds/*). This posting will occur at least 2 weeks before the meeting or as soon as practicable after the Service can schedule.

Accommodation requests: Please submit all requests for meeting accommodations at least 7 days prior to the meeting date. See *Meeting Accommodations,* below, for more information.

ADDRESSES: The SRC meeting will be conducted by video and telephonically with or without the aid of video technology. Meeting details with web links and telephone numbers will be posted at *https://www.fws.gov/birds/* when they become available.

FOR FURTHER INFORMATION CONTACT: Ken Richkus, U.S. Fish and Wildlife Service, Department of the Interior, MS: MB, 5275 Leesburg Pike, Falls Church, VA 22041–3803; (703) 358–1780.

SUPPLEMENTARY INFORMATION: Under the authority of the Migratory Bird Treaty Act (16 U.S.C. 703–712), the Service regulates the hunting of migratory game birds. We update the migratory game bird hunting regulations, located in title 50 of the Code of Federal Regulations in part 20 (50 CFR part 20), annually. Through these regulations, we establish the frameworks, or outside limits, for season lengths, bag limits, and areas for migratory game bird hunting. Acknowledging regional differences in hunting conditions, the Service has administratively divided the Nation into four Flyways for the primary purpose of managing migratory game birds. Each Flyway (Atlantic, Mississippi, Central, and Pacific) has a Flyway Council, a formal organization generally composed of one member from each State and Province in that Flyway. The Flyway Councils, established through the Association of Fish and Wildlife Agencies, assist in researching and providing migratory game bird management information for Federal, State, and Provincial governments, as well as private conservation entities and the public.

The process for adopting the migratory game bird hunting regulations in 50 CFR part 20 is constrained by three primary factors. Legal and administrative considerations dictate how long the rulemaking process will last. Most importantly, however, the biological cycle of migratory game birds controls the timing of data-gathering activities and thus the dates on which these results are available for consideration and deliberation.

For the regulatory cycle, Service biologists gather, analyze, and interpret biological survey data and provide this information to all those involved in the process through a series of published status reports and presentations to Flyway Councils and other interested parties. Because the Service is required to take abundance of migratory game birds and other factors into consideration, the Service undertakes a number of surveys throughout the year in conjunction with Service Regional Offices, the Canadian Wildlife Service, and State and Provincial wildlife-management agencies. To determine the appropriate frameworks for each species, we consider factors such as population size and trend, geographical distribution, annual breeding effort, condition of breeding and wintering habitat, number of hunters, and anticipated harvest. After frameworks are established for season lengths, bag limits, and areas for migratory game bird hunting, States may select season dates, bag limits, and other regulatory options for the hunting seasons. States may always be more conservative in their selections than the Federal frameworks, but never more liberal.

Upcoming Meetings

The SRC will conduct an open meeting on April 6, 2021, to identify and discuss preliminary issues concerning the 2022–2023 migratory bird hunting regulations. We will conduct a second SRC meeting in September/October 2021 to review information on the status of migratory game birds and develop 2022–2023 migratory game bird regulation recommendations for these species. In accordance with departmental policy, these meetings are open to public observation. In addition, Service representatives will be present at the individual meetings of the four Flyway Councils in February–March and again in August–October. We will provide the meeting dates, commencement times, and locations for the second SRC and Flyway Council meetings on our website at *https://www.fws.gov/birds/management/flyways.php* as this information becomes available.

Meeting Accommodations

The Service is committed to providing access to the April 6, 2021, SRC meeting for all participants. Please direct all requests for sign language interpreting services, closed captioning, or other accommodation needs to the person listed under **FOR FURTHER INFORMATION CONTACT** with your request by close of business on March 29, 2021. If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service at 800–877–8339.

Martha Williams,

Principal Deputy Director, Exercising the Delegated Authority of the Director, U.S. Fish and Wildlife Service.

[FR Doc. 2021–06144 Filed 3–24–21; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[201A2100DD/AAKC001030/A0A501010.999900253G]

Indian Gaming; Approval of Tribal-State Class III Gaming Compact in the State of North Carolina

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the approval of the Tribal-State Compact between the Catawba Indian Nation (Tribe) and the State of North Carolina (State).

DATES: The compact takes effect on March 25, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under section 11 of the Indian Gaming Regulatory Act (IGRA), Public Law 100–497, 25 U.S.C. 2701 *et seq.,* the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. As required by 25 CFR 293.4, all compacts and amendments are subject to review and approval by the Secretary. The Compact permits various types of gaming, including raffles, video games, gaming machines, sports wagering and horse racing wagering,

and live table games on the Tribe's Indian lands. The Compact includes provisions requiring the Tribe to share revenue with the State from the Tribe's live table games revenue in exchange for live table games exclusivity within a defined geographic area. The Compact also obligates the Tribe to reimburse the State to defray costs incurred to regulate sports and horse wagering; provides that the Tribe will have the primary responsibility to administer and enforce regulatory requirements; permits the Tribe to operate up to three class III Gaming facilities on the Tribe's Indian lands; and remains in effect for 30 years from today's date, unless extended by the parties. Therefore, pursuant to my delegated authority and Section 11 of IGRA, the Compact is approved.

Darryl LaCounte,

Director, Bureau of Indian Affairs.

[FR Doc. 2021–06111 Filed 3–24–21; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[21X.LLAZ921000.L14400000.BJ0000. LXSSA2250000.241A]

Notice of Filing of Plats of Survey; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of official filing.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed 30 days after the date of this publication in the Bureau of Land Management (BLM), Arizona State Office, Phoenix, Arizona. The surveys announced in this notice are necessary for the management of lands administered by the agency indicated.

ADDRESSES: These plats will be available for inspection in the Arizona State Office, Bureau of Land Management, One North Central Avenue, Suite 800, Phoenix, Arizona 85004–4427. Protests of any of these surveys should be sent to the Arizona State Director at the above address.

FOR FURTHER INFORMATION CONTACT: Mark D. Morberg, Chief Cadastral Surveyor of Arizona; (602) 417–9558; *mmorberg@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

The Gila and Salt River Meridian, Arizona

The plat, in one sheet, representing the dependent resurvey of a portion of the north boundary, the 'Katherine' lode of Mineral Survey No. 4438 and the northeasterly boundaries of the 'Oak Tree No. 1' and 'Oak Tree No. 2' lodes of Mineral Survey No. 4508 and a metes-and-bounds survey in section 1, partially surveyed Township 10 South, Range 15 East, accepted February 9, 2021, for Group 1195, Arizona.

This plat was prepared at the request of the United States Forest Service.

The plat, in one sheet, representing the dependent resurvey of a portion of the subdivisional lines, and two metes-and-bounds surveys in sections 8 and 9, partially surveyed Township 10 South, Range 16 East, accepted February 9, 2021, for Group 1195, Arizona.

This plat was prepared at the request of the United States Forest Service.

The plat, in one sheet, showing the amended lotting in section 34, Township 13 North, Range 2 West, accepted February 9, 2021, for Supplemental Group 9112, Arizona.

This plat was prepared at the request of the United States Forest Service.

A person or party who wishes to protest against any of these surveys must file a written notice of protest within 30 calendar days from the date of this publication with the Arizona State Director, Bureau of Land Management, stating that they wish to protest.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within 30 days after the protest is filed. Before including your address, or other personal information in your protest, please be aware that your entire protest, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 43 U.S.C. Chap. 3.

Mark D. Morberg,

Chief Cadastral Surveyor of Arizona.

[FR Doc. 2021–06109 Filed 3–24–21; 8:45 am]

BILLING CODE 4310–32–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1227]

Certain Routers, Access Points, Controllers, Network Management Devices, Other Networking Products, and Hardware and Software Components Thereof; Commission Determination Not To Review an Initial Determination Granting Complainant's Motion To Amend the Complaint and the Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 15) of the presiding administrative law judge (''ALJ'') granting the complainant's motion to amend the complaint and the notice of investigation to change the name of a respondent.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2392. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (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 *https://www.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: On October 28, 2020, the Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337''), based on a complaint filed by Q3 Networking LLC of Frisco, Texas (''Q3''). 85 FR 68367–68 (Oct. 28, 2020). The complaint alleges a violation of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain routers, access points, controllers, network management devices, other networking products, and hardware and software components thereof by reason of infringement of certain claims of U.S. Patent Nos. 7,457,627; 7,609,677; 7,895,305; and 8,797,853. The

complaint also alleges the existence of a domestic industry. The notice of investigation names as respondents: CommScope Holding Company, Inc. of Hickory, North Carolina; CommScope, Inc. of Hickory, North Carolina; Arris US Holdings, Inc. of Suwanee, Georgia; Ruckus Wireless, Inc. of Sunnyvale, California; Hewlett Packard Enterprise Co. of Palo Alto, California; Aruba Networks, Inc. of Santa Clara, California; and Netgear, Inc. of San Jose, California. *Id.* at 68368. The Commission's Office of Unfair Import Investigations is not named as a party in this investigation. *Id.*

On February 4, 2021, complainant Q3 filed a motion to ''amend the Complaint and Notice of Investigation to correct the corporate name of Respondent Aruba Networks, Inc. to Respondent Aruba Networks, LLC.'' Mot. at 1. The motion states that respondents do not oppose the motion. *Id.* No response was filed.

On March 5, 2021, the ALJ issued the subject ID (Order No. 15) pursuant to Commission Rule 210.14(b)(1), 19 CFR 210.14(b)(1), granting complainant's motion. The ID finds that good cause exists to correct the name of respondent Aruba Networks, Inc. to Aruba Networks, LLC. ID at 2 (citations omitted). The ID further finds that this amendment would not prejudice the public interest or the rights of the parties to the investigation. *Id.* No party petitioned for review of the ID.

The Commission has determined not to review the subject ID. Named respondent Aruba Networks, Inc. is corrected to Aruba Networks, LLC.

The Commission vote for this determination took place on March 22, 2021.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in Part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.

Issued: March 22, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–06199 Filed 3–24–21; 8:45 am]

BILLING CODE 7020–02–P

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Meeting of the Advisory Committee

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Joint Board for the Enrollment of Actuaries gives notice of a closed teleconference meeting of the Advisory Committee on Actuarial Examinations.

DATES: The meeting will be held on April 16, 2021, from 9:00 a.m. to 5:30 p.m. (EDT).

FOR FURTHER INFORMATION CONTACT: Elizabeth Van Osten, Designated Federal Officer, Advisory Committee on Actuarial Examinations, at (202) 317–3648 or *elizabeth.j.vanosten@irs.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Advisory Committee on Actuarial Examinations will hold a teleconference meeting on April 16, 2021, from 9:00 a.m. to 5:30 p.m. (EDT). The meeting will be closed to the public.

The purpose of the meeting is to discuss topics and questions that may be recommended for inclusion on future Joint Board examinations in actuarial mathematics, pension law and methodology referred to in 29 U.S.C. 1242(a)(1)(B).

A determination has been made as required by section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App., that the subject of the meeting falls within the exception to the open meeting requirement set forth in Title 5 U.S.C. 552b(c)(9)(B), and that the public interest requires that such meeting be closed to public participation.

Dated: March 19, 2021.

Thomas V. Curtin, Jr.,

Executive Director, Joint Board for the Enrollment of Actuaries.

[FR Doc. 2021–06115 Filed 3–24–21; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0030]

Agency Information Collection Activities; Proposed eCollection of eComments Requested; Extension With Change of a Currently Approved Collection; Records and Supporting Data: Importation, Receipt, Storage, and Disposition by Explosives Importers, Manufacturers, Dealers, and Users

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice (DOJ) will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for an additional 30 days until April 26, 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.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension with change of a currently approved collection.

(2) *The Title of the Form/Collection:* Records and Supporting Data: Importation, Receipt, Storage, and Disposition by Explosives Importers, Manufacturers, Dealers, and Users Licensed Under Title 18 U.S.C. Chapter 40 Explosives.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number: None.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: None.

Abstract: This information collection requires the maintenance of records showing daily activities in the importation, manufacture, receipt, storage, and disposition of all explosive materials covered under 18 U.S.C. Chapter 40 Explosives. These records must also show where and to whom explosive materials are sent, thereby ensuring that any diversions will be readily apparent, and that ATF will be immediately notified if these materials are lost or stolen.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 9,411 respondents will prepare records for this information collection annually, and it will take each respondent approximately 12.6 hours to prepare the required records.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 592,893 hours, which is equal to 47,055 (# of annual responses) * 12.6 (# of hours per response).

(7) *An Explanation of the Change in Estimates:* The adjustments associated with this collection include a decrease in the number of respondents, responses and total burden hours by 516, 2,580, and 32,508 hours respectively, since the last IC renewal in 2017.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: March 22, 2021.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2021–06170 Filed 3–24–21; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–NEW]

Agency Information Collection Activities; Proposed eCollection of eComments Requested; New Information Collection; Residency and Citizenship Questionnaire—ATF Form 8620.58

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice (DOJ) will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for an additional 30 days until April 26, 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.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New collection.

(2) *The Title of the Form/Collection:* Residency and Citizenship Questionnaire.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number: ATF Form 8620.58.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Individuals or households.

Other: None.

Abstract: The Residency and Citizenship Questionnaire—ATF Form 8620.58 will be used to determine if a candidate for Federal or contractor employment at the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), meet U.S. residency and citizenship requirements.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 2,000 respondents will use the form annually, and it will take each respondent approximately 5 minutes to complete their responses.

(6) *An estimate of the total public burden (in hours) associated with the collection:* T The estimated annual public burden associated with this collection is 167 hours, which is equal to 2,000 (# of respondents) * .0833333 (5 minutes).

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: March 22, 2021.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2021–06168 Filed 3–24–21; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States, et al. v. Waste Management, Inc., et al.; Response to Public Comments

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States hereby publishes below the Response to Public Comments on the Proposed Final Judgment in *United States, et al.* v. *Waste Management, Inc., et al.,* Civil Action No. 1:20–cv–03063–JDB, which was filed in the United States District Court for the District of Columbia on March 19, 2021, together with a copy of the two comments received by the United States.

A copy of the comments and the United States' response to the comments is available at *https://www.justice.gov/atr/case/us-and-plaintiff-states-v-waste-management-inc-and-advanced-disposal-services-inc.* Copies of the comments and the United States' response are available for inspection at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may also be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

United States District Court for the District of Columbia

United States of America, State of Florida, State of Illinois, State of Minnesota, Commonwealth of Pennsylvania, and State of Wisconsin, Plaintiffs, v. *Waste Management, Inc., and Advanced Disposal Services, Inc.,* Defendants.

Case No. 1:20–cv–03063 (JDB)

Response of Plaintiff United States to Public Comments on the Proposed Final Judgment

As required by the Antitrust Procedures and Penalties Act (the ''APPA'' or ''Tunney Act''), 15 U.S.C. 16(b)–(h), the United States hereby responds to the public comments received about the proposed Final Judgment in this case. After careful consideration of the two comments received, the United States continues to believe that the proposed remedy will provide an effective and appropriate remedy for the antitrust violations alleged in the Complaint and is therefore in the public interest. The United States will move the Court for entry of the proposed Final Judgment after the public comments and this Response have been published in the **Federal Register**, pursuant to 15 U.S.C. 16(d).

I. Procedural History

On April 14, 2019, Waste Management, Inc. (''WMI'') agreed to acquire all of the outstanding common stock of Advanced Disposal Services, Inc. (''ADS'') for approximately $4.9 billion. On June 24, 2020, WMI and ADS agreed to a revised purchase price of approximately $4.6 billion. On October 23, 2020, the United States and the State of Florida, State of Illinois, State of Minnesota, Commonwealth of Pennsylvania, and State of Wisconsin (the ''Plaintiff States'') filed a civil antitrust Complaint seeking to enjoin WMI from acquiring ADS because the proposed acquisition would substantially lessen competition for small container commercial waste (''SCCW'') collection and municipal solid waste (''MSW'') disposal in 57 local markets in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

Simultaneously with the filing of the Complaint, the United States and the Plaintiff States filed a proposed Final Judgment, an Asset Preservation Stipulation and Order signed by the United States, the Plaintiff States, and Defendants consenting to the entry of the proposed Final Judgment after compliance with the requirements of the APPA, and a Competitive Impact Statement describing the transaction and the proposed Final Judgment. The United States caused the Complaint, the proposed Final Judgment, and the Competitive Impact Statement to be published in the **Federal Register** on November 3, 2020, *see* 85 FR 70,004 (November 3, 2020), and caused notice regarding the same, together with directions for the submission of written comments relating to the proposed Final Judgment, to be published in *The Washington Post* for seven days, from November 2, 2020, through November 8, 2020. The 60-day period for public comment ended on January 7, 2021. During the public comment period, the United States received the two comments described below in Section IV and attached in Appendix A.

II. The Complaint and the Proposed Final Judgment

The proposed Final Judgment is the culmination of a thorough, comprehensive investigation conducted by the Antitrust Division of the U.S. Department of Justice into WMI's proposed acquisition of ADS. As alleged in the Complaint, WMI is the largest solid waste hauling and disposal company in the United States and provides waste collection, recycling, and disposal services in 49 states. ADS is the fourth-largest solid waste hauling and disposal company in the United States and provides waste collection, recycling, and disposal services in 16 states.

Based on the evidence gathered during its investigation, the United States concluded that WMI's proposed acquisition of ADS would likely substantially lessen competition in the markets for SCCW collection and MSW disposal in 57 local markets in the United States, resulting in higher prices and a lower quality and level of service for customers in these markets. Accordingly, the United States and the Plaintiff States filed a civil antitrust lawsuit to block the acquisition as a violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

The proposed Final Judgment is designed to preserve competition in each of the affected geographic markets that were alleged in the Complaint. It requires WMI and ADS to divest a total of 15 landfills, 37 transfer stations, 29 hauling locations, and over 200 waste and recycling collection routes, together with related ancillary assets. The required divestitures, together with the other requirements of the proposed Final Judgment, will address the anticompetitive effects of the acquisition in SCCW collection or MSW disposal service in the areas alleged in the Complaint. The divestiture of these assets to an independent, economically viable acquirer will ensure that customers of these services in the geographic markets alleged in the Complaint will continue to receive the benefits of competition that otherwise would be lost as a result of the transaction.

Pursuant to Paragraph V(B) of the Asset Preservation Stipulation and Order, which the Court entered on October 27, 2020 (Dkt. No. 8), Defendants are required to comply with all of the terms and provisions of the proposed Final Judgment. Following the Court's entry of the Asset Preservation Stipulation and Order, and as required by Paragraph IV(A) of the proposed Final Judgment, Defendants completed the required divestiture to GFL Environmental Inc. (''GFL''), which took ownership of the assets and has begun incorporating them into its operations. GFL is now the fourth-largest SCCW collection and MSW disposal provider in North America.

III. Standard of Judicial Review

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a 60-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the Court, in accordance with the statute as amended in 2004, is required to consider:

(A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). In considering these statutory factors, the Court's inquiry is necessarily a limited one as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995); *United States* v. *U.S. Airways Grp.,* Inc., 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (explaining that the ''court's inquiry is limited'' in Tunney Act settlements); *United States* v. *InBev N.V./S.A.,* No. 08–1965 (JR), 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009) (noting that a court's review of a consent judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable'').

As the U.S. Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations in the government's complaint, whether the proposed Final Judgment is sufficiently clear, whether its enforcement mechanisms are sufficient, and whether it may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the proposed Final Judgment, a court may not ''make de novo determination of facts and issues.'' *United States* v. *W. Elec. Co.,* 993 F.2d 1572, 1577 (D.C. Cir. 1993) (quotation marks omitted); *see also Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa,* Inc., 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 16 (D.D.C. 2000); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3. Instead, ''[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General.'' *W. Elec. Co.,* 993 F.2d at 1577 (quotation marks omitted). ''The court should bear in mind the flexibility of the public interest inquiry: the court's function is not to determine whether the resulting array of rights and liabilities is one that will best serve society, but only to confirm that the resulting settlement is within the reaches of the public interest.'' *Microsoft,* 56 F.3d at 1460 (quotation marks omitted); *see also United States* v. *Deutsche Telekom AG,* No. 19–2232 (TJK), 2020 WL 1873555, at *7 (D.D.C. Apr. 14, 2020). More demanding requirements would ''have enormous practical consequences for the government's ability to negotiate future settlements,'' contrary to congressional intent. *Id.* at 1456. ''The Tunney Act was not intended to create a disincentive to the use of the consent decree.'' *Id.*

The United States' predictions about the efficacy of the remedy are to be afforded deference by the Court. *See, e.g., Microsoft,* 56 F.3d at 1461 (recognizing courts should give ''due respect to the Justice Department's . . . view of the nature of its case''); *United States* v. *Iron Mountain, Inc.,* 217 F. Supp. 3d 146, 152–53 (D.D.C. 2016) (''In evaluating objections to settlement agreements under the Tunney Act, a court must be mindful that [t]he government need not prove that the settlements will perfectly remedy the alleged antitrust harms[;] it need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'') (internal citations omitted); *United States* v. *Republic Servs., Inc.,* 723 F. Supp. 2d 157, 160 (D.D.C. 2010) (noting ''the deferential review to which the government's proposed remedy is accorded''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (''A district court must accord due respect to the government's prediction as to the effect of proposed remedies, its perception of the market structure, and its view of the nature of the case.''). The ultimate question is whether ''the remedies [obtained by the Final Judgment are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.' '' *Microsoft,* 56 F.3d at 1461 (*quoting W. Elec. Co.,* 900 F.2d at 309).

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the Court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459; *see also U.S. Airways,* 38 F. Supp. 3d at 75 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 (''[T]he 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged''). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d at 1459–60.

In its 2004 amendments to the APPA, Congress made clear its intent to preserve the practical benefits of using consent judgments proposed by the United States in antitrust enforcement, Public Law 108–237 § 221, and added the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2); *see also U.S. Airways,* 38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). This language explicitly wrote into the statute what Congress intended when it first enacted the Tunney Act in 1974. As Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). ''A court can make its public interest determination based on the competitive impact statement and response to public

comments alone.'' *U.S. Airways,* 38 F. Supp. 3d at 76 (*citing Enova Corp.,* 107 F. Supp. 2d at 17).

IV. Summary of Public Comments and the Response of the United States

During the 60-day public comment period, the United States received comments from: (1) Solid Waste Agency of Lake County, Illinois (''SWALCO''); and (2) Solid Waste Agency of Northern Cook County, Illinois (''SWANCC''). The comments are attached in the accompanying Appendix A and are summarized below. After reviewing these comments, the United States continues to believe that the proposed Final Judgment is in the public interest.

A. Public Comments From Solid Waste Agency of Lake County, Illinois and Solid Waste Agency of Northern Cook County, Illinois

SWALCO and SWANCC are both intergovernmental organizations that advise and assist member communities with solid waste management issues and provide them with a variety of waste reduction and recycling programs and resource materials. SWALCO is composed of members from 43 municipalities in Lake County, Illinois, and SWANCC has 23 member communities in Northern Cook County, Illinois. In their comments, SWALCO and SWANCC assert that the proposed Final Judgment should be revised to include the sale of collection routes and assets in the Chicago, Illinois area (''Chicago area''). In the alternative, SWALCO proposes that WMI be required to commit to take waste to the divested MSW disposal assets in Chicago or to sell those MSW disposal assets to Lakeshore Recycling Systems, Inc. instead of GFL, which, after approval by the United States, acquired the Divestiture Assets.

SWALCO and SWANCC both assert that such modifications are necessary to make the divested disposal facilities ''economically viable'' and to create a ''strong fourth vertically integrated competitor.'' SWALCO further asserts that because the United States required the divestiture of vertically integrated operations in other markets, it should do so in the Chicago area as well. Finally, SWALCO and SWANCC state that the approved acquirer, GFL, has not shown a commitment to the Chicago area since the close of the divestiture transaction because it has not bid for certain hauling contracts. SWANCC further suggests that GFL will not be able to attract sufficient independent collection providers to the divested MSW disposal assets, and thus, GFL will eventually sell the assets to a larger market participant.

B. Response of the United States

Entry of the proposed Final Judgment is in the public interest, and SWALCO's and SWANCC's recommendations—to revise the proposed Final Judgment to require the sale of additional collection routes and assets, to require WMI to commit to take waste to the divested MSW disposal assets, or to require that the divested MSW disposal assets be sold to Lakeshore Recycling Systems instead of GFL—are unnecessary. As explained in more detail below, the United States continues to believe that the proposed Final Judgment presents an adequate remedy for four primary reasons. First, the divestiture of collection routes and assets in the Chicago area is not necessary to ensure the success of the MSW disposal divestiture assets. Second, to the extent SWALCO and SWANCC assert that the sale of additional collection routes and assets is necessary to remedy a competitive concern in collection in the Chicago area, they seek a remedy for harm not alleged by the United States in its Complaint. Third, GFL's decision not to bid on certain collection contracts is not evidence of a lack of commitment to the Chicago area MSW disposal markets. Fourth, the alternative proposals—to require WMI to commit to take waste to the divested MSW disposal assets in the Chicago area or to require that these divested MSW disposal assets be sold to Lakeshore Recycling Systems instead of GFL—are unnecessary to ensure the viability of the MSW divestitures and to remedy the harm alleged in the Complaint.

1. The MSW Disposal Assets in the Chicago Area Do Not Need To Be Operated With Collection Routes and Assets To Be Viable

SWALCO's and SWANCC's recommendation to revise the proposed Final Judgment to require the sale of collection routes and assets is unnecessary to ensure the viability of the MSW disposal divestiture assets in the Chicago area. The MSW disposal divestiture assets in the Chicago area are viable without also requiring divestiture of collection routes and assets.

As part of a thorough vetting process of the required divestitures and GFL as the approved acquirer, the United States specifically examined the viability of the assets to be divested. As part of this process, the United States conducted interviews with GFL, examined the GFL's business plans, financial plans, and additional related documents, and interviewed other market participants. Through this process, the United States determined that divestiture of collection routes and assets in the Chicago area is not necessary to ensure the viability and competitiveness of the divested MSW disposal assets in the Chicago area. In significant part, this is because a number of independent collection providers in the Chicago area (including Flood Brothers Disposal and, as SWALCO notes, Lakeshore Recycling Services) need MSW disposal options for the waste they collect. GFL will be motivated and able to compete to provide MSW disposal services for these firms, which will provide GFL with the waste flow to make the MSW disposal divestiture assets viable. By partnering with independent collection providers, GFL will be able to compete with vertically-integrated waste management companies to serve communities such as SWALCO and SWANCC. In short, GFL does not itself need to collect waste in order to run a successful waste disposal business in the Chicago area, as it can contract with others that collect that waste.

Furthermore, the fact that the United States required the divestiture of both collection and disposal assets in other markets does not mean that the United States should have done the same in the Chicago area. The United States examines each market individually and on its own merits. In some markets in which the United States alleged harm resulting from the transaction, the United States determined that divestiture of both collection and MSW disposal assets was necessary, primarily because there were not sufficient independent collection firms in the area to provide waste volume to support the MSW disposal divestiture assets. In other markets, the United States determined that the merger would significantly reduce competition in SCCW collection, and thus, the divestiture of collection assets was necessary to remedy the alleged harm in SCCW collection. As noted above, in the Chicago area, the United States determined that there were a sufficient number of independent collection firms that would provide waste volume to the MSW disposal divestiture assets acquired by GFL. For this reason, and as discussed below, the United States did not allege harm in waste collection in the Chicago area. The divestiture of collection routes and assets in the Chicago area is therefore not required to remedy any competitive harm alleged in the Complaint.

2. The Complaint Does Not Allege Harm in the Chicago Area's Collection Markets

SWALCO's and SWANCC's recommendations to revise the proposed Final Judgment to require the sale of collection routes and assets in the Chicago area is unnecessary and beyond the scope of the allegations in the Complaint. The United States conducted a thorough investigation of the effects of the transaction in the Chicago area (including Lake County and Northern Cook County, Illinois). Based on this investigation, the United States did not find a basis to allege harm in any collection market in the Chicago area and, therefore, did not require the divestiture of collection routes or assets in the Chicago area. Rather, the Complaint alleged competitive harm in multiple MSW disposal markets in the Chicago area.

Because the additional relief sought by SWALCO and SWANCC is not required to remedy any harm alleged in the Complaint, consideration of whether to amend the proposed Final Judgment to include this relief falls outside the scope of the Tunney Act's public interest inquiry. As the D.C. Circuit explained in *Microsoft,* 56 F.3d at 1459–60, the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place.'' Because the United States did not allege harm in any collection market in the Chicago area, the modifications proposed by SWALCO and SWANCC fall outside the scope of this Tunney Act review. Expanding the public interest review to encompass relief related to an uncharged allegation would amount to ''effectively redraft[ing] the complaint'' to inquire into matters the United States did not pursue. *Microsoft,* 56 F.3d at 1459.

3. GFL Is Committed To Operating the Chicago Area MSW Disposal Assets

SWALCO and SWANCC assert that GFL has not shown a commitment to the Chicago-area market because GFL did not bid on two recent municipal collection opportunities in SWALCO's area and has not yet pursued such collection opportunities in SWANCC's area.[1] SWANCC argues that this suggests GFL might sell the Divestiture Assets in the Chicago area at a later date. But the divestiture to GFL in the Chicago area is aimed at preventing harm in MSW disposal, not waste collection. As noted above, the United States did not allege harm in any waste collection market in the Chicago area. The absence of bidding activity by GFL for specific collection opportunities does not warrant modification of the proposed Final Judgment. GFL's commitment to compete in the Chicago area should be judged by its activities and plans for competing in the market in which the United States alleged harm: The MSW disposal market. Thus, GFL's decision not to bid on particular contracts to provide collection services is not evidence of a lack of commitment to the MSW disposal market and does not impact the evaluation of whether the remedy for the Chicago-area MSW disposal market alleged in the Complaint is in the public interest.

The United States has reviewed GFL's financial and operational plans for the relevant MSW disposal divestiture assets as a part of its vetting process. The United States determined that GFL has both the intent and capability to serve the Chicago area with the MSW disposal divestiture assets, thus meeting the standard established by the United States in the proposed Final Judgment for approval of the acquirer of the Chicago-area MSW disposal divestiture assets.

4. SWALCO's Alternative Proposals Are Also Unnecessary

For the same reasons that there is no need to divest collection assets to GFL in the Chicago area, there is no need to revise the proposed Final Judgment to require WMI to guarantee that it will take waste to the MSW disposal divestiture assets in the Chicago area, as SWALCO proposes. As described above, the MSW disposal divestiture assets are viable without a commitment of this sort from WMI. MSW volumes from independent collection firms will be sufficient to support the successful operation of the MSW disposal divestiture assets in the Chicago area. Moreover, a commitment of this sort would create an ongoing entanglement between competitors and could have the effect of disincentivizing GFL from competing vigorously in the marketplace. Such a commitment is therefore not only unnecessary, but also potentially harmful to competition in the Chicago area.

Further, in accordance with Paragraph IV(A) of the proposed Final Judgment, the United States has found GFL to be an appropriate acquirer for the MSW disposal assets, and the proposed Final Judgment should not be modified to require the sale of the MSW disposal divestiture assets in the Chicago area to Lakeshore Recycling Services, as SWALCO proposes. Paragraph IV(D) of the proposed Final Judgment requires Defendants to sell the MSW disposal divestiture assets in the Chicago-area to a purchaser who ''has the intent and capability (including the necessary managerial, operational, technical, and financial capability) to compete effectively'' in the MSW disposal business. The goal of a divestiture is to ''ensure that the purchaser possesses both the means and the incentive to maintain the level of premerger competition in the market of concern.'' U.S. Dep't of Justice, Merger Remedies Manual (2020), *available at https://www.justice.gov/atr/page/file/1312416/download,* at 4–6 (internal citations omitted). Accordingly, in vetting a divestiture buyer, the ''appropriate remedial goal [of the United States] is to ensure that the selected purchaser will effectively preserve competition according to the requirements in the consent decree.'' *Id.* at 24. The United States has done so here.

The buyer here, GFL, is a significant waste management company in North America. In addition to other non-hazardous waste services, it provides MSW disposal and SCCW collection services across Canada and the United States. The United States extensively vetted GFL's ability to operate the Divestiture Assets, including the MSW disposal divestiture assets in the Chicago area, and, as described above, determined that GFL has both the capability and intent to operate those assets competitively. GFL therefore is an appropriate buyer for the MSW disposal divestiture assets in the Chicago area.

V. Conclusion

[1] While SWALCO's and SWANCC's comments refer to both residential waste collection and SCCW collection bids in the Chicago area, the primary focus of the relevant bids is residential collection. As explained in the Complaint, residential waste collection is a distinct service from SCCW collection. The United States did not allege harm in *any* residential waste collection market and comments related to residential collection are outside the scope of the Court's Tunney Act review. *See Microsoft, 56 F.3d at 1459–60.*

After careful consideration of the public comments, the United States continues to believe that the proposed Final Judgment, as drafted, provides an effective and appropriate remedy for the antitrust violations alleged in the Complaint, and is therefore in the public interest. The United States will move this Court to enter the Final Judgment after the comments and this response are published as required by 15 U.S.C. 16(d).

Dated: March 19, 2021.

Respectfully submitted,

For Plaintiff United States:

/s/ _____

Gabriella Moskowitz (D.C. Bar #1044309)
Trial Attorney, U.S. Department of Justice, Antitrust Division, 450 Fifth Street NW, Suite 8700, Washington, DC 20530
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Appendix A

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December 28, 2020

Via UPS Overnight

Ms. Katrina Rouse, Chief, Defense, Industrials and Aerospace Section, U.S. Department of Justice, Antitrust Division, 450 5th Street NW, Suite 8700, Washington, DC 20530

Re: United States of America, et al. v. Waste Management Inc. et al, No 1:20–cv–3063 (D.D.C.)

Dear Ms. Rouse:

On behalf of my client, the Solid Waste Agency of Lake County, IL (SWALCO), we are submitting comments regarding Waste Management Inc.'s (WMI) proposed divestment to GFL of municipal waste management infrastructure assets located in Illinois pursuant to the consent decree in the above referenced matter. We appreciate the open lines of communication and thorough review conducted by Steve Harris, Jeremy Cline and others on your team during this process.

As first indicated in our June 14, 2019 letter to the Department of Justice our primary concern is to maintain the current level of competition in the northern Illinois waste management market despite losing a key competitor as a result of WMI's acquisition of Advanced Disposal. During our discussions we stressed the need for a viable, vertically integrated fourth competitor in our market, as we stare down a market with only three such competitors due to WMI's acquisition.

In several other markets, including neighboring Wisconsin and several other states, the consent decree requires the divestment of numerous hauling facilities and hauling routes. We do not agree with the position that the Department of Justice took in Illinois by requiring the divestment of assets in the Illinois market to GFL, without including collection assets as part of the required divestment. Having three transfer stations and one landfill in the Illinois market without any collection assets does not result in a strong fourth vertically integrated competitor in our marketplace. The only way it will is if GFL makes a strong commitment to competing in the Illinois market or it sells the assets to an independent hauler in this market.

What has been GFL's commitment so far in growing its presence in the Lake County market since the DOJ's announcement on November 3, 2020? My client, SWALCO, had to make the first introduction to GFL's municipal hauling sales representatives as there are several municipal hauling franchise contract opportunities upcoming in Lake County. GFL was added to the hauler contact list that SWALCO provides its 43 municipal members. GFL was invited to bid on two hauling contracts (residential and commercial franchises) in the Village of Deerfield and attended the mandatory pre-proposal meeting. Proposals were due on December 21, 2020 and GFL did not bid on either opportunity; this is not the type of commitment that will result in a viable fourth vertically integrated competitor in the Lake County market.

Furthermore, with respect, we disagree with the Department's view that, in Illinois, a divestment of a landfill and transfer stations alone is sufficient to preserve competition because of the existing competition in the hauling market. By definition, GFL's failure to bid described above is clear evidence of a lack of competition in that market; had Waste Management and Advanced remained separate, we would have expected to see bids from both; with the divestiture, we received one bid from the surviving entity and none from GFL. Without a serious commitment from GFL to replace the competition lost in the hauling market, we are certain that our member agencies will see less competition for hauling, and seriously concerned about the long term survival of the divested transfer stations and landfill without a committed garbage flow.

On behalf of SWALCO's 43 municipal members and the County of Lake, SWALCO requests that the Department of Justice amend its final judgement or take other appropriate action to require that WMI provide hauling assets to GFL or provide it a guaranteed commitment to dispose of waste at the three transfer stations and landfill divested to GFL at a daily tonnage rate necessary for those facilities to be economically viable. Another alternative satisfactory to SWALCO is to require GFL to sell all the assets to Lakeshore Recycling Systems, Inc. the only independent hauler in the Chicago market with the size and market share necessary to compete with the three publicly traded and vertically integrated companies currently operating in the Lake County and Chicagoland markets.

Please feel free to contact me with any questions or comments you may have.

Sincerely,

/s/

John S. Martin, Partner
Hunton Andrews Kurth LLP

JSM/ejr
cc: Mr. Walter S. Willis
Stephen Harris, Esq.
Jeremy Cline, Esq.

BILLING CODE 4410–11–P

Solid Waste Agency of Northern Cook County

77 Hintz Road, Suite 200 | Wheeling, IL 60090 | 847.724.9205 | swancc.org

December 29, 2020

Ms. Katrina Rouse
Chief, Defense, Industrials and Aerospace Section
U.S. Department of Justice, Antitrust Division
450 5th Street NW, Suite 8700
Washington, DC 20530

Re: Waste Management, Inc.'s Proposed Divestment to GFL As a Condition of the Acquisition of Advanced Disposal Services

Dear Ms. Rouse:

I am writing to you as the Executive Director for the Solid Waste Agency of Northern Cook County ("SWANCC"). We have previously corresponded and discussed with you the negative impact of the acquisition of Advanced Disposal Services by Waste Management, Inc. ("WMI") upon the competitive market for waste hauling and disposal services in the greater Chicagoland market, including the market for SWANCC's 23 municipalities. We have reviewed the position taken by the Department of Justice concerning the divestiture of certain assets by WMI to GFL Environmental, Inc. and oppose that position due to GFL's complete lack of any share of the hauling market and consequent lack of control over any share of the waste stream that is necessary to flow through the transfer stations and to the landfill in order for those assets to be viable.

As we explained previously, Municipal Solid Waste is hauled from the curbside receptacles to transfer stations. Due to the economic advantages of vertical integration, those companies that own a landfill and have experience operating transfer stations have a competitive pricing advantage for securing hauling contracts. Likewise, those with hauling contracts can control the destination of the waste through their own transfer stations and to their own landfills, thereby making those assets valuable.

In the time since the Department of Justice announced its position concerning the sale of the assets, GFL has taken little action other than to introduce themselves to regulators. Despite opportunities to bid for hauling contracts and despite active outreach to GFL about those opportunities, GFL has not pursued even one hauling contract. The Department's belief that smaller independent haulers will find their way to GFL's assets is not substantiated by any data. There is nothing preventing GFL's competitors from attracting those independents until such time as GFL determines to sell the transfer station and landfill assets it acquired from ADS/WMI to another one of the giants that controls the waste stream—thereby further decreasing competition in the market to the detriment of all.

On behalf of the 23 member municipalities, SWANCC requests that the Department of Justice condition approval upon the transfer of hauling contracts and assets to GFL, or alternatively upon other proof that GFL will have sufficient volume to remain a sustainable competitor in the marketplace.

Should you have any questions or comments, please do not hesitate to contact me.

David Van Vooren
Executive Director

cc via email: Stephen Harris, DOJ
Jeremy Cline, DOJ

George Van Dusen
Chairman,
Board of Directors

Karen Darch
Vice Chairman,
Board of Directors

Raymond Rummel
Secretary/Treasurer,
Board of Directors
Chairman,
Executive Committee

David Van Vooren
Executive Director

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[FR Doc. 2021–06147 Filed 3–24–21; 8:45 am]

BILLING CODE 4410–11–C

THE NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

Submission for OMB Review, Comment Request, Proposed Collection: IMLS Collections Assessment for Preservation Forms

AGENCY: Institute of Museum and Library Services, National Foundation on the Arts and the Humanities.

ACTION: Submission for OMB review, comment request.

SUMMARY: The Institute of Museum and Library Services announces the following information collection has been submitted to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. This notice proposes the clearance of seven IMLS Collections Assessment for Preservation Forms. A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **FOR FURTHER INFORMATION CONTACT** section below on or before April 25, 2021.

OMB is particularly interested in comments that help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses).

ADDRESSES: Comments should be sent to Office of Information and Regulatory Affairs, Attn.: OMB Desk Officer for Education, Office of Management and Budget, Room 10235, Washington, DC 20503, (202) 395–7316.

FOR FURTHER INFORMATION CONTACT: Christopher J. Reich, Chief Administrator, Office of Museum Services, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington DC 20024–2135. Mr. Reich can be reached by telephone at 202–653–4568, by email at *creich@imls.gov,* or by teletype (TTY/TDD) for persons with hearing difficulty at 202–653–4614.

SUPPLEMENTARY INFORMATION: The Institute of Museum and Library Services is the primary source of federal support for the nation's libraries and museums. We advance, support, and empower America's museums, libraries, and related organizations through grant making, research, and policy development. Our vision is a nation where museums and libraries work together to work together to transform the lives of individuals and communities. To learn more, visit *www.imls.gov.*

Current Actions: This notice proposes the clearance of Collections Assessment for Preservation Forms. The 60-day Notice was published in the **Federal Register** on January 13, 2022 (86 FR 2704). The agency received no comments under this notice.

The Collections Assessment for Preservation (CAP) program allows up to two qualified conservators, who serve as assessors, to study of all of a museum's collections, buildings and building systems, as well as its policies and procedures relating to collections care. Participants who complete the program receive a report prepared by the assessor(s) with prioritized recommendations to improve collections care.

The purpose of this Notice is to solicit comments concerning the three-year approval of the seven forms necessary to support the administration and implementation of the IMLS Collections Assessment for Preservation (CAP) program. These are an Application Form to collect information about museums that wish to be considered for enrollment in the program; an Assessor Application Form to information necessary to determine whether potential conservators/assessors have sufficient qualifications to participate in the program; a Site Questionnaire to provide more detailed information about a museum to prepare for its assessment once it is accepted for participation in the program; an Application Feedback Form for museums to share information about how they heard about the program and to provide feedback about the application process; an Assessor Feedback Form for conservators/assessors to share their experiences with the CAP assessment; a Participant Feedback Form to help IMLS and the program administrator gain a better understanding of the experience of museums after participating in the program and to help improve the program for future years; and a Follow-Up Survey for CAP participants to share their longer-term experiences as a result of program participation to help IMLS and the program administrator make improvements over time. These forms are used by the administrator of the CAP program and are necessary to support the management of the program and ongoing improvements to the services it provides. These are web-based forms that can be completed online via application software and SurveyMonkey, allowing faster response and reducing participant burden. Paper versions of the forms can be made available for small museums that may have limited or no access to the necessary technology.

Each application cycle to the CAP program engages new participating museums, therefore requiring the use of the forms for every participant. Assessor Application Forms need only be filled out once by conservators/assessors who may participate in multiple application cycles. Assessor Feedback Forms are completed by each assessor each year.

The CAP program could not function effectively without application forms to select eligible participants and site questionnaires to prepare them for the assessors' site visit. The feedback forms are necessary to gather information that is used to improve program services each year. Each of these forms has been reviewed by a steering committee of subject matter experts to ensure that they information collected is both clear and necessary to support the program.

Agency: Institute of Museum and Library Services.

Title: Collections Assessment for Preservation Forms.

OMB Control Number: 3137–NEW.

Agency Number: 3137.

Affected Public: Museum professionals and professional conservators.

Total Number of Respondents: 710.

Frequency of Response: Once.

Average Hours per Response: 1.44.

Total Burden Hours: 950.

Total Annualized Capital/Startup Costs: n/a.

Total Annual Cost Burden: $27,008.50.

Total Annual Federal Costs: $4,721.82.

Dated: March 22, 2021.

Kim Miller,

Senior Grants Management Specialist, Institute of Museum and Library Services.

[FR Doc. 2021–06159 Filed 3–24–21; 8:45 am]

BILLING CODE 7036–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–29462; NRC–2021–0080]

Department of the Navy; Environmental Assessment and Finding of No Significant Impact

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering amending Materials License No. 45–23645–01NA to authorize extending the time period for completing decommissioning and requesting termination of the Department of the Navy's permitted activities and has prepared an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) in support of this action.

DATES: The Technical Evaluation Report referenced in this document is available on March 25, 2021.

ADDRESSES: Please refer to Docket ID NRC–2021–0080 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0080. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *Attention:* The PDR, where you may examine and order copies of public documents, is currently closed. You may submit your request to the PDR via email at *pdr.resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ronald A. Burrows, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6443, email: *Ronald.Burrows@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is considering issuance of an amendment of License No. 45–23645–01NA, issued to the Department of the Navy (DON). Therefore, as required by Part 51 of title 10 of the *Code of Federal Regulations* (10 CFR), the NRC performed an EA. Based on the results of the EA that follows, the NRC has determined not to prepare an environmental impact statement for the license amendment and is issuing a FONSI.

II. Environmental Assessment

Introduction

In accordance with License Condition, 21.W of NRC Radioactive Materials License No. 45–23645–01NA (Master Materials License (MML)), the DON incorporates a permitting program for the use of licensed material. Individual entities that are subject to this permitting program are called permittees. Each permittee associated with this MML, consistent with the requirements in 10 CFR 30.36(h), is required to complete decommissioning as soon as practicable but no later than 24 months following the initiation of decommissioning.

The DON has requested approval to extend the 24-month time period specified in 10 CFR 30.36(h)(1) and (2) for completing decommissioning and requesting termination of permitted activities under its MML beyond the 24-month time limit for decommissioning. The NRC may approve such a request consistent with the criteria specified in 10 CFR 30.36(i).

Description of the Proposed Action

The proposed action would amend the DON's MML to allow an alternative schedule for decommissioning and requesting termination of permitted activities. By letter dated September 15, 2020, (ADAMS Accession No. ML20260H015) the DON requested a 10-year time limit be applied to the requirements in 10 CFR 30.36(h)(1) and (2) with no other stipulations. As a result of the information submitted by the DON to support its request, the NRC staff only analyzed potential environmental issues related to a shorter 5-year time limit.

During the review of the DON's request, the NRC staff identified some concerns related to the sites where groundwater could be implicated in the decontamination and termination of a permit. In response to this information, the NRC proposed to limit the extension of decontamination and termination of permitted site to those where no potential for groundwater contamination exists through a license condition. The DON agreed to this condition and its limitation in a letter dated February 6, 2021 (ADAMS Accession No. ML21048A250). As a result, the NRC staff's analysis of potential environmental impacts was limited to the 5-year time limit of the decommission and termination process for sites without the potential to involve groundwater. The NRC staff, however, is not taking a position and did not perform an assessment of potential environmental impacts from extending decommissioning and termination of permitted sites with potential groundwater concerns to a 5-year time limit.

Purpose and Need for the Proposed Action

The purpose of the proposed action is to align the DON's responsibilities for timely decommissioning and termination of permits as specified in 10 CFR 30.36(h)(1) and (2) with the Federal budgeting process. This purpose is consistent with the guidance for operators of Federal facilities in NUREG–1757 (see Section 2.6.1) (ADAMS Accession No. ML12048A683).

The need for the proposed action is to comply with NRC regulations. The NRC is fulfilling its responsibilities under the Atomic Energy Act to make a decision on a proposed license amendment for an alternative schedule for completion of decommissioning and permit termination that ensures protection of the public health and safety and environment.

Environmental Impacts of the Proposed Action

The NRC staff reviewed the information provided by the DON to support their 10 CFR 30.36(h)(1) and (2) alternative decommissioning and license (or permit, in this case) termination schedule request. As documented in the Technical Evaluation Report (TER) (ADAMS Accession No. ML21054A252), the NRC staff evaluated the five criteria specified in 10 CFR 30.36(i). Based on its evaluation of 10 CFR 30.36(i)(5), the NRC staff determined that the 24-month decommissioning timeline is inconsistent with the availability of funds to the DON for decommissioning activities.

Under the MML, the DON is currently allowed to permit any radionuclide to carry out activities at its permitted sites. The DON's permitting authority is limited to quantities that are less than the critical mass quantities specified in 10 CFR 150.11. The NRC staff notes that the DON is not requesting any changes to its licensed activities or other decommissioning processes previously evaluated and approved by the NRC staff.

The NRC staff evaluated potential environmental impacts resulting from increasing the time to complete the actions in 10 CFR 30.36(h)(1) and (2) from 2 years to 5 years. The NRC staff considered radionuclides with short half-lives ($t_{1/2}$) (*e.g.,* technicium-99, $t_{1/2}$ = 6 hours) and long half-lives (*e.g.,* U-235, $t_{1/2}$ = 700 million years). Over the 3 additional years (5 years total), radionuclides with very short half-lives will decay to levels not detectable with common radiation detectors. During the same time frame, radionuclides with very long half-lives will undergo no appreciable radioactive decay and will therefore be at the same activity levels. The NRC staff did not identify activities that would result in a significant increase in the potential for or consequences from radiological accidents involving the licensed material as a result of the proposed action. The NRC staff considered the potential for any contamination to spread or migrate off the permitted site during the additional 3-years that would be allowed for decommissioning and termination. For sites without any potential groundwater contamination, the NRC staff did not identify any reasonable scenarios for contamination to migrate off-site given the DON ability to maintain institutional controls over the permitted sites. For sites with the potential for groundwater contamination, the NRC staff determined that it did not have sufficient information to complete a generic analysis of these permitted sites at this time. Consistent with the condition imposed on the amendment to sites without groundwater contamination, the NRC staff did not perform additional environmental analysis of these type of sites.

As a Federal agency, the DON or a successor agency would continue to be able to maintain institutional controls over the permitted sites and perform the necessary denomination and termination consistent with its appropriations. Therefore, the short extension from a 2-year period to the 5-year period is unlikely to result in abandonment of a site or affect the DON's ability to perform decommissioning.

Based on the previously noted analysis, the NRC staff finds that the environmental impacts of the proposed action are not significant.

Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff considered the no-action alternative in which the NRC staff would deny the extension request. Denial of the request would require the DON to request separate extensions for most, if not all, of its permittees. This would place an undue burden on the DON and the NRC staff associated with the licensing actions required for these separate extension requests as the criteria to be considered by the NRC for approval would be the same or similar as those for the proposed action. In addition, the DON would not be able to comply with the timeliness requirements of 10 CFR 30.36(h)(1) and (2) due to the appropriation process. Therefore, the no-action alternative was not further considered.

Consultations

Section 7 of the Endangered Species Act (Act) [16 U.S.C. 1531 *et seq.*] outlines the procedures for Federal interagency cooperation to conserve Federally listed species and designated critical habitats. Section 7(a)(2) states that each Federal agency shall, in consultation with the Secretary, insure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. The NRC staff has determined that a Section 7 consultation is not required because the proposed action is administrative/procedural in nature and will not affect listed species or critical habitat. The NRC staff has also determined that the proposed action is not a type of activity that have potential to cause effects on historic properties because they are administrative/procedural actions. Therefore, no additional consultation is required under Section 106 of the National Historic Preservation Act.

Conclusion

Based on its review, the NRC staff has concluded that the proposed action complies with 10 CFR part 30. NRC has prepared this EA in support of the proposed license amendment to approve an alternative decommissioning schedule. On the basis of the EA, NRC has concluded that the environmental impacts from the proposed action are expected to be insignificant and has determined that preparation of an environmental impact statement for the proposed action is not required.

III. Finding of No Significant Impact

On the basis of the EA, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

Dated: March 19, 2021.

For the Nuclear Regulatory Commission.

Patricia K. Holahan,

Director, Division of Decommissioning, Uranium Recovery and Waste Programs, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2021–06134 Filed 3–24–21; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–28641; NRC–2021–0081]

Department of the Air Force; Environmental Assessment and Finding of No Significant Impact

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering amending Materials License No. 42–23539–01AF to authorize extending the time period for completing decommissioning and requesting termination of the Department of the Air Force's permitted activities and has prepared an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) in support of this action.

DATES: The Technical Evaluation Report referenced in this document is available on March 25, 2021.

ADDRESSES: Please refer to Docket ID NRC–2021–0081 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0081. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *Attention:* The PDR, where you may examine and order copies of public documents, is currently closed. You may submit your request to the PDR via email at *pdr.resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ronald A. Burrows, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6443, email: *Ronald.Burrows@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is considering issuance of an amendment of License No. 42–23539–01AF, issued to the Department of the Air Force (AF). Therefore, as required by Part 51 of title 10 of the *Code of Federal Regulations* (10 CFR), the NRC performed an EA. Based on the results of the EA that follows, the NRC has determined not to prepare an environmental impact statement for the license amendment and is issuing a FONSI.

II. Environmental Assessment

Introduction

In accordance with License Condition, 20.A of NRC Radioactive Materials License No. 42–23539–01AF (Master Materials License (MML)), the AF incorporates a permitting program for the use of licensed material. Individual entities that are subject to this permitting program are called permittees. Each permittee associated with this MML, consistent with the requirements in 10 CFR 30.36(h), is required to complete decommissioning as soon as practicable but no later than 24 months following the initiation of decommissioning.

The AF has requested approval to extend the 24-month time period specified in 10 CFR 30.36(h)(1) and (2) for completing decommissioning and requesting termination of permitted activities under its MML beyond the 24-month time limit for decommissioning. The NRC may approve such a request consistent with the criteria specified in 10 CFR 30.36(i).

Description of the Proposed Action

The proposed action would amend the AF's MML to allow an alternative schedule for decommissioning and requesting termination of permitted activities. By memorandum dated September 10, 2020, (ADAMS Accession No. ML20290A746) the AF requested a 10-year time limit be applied to the requirements in 10 CFR 30.36(h)(1) and (2) with no other stipulations. As a result of the information submitted by the AF to support its request, the NRC staff only analyzed potential environmental issues related to a shorter 5-year time limit.

During the review of the AF's request, the NRC staff identified some concerns related to the sites where groundwater could be implicated in the decontamination and termination of a permit. In response to this information, the NRC proposed to limit the extension of decontamination and termination of permitted site to those where no potential for groundwater contamination exists through a license condition. The AF agreed to this condition and its limitation in an email dated February 17, 2021 (ADAMS Accession No. ML21054A328). As a result, the NRC staff's analysis of potential environmental impacts was limited to the 5-year time limit of the decommission and termination process for sites without the potential to involve groundwater. The NRC staff, however, is not taking a position and did not perform an assessment of potential environmental impacts from extending decommissioning and termination of permitted sites with potential groundwater concerns to a 5-year time limit.

Purpose and Need for the Proposed Action

The purpose of the proposed action is to align the AF's responsibilities for timely decommissioning and termination of permits as specified in 10 CFR 30.36(h)(1) and (2) with the Federal budgeting process. This purpose is consistent with the guidance for operators of Federal facilities in NUREG–1757 (see Section 2.6.1) (ADAMS Accession No. ML12048A683).

The need for the proposed action is to comply with NRC regulations. The NRC is fulfilling its responsibilities under the Atomic Energy Act to make a decision on a proposed license amendment for an alternative schedule for completion of decommissioning and permit termination that ensures protection of the public health and safety and environment.

Environmental Impacts of the Proposed Action

The NRC staff reviewed the information provided by the AF to support their 10 CFR 30.36(h)(1) and (2) alternative decommissioning and license (or permit, in this case) termination schedule request. As documented in the Technical Evaluation Report (TER) (ADAMS Accession No. ML21054A247), the NRC staff evaluated the five criteria specified in 10 CFR 30.36(i). Based on its evaluation of 10 CFR 30.36(i)(5), the NRC staff determined that the 24-month decommissioning timeline is inconsistent with the availability of funds to the AF for decommissioning activities.

Under the MML, the AF is currently allowed to permit any radionuclide to carry out activities at its permitted sites. The AF's permitting authority is limited to quantities that are less than the critical mass quantities specified in 10 CFR 150.11. The NRC staff notes that the AF is not requesting any changes to its licensed activities or other decommissioning processes previously evaluated and approved by the NRC staff.

The NRC staff evaluated potential environmental impacts resulting from increasing the time to complete the actions in 10 CFR 30.36(h)(1) and (2) from 2 years to 5 years. The NRC staff considered radionuclides with short half-lives ($t_{1/2}$) (*e.g.,* technicium-99, $t_{1/2}$ = 6 hours) and long half-lives (*e.g.,* U–235, $t_{1/2}$ = 700 million years). Over the 3 additional years (5 years total),

radionuclides with very short half-lives will decay to levels not detectable with common radiation detectors. During the same time frame, radionuclides with very long half-lives will undergo no appreciable radioactive decay and will therefore be at the same activity levels. The NRC staff did not identify activities that would result in a significant increase in the potential for or consequences from radiological accidents involving the licensed material as a result of the proposed action. The NRC staff considered the potential for any contamination to spread or migrate off the permitted site during the additional 3-years that would be allowed for decommissioning and termination. For sites without any potential groundwater contamination, the NRC staff did not identify any reasonable scenarios for contamination to migrate off-site given the AF ability to maintain institutional controls over the permitted sites. For sites with the potential for groundwater contamination, the NRC staff determined that it did not have sufficient information to complete a generic analysis of these permitted sites at this time. Consistent with the condition imposed on the amendment to sites without groundwater contamination, the NRC staff did not perform additional environmental analysis of these type of sites.

As a Federal agency, the AF or a successor agency would continue to be able to maintain institutional controls over the permitted sites and perform the necessary denomination and termination consistent with its appropriations. Therefore, the short extension from a 2-year period to the 5-year period is unlikely to result in abandonment of a site or affect the AF's ability to perform decommissioning.

Based on the previously noted analysis, the NRC staff finds that the environmental impacts of the proposed action are not significant.

Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff considered the no-action alternative in which the NRC staff would deny the extension request. Denial of the request would require the AF to request separate extensions for most, if not all, of its permittees. This would place an undue burden on the AF and the NRC staff associated with the licensing actions required for these separate extension requests as the criteria to be considered by the NRC for approval would be the same or similar as those for the proposed action. In addition, the AF would not be able to comply with the timeliness requirements of 10 CFR 30.36(h)(1) and (2) due to the appropriation process. Therefore, the no-action alternative was not further considered.

Consultations

Section 7 of the Endangered Species Act (Act) [16 U.S.C. 1531 *et seq.*] outlines the procedures for Federal interagency cooperation to conserve Federally listed species and designated critical habitats. Section 7(a)(2) states that each Federal agency shall, in consultation with the Secretary, insure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. The NRC staff has determined that a Section 7 consultation is not required because the proposed action is administrative/procedural in nature and will not affect listed species or critical habitat. The NRC staff has also determined that the proposed action is not a type of activity that have potential to cause effects on historic properties because they are administrative/procedural actions. Therefore, no additional consultation is required under Section 106 of the National Historic Preservation Act.

Conclusion

Based on its review, the NRC staff has concluded that the proposed action complies with 10 CFR part 30. NRC has prepared this EA in support of the proposed license amendment to approve an alternative decommissioning schedule. On the basis of the EA, NRC has concluded that the environmental impacts from the proposed action are expected to be insignificant and has determined that preparation of an environmental impact statement for the proposed action is not required.

III. Finding of No Significant Impact

On the basis of the EA, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

Dated: March 19, 2021.

For the Nuclear Regulatory Commission.

Patricia K. Holahan,

Director, Division of Decommissioning, Uranium Recovery and Waste Programs, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2021–06133 Filed 3–24–21; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2021–74 and CP2021–77]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* March 29, 2021.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance

with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2021–74 and CP2021–77; *Filing Title:* USPS Request to Add Priority Mail Express & Priority Mail Contract 125 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* March 19, 2021; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* March 29, 2021.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2021–06204 Filed 3–24–21; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

POSTAL SERVICE

Product Change—Priority Mail Express and Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* March 25, 2021.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on March 18, 2021, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express & Priority Mail Contract 125 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2021–74, CP2021–77.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2021–06131 Filed 3–24–21; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* March 25, 2021.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on March 16, 2021, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express & Priority Mail Contract 689 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2021–72, CP2021–75.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2021–06129 Filed 3–24–21; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* March 25, 2021.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on March 16, 2021, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 690 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2021–73, CP2021–76.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2021–06130 Filed 3–24–21; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 10905A/March 19, 2021; Release No. 90693A/March 19, 2021]

Securities Act of 1933; Securities Exchange Act of 1934; Amendment To Order Approving Public Company Accounting Oversight Board Budget and Annual Accounting Support Fee for Calendar Year 2021

On December 16, 2020, the Securities and Exchange Commission (the ''Commission'') issued an Order (the ''Order'') approving the Public Company Accounting Oversight Board (''PCAOB'') budget and annual accounting support fee for calendar year 2021,[1] pursuant to Section 109 of the Sarbanes-Oxley Act of 2002, as amended (the ''Sarbanes-Oxley Act'').[2] That Order stated, among other things, that the PCAOB should submit its 2020 annual report (''2020 Annual Report'') to the Commission by March 31, 2021. The PCAOB has informed the Commission staff that, due to a change in auditors in January 2021, the 2020 Annual Report, including the audit report, may not be completed by March 31, 2021.

The Commission is amending the Order to permit the PCAOB to submit its 2020 Annual Report to the Commission by April 30, 2021.

Accordingly,

It is ordered, pursuant to Section 109 of the Sarbanes-Oxley Act, that the PCAOB should submit its 2020 Annual Report to the Commission by April 30, 2021.

[1] *See Order Approving Public Company Accounting Oversight Board Budget and Annual Accounting Support Fee for Calendar Year 2021,* Release No. 33–10905 (Dec. 16, 2020) [85 FR 83642 (Dec. 22, 2020)].

[2] 15 U.S.C. 7201 *et seq.*

By the Commission.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2021–06137 Filed 3–24–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91377; File No. SR–NYSE–2021–08]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change of New Rules Providing for the Registration and Obligations of Non-DMM Market Makers

March 19, 2021.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on March 12, 2021, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes new rules providing for the registration and obligations of Non-DMM Market Makers. 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes rules governing electronic, off-floor market makers that would not be either Designated Market Makers (''DMMs'') or Supplemental Liquidity Providers (''SLPs'') (''Non-DMM Market Makers''). Non-DMM Market Makers would be a new category of market participants on the Exchange and would have responsibilities different from those of DMMs and SLPs. The proposed Non-DMM Market Makers are not intended to replace DMMs or SLPs on the Exchange and would not assume any of the responsibilities already assigned to DMMs or SLPs pursuant to Exchange Rules (for example, Non-DMM Market Makers would not perform any trading floor functions such as those assigned to DMMs). Instead, for all securities that trade on the Exchange, a member organization may register as a Non-DMM Market Maker and be subject to obligations similar to those of Market Makers on NYSE Arca, Inc. (''NYSE Arca'') and NYSE American LLC (''NYSE American'') to, among other things, maintain continuous, two-sided trading interest in the securities in which they are registered as a Non-DMM Market Maker (''Two-Sided Obligation'') and adhere to certain pricing obligations. The addition of Non-DMM Market Makers is intended to promote competition on the Exchange by providing an opportunity for member organizations to register as a Non-DMM Market Maker and become eligible for various benefits and economic incentives available to registered market makers. Non-DMM Market Makers would be subject to obligations distinct from those imposed on DMMs and SLPs under Exchange rules but would likewise contribute to displayed liquidity on the Exchange and would enhance the range and diversity of market making activity on the Exchange, thereby promoting competition and market quality on the Exchange to the benefit of all market participants.

The Exchange proposes the following rules, based on NYSE Arca and NYSE American rules of the same number with non-substantive changes, to govern the registration and obligations of Non-DMM Market Makers on the NYSE:

- Proposed Rule 1.1(p) (definition of Market Maker Authorized Trader);
- Proposed Rule 1.1(t) (definition of Non-DMM Market Maker);
- Proposed Rule 7.20 (Registration of Non-DMM Market Makers);
- Proposed Rule 7.21 (Obligations of Market Maker Authorized Traders);
- Proposed Rule 7.22 (Registration of Non-DMM Market Makers in a Security); and
- Proposed Rule 7.23 (Obligations of Non-DMM Market Makers).

These proposed rules would be applicable only to the proposed new category of Non-DMM Market Makers. They would not apply to DMMs or SLPs, who would continue to be governed by existing Exchange rules applicable to those market participants.[4]

Proposed Rule Changes

Rule 1.1

Rule 1.1 sets forth definitions of terms that are used throughout the Exchange rules. The Exchange proposes to add the following definitions to the rule:

- The Exchange proposes to amend current Rule 1.1(p) to set forth the definition of ''Market Maker Authorized Trader'' or ''MMAT.'' A ''Market Maker Authorized Trade'' or ''MMAT'' would be defined as an Authorized Trader (as defined in Rule 1.1(a)) who performs market making activities pursuant to Rule 7P on behalf of a Non-DMM Market Maker. This proposed rule is based on NYSE Arca Rule 1.1(aa) and NYSE American Rule 1.1E(w).
- The Exchange proposes to amend current Rule 1.1(t) to set forth the definition of ''Non-DMM Market Maker.'' A ''Non-DMM Market Maker'' would be defined as a member organization that acts as a Non-DMM Market Maker pursuant to Rule 7P. Accordingly, for purposes of Exchange rules, the term ''Non-DMM Market Maker'' does not include DMMs or SLPs. This proposed rule is based on NYSE Arca Rule 1.1(z) and NYSE American Rule 1.1E(v).

To accommodate the addition of these definitions, the Exchange also proposes to adjust the lettering in Rule 1.1. Specifically, current Rule 1.1(p) defining the term ''Marketable'' would become Rule 1.1(q), current Rule 1.1(q) defining ''NBBO, Best Protected Bid, Best Protected Offer, Protected Best Bid and Offer (PBBO)'' would become Rule 1.1(r), and so forth, with no changes to the substance of the definitions.

Rule 7P, Section 2

The Exchange proposes to amend Section 2 under Rule 7P, which is currently designated as ''Reserved,'' and rename it ''Non-DMM Market Makers.'' The Exchange proposes that the rules set forth in this section would apply only to the proposed new group of Non-

[4] *See, e.g.,* Rules 98, 103, 103B, 104, and 107B.

DMM Market Makers and would not be applicable to DMMs or SLPs.

Rule 7.20

The Exchange proposes to add Rule 7.20 and title it ''Registration of Non-DMM Market Makers.'' Proposed Rule 7.20 would set forth the requirements for member organizations to apply for registration as Non-DMM Market Makers. The Exchange proposes that its Non-DMM Market Makers have the same registration requirements as Market Makers on NYSE Arca and NYSE American. Accordingly, the Exchange's proposal is based on NYSE Arca Rule 7.20–E and NYSE American Rule 7.20E without substantive differences. Consistent with the requirements set forth in the NYSE Arca and NYSE American rules, the Exchange proposes to require member organizations interested in acting as Non-DMM Market Makers to submit an application to the Exchange. Proposed Rule 7.20 would also set forth the criteria the Exchange may consider in determining whether to approve or disapprove a prospective Non-DMM Market Maker's application and specify how a Non-DMM Market Maker's registration may be suspended, terminated, or withdrawn.

The Exchange notes two non-substantive differences from the NYSE Arca rules relating to the references to the Exchange's disciplinary rules. First, in proposed Rule 7.20(c), the Exchange proposes to refer to the process described in the NYSE Rule 9500 Series instead of NYSE Arca Rule 10.14. Second, in proposed Rule 7.20(e), the Exchange proposes to refer to the process set forth in the NYSE Rule 9200 Series instead of NYSE Arca Rule 10.0 and the NYSE Arca Rule 10.9000 Series.

Rule 7.21

The Exchange proposes to add Rule 7.21 and title it ''Obligations of Market Maker Authorized Traders.'' Proposed Rule 7.21 would provide that Market Maker Authorized Traders (''MMATs'') are permitted to enter orders only for the account of the Non-DMM Market Maker for which they are registered. In addition, the proposed rule would specify the registration requirements for MMATs and the procedures for suspension and withdrawal of registration of MMATs, both of which the Exchange proposes to base on the NYSE Arca and NYSE American rules pertaining to the obligations of MMATs. Specifically, the proposed rule would provide that a Non-DMM Market Maker must submit an application to the Exchange to register an associated person as an MMAT. An MMAT must meet certain requirements, and a Non-DMM Market Maker must ensure that its MMATs are qualified to perform market making activities. Proposed Rule 7.21 also provides that the Exchange may suspend or withdraw an MMAT's registration. Accordingly, this proposed rule is based on NYSE Arca Rule 7.21–E and NYSE American Rule 7.21E without any substantive differences.

Rule 7.22

The Exchange proposes to add Rule 7.22 and title it ''Registration of Non-DMM Market Makers in a Security.'' Proposed Rule 7.22 would set forth the process for Non-DMM Market Makers to become registered in a security and the factors the Exchange may consider in approving such registration. The Exchange proposes that the registration of Non-DMM Market Makers follow the same process as is in place for Market Makers on NYSE Arca and NYSE American. Specifically, Non-DMM Market Makers may submit a request to the Exchange to be registered in a security, and the Exchange will evaluate whether to approve such registration, taking into consideration factors including the Non-DMM Market Maker's financial resources, experience in making markets, operational capability, and the character of the market for the security. Non-DMM Market Makers will generally be permitted to register in securities in which a DMM and/or SLP is also registered, subject to the Exchange's evaluation of the character of the market for a given security.[5]

Also consistent with the rules of NYSE Arca and NYSE American, the proposed rule would also describe both termination of a Non-DMM Market Maker's registration in a security by the Exchange and voluntary termination by a Non-DMM Market Maker. Accordingly, the Exchange's proposal is based on NYSE American Rule 7.20E without substantive differences and is also substantially based on NYSE Arca Rule 7.22–E with certain exceptions.

The Exchange does not propose to adopt NYSE Arca Rule 7.22–E(c) or 7.22–E(d), which pertain to DMMs, because the Exchange has a separate set of rules governing DMMs. The Exchange also proposes to adopt a version of the rule with the non-substantive difference of replacing references to NYSE Arca Equities Rule 10 and 10.13 with references to the NYSE Rule 9200 and Rule 9500 Series, respectively.

Rule 7.23

The Exchange proposes to add Rule 7.23 and title it ''Obligations of Non-DMM Market Makers.'' Proposed Rule 7.23 would set forth the obligation of Non-DMM Market Makers to engage in a course of dealings for their own account to assist in the maintenance, insofar as reasonably practicable, of fair and orderly markets on the Exchange. The proposed rule would delineate the specific responsibilities and duties of Non-DMM Market Makers, including the Two-Sided Obligation applicable to securities in which the Non-DMM Market Maker is registered and the requirement that the interest satisfying the Two-Sided Obligation be not more than the Designated Percentage (as defined in Proposed Rule 7.23) away from the National Best Bid or Offer (''NBBO''). Proposed Rule 7.23 also provides that Non-DMM Market Makers will be subject to certain minimum capital requirements and sets forth the circumstances under which a Non-DMM Market Maker could be subject to disciplinary action or suspension or revocation of registration by the Exchange for failure to comply with the course of dealings obligations set forth in this proposed rule.

Specifically, with respect to the Two-Sided Obligation, proposed Rule 7.23(a)(1)(A) provides that Non-DMM Market Makers would be required to maintain displayed interest identified as interest meeting the Two-Sided Obligation on a continuous basis during Core Trading Hours for those securities in which the Non-DMM Market Maker is registered. Proposed Rule 7.23(a)(1)(B) provides that interest satisfying a Non-DMM Market Maker's Two-Sided Obligation must not be more than the Designated Percentage away from the then current NBBO, or if there is no NBBO, not more than the Designated Percentage away from the last reported sale for that security. With respect to minimum capital requirements, proposed Rule 7.23(a)(2) provides that Non-DMM Market Makers would be required to maintain adequate minimum capital in accordance with Rule 15c3–1 under the Act.

As proposed, Non-DMM Market Makers would occupy a role distinct from DMMs and SLPs and, accordingly, would be subject to different obligations. For example, Non-DMM Market Makers would differ from DMMs in that they would be subject to pricing obligations and financial requirements less stringent than those set forth in Rules 103, 103B, and 104 for DMMs.

[5] Orders entered by Non-DMM Market Makers will be allocated in accordance with Rules 7.36 and 7.37 and be treated as a Book Participant. Non-DMM Market Makers will not be eligible to participate in the allocation process as a DMM Participant.

Whereas Non-DMM Market Makers would be required to maintain a Two-Sided Obligation as outlined above, DMMs must maintain a bid or offer at the NBBO for a certain percentage of the trading day for the securities in which they are registered, as specified in Rule 104(a)(1)(A). In addition, in order to participate in the allocation process for a specified security, DMMs must meet various quoting requirements set forth in Rule 103B.II, such as requirements to maintain a bid or offer at the NBBO for a specified percentage of time during a calendar month. With respect to financial requirements, whereas Non-DMM Market Makers are required to adhere to Rule 15c3–1 of the Act, Rule 103 Supplementary Material .20 sets forth additional requirements pertaining to a DMM's Net Liquid Assets, including minimum Net Liquid Assets and specifications relating to the portion of a DMM's Net Liquid Assets that may be derived from Excess Net Capital.

Non-DMM Market Makers would also be different from SLPs because, among other reasons, they would not be subject to the heightened quoting requirements or monthly volume requirements applicable to SLPs pursuant to Rule 107B. For example, SLPs are required to maintain a bid or an offer at the NBBO in each of their assigned securities averaging at least 10% of the trading day as specified in Rules 107B(a) and (g). SLPs are also required, as described in Rules 107B(a) and (h), to add liquidity at a certain average daily volume in their assigned securities on a monthly basis.

Proposed Rule 7.23 is consistent with the obligations and processes for Market Makers set forth in the rules of NYSE Arca and NYSE American, and accordingly, is based on NYSE Arca Rule 7.23–E and NYSE American Rule 7.23E without any substantive differences.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934,[6] in general, and furthers the objectives of Section 6(b)(5),[7] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the proposed rules would remove impediments to and perfect the mechanism of a free and open market because they propose rules governing Non-DMM Market Makers that are based on the rules governing Market Makers on the Exchange's affiliated markets, NYSE Arca and NYSE American. The proposed rule change would therefore remove impediments to and perfect the mechanism of a free and open market and a national market system by promoting continuity across affiliated exchanges, enabling market makers on the Exchange's affiliated markets to also become Non-DMM Market Makers on the Exchange by meeting the same registration requirements and by agreeing to be subject to the same obligations. The proposed rule change also removes impediments to and perfects the mechanism of a free and open market and a national market system by providing the Exchange's member organizations with the opportunity to access the benefits available to registered market makers (such as certain exemptions under Regulation SHO),[8] without committing to the more stringent quoting or volume requirements that apply to DMMs and SLPs. The Exchange also believes that providing for a Non-DMM Market Maker role on the NYSE would allow member organizations that are market makers on other exchanges to leverage their existing market-making strategies on the Exchange, and provide all member organizations who choose to register as Non-DMM Market Makers with enhanced opportunities to qualify for various existing credits set forth in the Exchange's Price List through increased quoting and liquidity-providing activity.[9] The proposed rules are also intended to serve investor protection and public interest goals by providing for a new category of market participant that will contribute to displayed liquidity, price discovery, and market quality on the Exchange. The proposed Non-DMM Market Makers are not intended to supplant the existing DMM or SLP market participants or their roles on the Exchange and would represent an additional source of displayed liquidity on the Exchange and enhance the range and diversity of market making activity on the Exchange, thereby promoting competition and market quality on the Exchange to the benefit of all market participants.

Specifically, the Exchange believes that the proposed definitions of Non-DMM Market Maker and Market Maker Authorized Trader in Rule 1.1 would remove impediments to and perfect the mechanism of a free and open market and a national market system by clearly setting forth the definitions of Non-DMM Market Maker and Market Maker Authorized Trader as those terms would be used in the additional rules proposed by the Exchange, particularly since the proposed definitions are based on rules of the Exchange's affiliates that have been approved by the Commission and would promote consistency across affiliated exchanges. The Exchange believes that defining the term ''Non-DMM Market Maker'' to mean a member organization that is not a DMM or SLP would also promote transparency and clarity in Exchange rules that the capitalized term of ''Non-DMM Market Maker'' would not also mean DMMs or SLPs.

The Exchange also believes that proposed Rules 7.20 and 7.21, which provide for the registration of Non-DMM Market Makers and Market Maker Authorized Traders, would remove impediments to and perfect the mechanism of a free and open market and a national market system because they clearly set forth the requirements and process for a member organization to register as a Non-DMM Market Maker or Market Maker Authorized Trader on the Exchange. The proposed rule change would also promote just and equitable principles of trade by implementing the same registration process and requirements, for the same category of market participants, as on affiliated exchanges, which requirements have already been approved by the Commission. Proposed Rules 7.20 and 7.21 would also protect investors and the public interest by ensuring that Non-DMM Market Makers and Market Maker Authorized Traders are subject to uniform, objective requirements relating to their ability to contribute to the maintenance of fair and orderly markets on the Exchange and that their registration may be suspended or withdrawn should they fail to meet those requirements.

The Exchange believes that proposed Rule 7.22, providing for the registration of a Non-DMM Market Maker in a security, would similarly remove impediments to and perfect the mechanism of a free and open market and a national market system because it would specify the requirements and process for Non-DMM Market Makers to register to trade a specific security on

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] *See, e.g.,* 17 CFR 242.203(b)(2)(iii) and 17 CFR 242.204(a)(3).

[9] To the extent Non-DMM Market Makers would be eligible for pricing relating to their role as Non-DMM Market Makers (similar to pricing currently set forth in the Exchange's Price List with respect to DMMs and SLPs), the Exchange would address such pricing in a separate proposed rule change.

the Exchange. Proposed Rule 7.22 sets forth a process based on the rules of NYSE Arca and NYSE American governing the registration of a Non-DMM Market Maker in a security, and therefore would promote just and equitable principles of trade by specifying requirements that are based on the approved rules of other exchanges. The Exchange further believes that proposed Rule 7.22 would serve investor protection and public interest goals by enumerating the factors that the Exchange may consider in approving a Non-DMM Market Maker's request to register in a security, which take into account the Non-DMM Market Maker's ability to meet its obligations and promote market quality on the Exchange.

The Exchange believes that proposed Rule 7.23, setting forth the obligations and duties of Non-DMM Market Makers, would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would establish rules governing trading on the Exchange that are consistent with the rules currently in place on NYSE Arca and NYSE American regarding the duties and obligations of Market Makers on those exchanges, which have been previously approved by the Commission. As a result, the proposal promotes uniformity and consistency among affiliated exchanges' rules pertaining to market makers who are not DMMs or SLPs. For similar reasons, the Exchange believes that proposed Rule 7.23 is also designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade by establishing regulatory requirements for Non-DMM Market Makers that would enhance the quality of its market and support investor protection and public interest goals. Specifically, proposed Rule 7.23 specifies the obligations of a Non-DMM Market Maker to, among other things, maintain a Two-Sided Obligation and meet certain pricing specifications, thereby promoting additional displayed liquidity and facilitating price discovery on the Exchange. The proposed rule change would also remove impediments to and perfect the mechanism of a free and open market and a national market system by providing a new opportunity for member organizations to leverage their trading activity and access the benefits and economic incentives available to registered market makers by meeting obligations less stringent than those required of DMMs and SLPs, and in turn enhancing competition on the Exchange for the benefit of all market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change sets forth rules governing Non-DMM Market Makers on the Exchange and is based on NYSE Arca and NYSE American rules that have been approved by the Commission. The Exchange believes that the proposed rules would promote competition because they would provide for obligations relating to Non-DMM Market Makers that are based on established rules, thereby reducing any potential barriers to entry for market makers registered on other exchanges to be approved as a Non-DMM Market Maker on the Exchange. The Exchange further believes that the proposed rules would not impose any burden on competition that is not necessary or appropriate because they are designed to provide its members with consistency across affiliated exchanges, thereby enabling the Exchange to compete with unaffiliated exchange competitors that similarly operate multiple exchanges on the same trading platforms. The Exchange also believes that the proposed rule change would promote competition by providing member organizations that are registered as market makers on other exchanges with the opportunity to similarly register as a Non-DMM Market Maker on the Exchange without being subject to the more stringent quoting or volume requirements associated with being a DMM or SLP. By registering as a Non-DMM Market Maker on the Exchange, such member organizations may be able to deploy their existing market-making strategies on the Exchange and may more easily qualify for credits offered by the Exchange based on the increased quoting and liquidity-providing activity required of them as Non-DMM Market Makers. The Exchange therefore believes that the proposed rule change would promote competition by encouraging additional displayed liquidity, facilitating price discovery, and increasing the range and diversity of market making activity on the Exchange. Finally, the Exchange does not believe that the proposed rules would impose any burden on intra-market competition because adding a new market participant of ''Non-DMM Market Maker'' would allow all member organizations an opportunity to access the benefits available to registered market makers, subject to the same requirements and obligations as market makers on other exchanges.

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 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–2021–08 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–2021–08. 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–2021–08, and should be submitted on or before April 15, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2021–06127 Filed 3–24–21; 8:45 am]

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[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91371; File No. SR–NYSEArca–2021–19]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Equities Proprietary Market Data Fee Schedule and the NYSE Arca Options Proprietary Market Data Fee Schedule

March 19, 2021.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on March 10, 2021, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Equities Proprietary Market Data Fee Schedule and the NYSE Arca Options Proprietary Market Data Fee Schedule (together, ''Market Data Fee Schedules'') to adopt a billing dispute practice substantially similar to the practice adopted by another group of exchanges for their transaction and market data fees. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Market Data Fee Schedules to adopt a billing dispute practice similar to the practice adopted by another group of exchanges for their transaction and market data fees. As discussed below, the proposed provision would be substantially similar to provision in the fee schedules of the Cboe U.S. Equities markets—Cboe BZX Exchange, Inc. (''BZX Equities''),[4] Cboe BYX Exchange, Inc. (''BYX Equities''),[5] Cboe EDGA Exchange, Inc. (''EDGA Equities''),[6] Cboe EDGX Exchange, Inc. (''EDGX Equities'')[7]—and the Cboe U.S Options markets—Cboe Exchange, Inc. (''Cboe Options''),[8] Cboe C2 Exchange, Inc. (''C2 Options''),[9] the options platform of Cboe BZX Exchange, Inc. (''BZX Options''),[10] the options platform of Cboe EDGX Exchange, Inc. (''EDGX Options'') (collectively, the ''Cboe Exchanges'').[11] In addition, the Exchange and the Exchange's affiliates, New York Stock Exchange LLC (''NYSE''), NYSE American LLC (''NYSE American''), NYSE Chicago, Inc. (''NYSE Chicago'') and NYSE National, Inc. (''NYSE National'') as well as other equities and options markets[12] already have in place a similar billing dispute provision for transaction fees.

Background

The Exchange proposes to amend the Market Data Fee Schedules to adopt a

[4] *See* BZX Equities Fee Schedule, available at, *https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/. See also* Securities Exchange Act Release No. 90897 (January 11, 2021), 86 FR 4161 (January 15, 2021) (SR–CboeBZX–2020–094).

[5] *See* BYX Equities Fee Schedule, available at, *https://markets.cboe.com/us/equities/membership/fee_schedule/byx/. See also* Securities Exchange Act Release No. 90899 (January 11, 2021), 86 FR 4156 (January 15, 2021) (SR–CboeBYX–2020–034).

[6] *See* EDGA Equities Fee Schedule, available at, *https://markets.cboe.com/us/equities/membership/fee_schedule/edga/. See also* Securities Exchange Act Release No. 90900 (January 11, 2021), 86 FR 4149 (January 15, 2021) (SR–CboeEDGA–2020–032).

[7] *See* EDGX Equities Fee Schedule, available at, *https://markets.cboe.com/us/equities/membership/fee_schedule/edgx/. See also* Securities Exchange Act Release No. 90901 (January 11, 2021), 86 FR 4137 (January 15, 2021) (SR–CboeEDGX–2020–064).

[8] *See* Cboe Options Fee Schedule, footnote 7, available at, *https://cdn.cboe.com/resources/membership/Cboe_FeeSchedule.pdf. See also* Securities Exchange Act Release No. 91053 (February 3, 2021), 86 FR 8814 (February 9, 2021) (SR–Cboe–2021–010).

[9] *See* C2 Options Fee Schedule, available at, *https://markets.cboe.com/us/options/membership/fee_schedule/ctwo/. See also* Securities Exchange Act Release No. 91049 (February 3, 2021), 86 FR 8824 (February 9, 2021) (SR–C2–2021–002).

[10] *See* BZX Options Fee Schedule, available at, *https://markets.cboe.com/us/options/membership/fee_schedule/bzx/. See also* Securities Exchange Act Release No. 90897 (January 11, 2021), 86 FR 4161 (January 15, 2021) (SR–CboeBZX–2020–094).

[11] *See* EDGX Options Fee Schedule, available at, *https://markets.cboe.com/us/options/membership/fee_schedule/edgx/. See also* Securities Exchange Act Release No. 90901 (January 11, 2021), 86 FR 4137 (January 15, 2021) (SR–CboeEDGX–2020–064).

[12] *See* NASDAQ Equity Rules, Equity 7 (Pricing Schedule), Section 70(b) (all fee disputes must be submitted no later than 60 days after receipt of billing invoice, in writing and accompanied by supporting documentation); NASDAQ Options Rules, Options 7 (Pricing Schedule), Section 7(a)–(b) (same); NASDAQ BX Equity Rules, Equity 7 (Pricing Schedule), Section 111(b) (Collection of Exchange Fees and Other Claims and Billing Policy) (same); NASDAQ BX Options Rules, Options 7 (Pricing Schedule), Section 7(a)–(b) (BX Options Fee Disputes) (same); NASDAQ PHLX Equity Rules, Equity 7 (Pricing Schedule), Section 1(a) (same); NASDAQ PHLX Options Rules, Options 7 (Pricing Schedule), Section 1(a) (same); NASDAQ ISE Options Rules, Options 7 (Pricing Schedule), Section 1(b) (same); NASDAQ GEMX Options Rules, Options 7 (Pricing Schedule), Section 1(b) (same); NASDAQ MRX Options Rules, Options 7 (Pricing Schedule), Section 1(b) (same); MIAX Options Fee Schedule, available at *https://www.miaxoptions.com/sites/default/files/fee_schedule-files/MIAX_Options_Fee_Schedule_01_13_21.pdf* (same); MIAX Pearl Fee Schedule, available at *https://www.miaxoptions.com/sites/default/files/fee_schedule-files/MIAX_PEARL_Options_Fee_Schedule_03012021.pdf* (same); and MIAX Emerald Fee Schedule, available at *https://www.miaxoptions.com/sites/default/files/fee_schedule-files/MIAX_Emerald_Fee_Schedule_02_22_21.pdf* (same).

billing dispute procedure to prevent market data subscribers from contesting their bills long after they have been sent an invoice. The Exchange and other equities and options markets already have a billing dispute procedure in effect for their transaction fees that allows for sixty (60) days to dispute billing errors.[13] The Cboe Exchanges also have a billing dispute procedure in place for both its equities markets and options markets and apply that procedure to both transaction fees and market data fees on each of the Cboe Exchanges.[14] In contrast to the other exchanges, the Cboe Exchanges' billing dispute policy allows for ''three full calendar months'' to dispute billing errors.[15] Similar to the Cboe Exchanges, the Exchange is proposing a ninety (90) day period for market data subscribers to dispute billing errors.

As proposed, all disputes concerning market data fees and credits billed by the Exchange would have to be submitted to the Exchange in writing and accompanied by supporting documentation. Further, all disputes would have to be submitted no later than ninety (90) days after receipt of a billing invoice. After ninety days, all market data fees assessed by the Exchange would be considered final. The Exchange believes that this requirement, which is substantially similar to that in place on the Cboe Exchanges,[16] will streamline the billing dispute process. The Exchange would resolve an error by crediting or debiting market data subscribers based on the fees or credits that should have applied and will make billing adjustments regardless of whether the error was discovered by the Exchange or by a subscriber that submitted a dispute to the Exchange.

The Exchange believes it is reasonable for market data subscribers to become aware of any potential billing errors within ninety (90) calendar days of receiving an invoice. The Exchange provides all subscribers on-line access to view their current subscriptions and their invoices. In addition to being able to view the level of their subscription, the Exchange also sends subscribers an invoice by mail each month. Given the tools that the Exchange provides to allow subscribers to monitor their billing, requiring that subscribers dispute an invoice within ninety (90) calendar days will encourage them to review their invoices promptly so that any disputed charges can be addressed in a timely manner while the information and data underlying those charges (*e.g.,* applicable fees and subscriber information) is still easily and readily available. This practice will avoid issues that may arise when subscribers do not dispute an invoice in a timely manner, and will conserve Exchange resources that would have to be expended to resolve untimely billing disputes.[17] As such, the proposed rule change would alleviate administrative burdens related to billing disputes, which could divert staff resources away from the Exchange's regulatory and business purposes. The proposed rule change to provide all fees and credits are final after ninety (90) days also provides both the Exchange and subscribers finality and the ability to close their books after a known period of time. Finally, the Exchange notes that it routinely conducts audits of its market data customers to ensure that customers are complying with the terms of the subscriber agreement they have signed. The audit process is independent of the billing process. The audit function is administered by the Exchange's market data compliance group and the billing function is administered by the Exchange's market data operations group. Each group is charged with distinct responsibilities that do not overlap. The proposed billing dispute provision is not intended to circumvent the audit process in any manner and the adoption of the ninety (90) day period to dispute billing errors would not affect subscribers' ability to take a position with respect to billing charges identified through the audit process.

In order for subscribers to be fully aware of this rule regarding fee disputes, the Exchange proposes to include the language proposed for the Market Data Fee Schedules on each customer invoice.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,[18] in general, and Section 6(b)(5) of the Act.[19] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes the requirement to submit all billing disputes in writing, and with supporting documentation, within ninety (90) days from receipt of the invoice, is reasonable because, as noted above, the Exchange provides ample tools for market data subscribers to properly and swiftly monitor and account for various charges incurred in a given month. Also, the proposal is not unfairly discriminatory because it would apply equally to all market data subscribers. The proposed provision regarding fee disputes in the Market Data Fee Schedules promotes the protection of investors and the public interest by providing a clear and concise time frame for market data subscribers to dispute market data fees and for the Exchange to review such disputes in a timely manner. In addition, the proposed 90-day limitation promotes just and equitable principles of trade because it would be implemented prospectively on all market data subscribers, only applying to invoices issued after the proposed rule change becomes operative. Moreover, the proposed billing dispute language, which will lower the Exchange's administrative burden, is substantially similar to the billing dispute language adopted by the Cboe Exchanges,[20] and with the one difference noted above,[21] the proposed provision is same as that in place at the Exchange's affiliates for transaction fees and at other equities and options markets.[22]

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

[13] *See id.*

[14] *See* notes 4–11, *supra.*

[15] The Cboe Exchanges' billing dispute policy provides, in relevant part: ''All fees and rebates assessed prior to the three full calendar months before the month in which the Exchange becomes aware of a billing error shall be considered final.''

[16] *See* notes 4–11, *supra.*

[17] The same rationale has been advanced by the other markets that have adopted a similar billing procedure. *See, e.g.,* Securities Exchange Act Release No. 71286 (January 14, 2014), 79 FR 3442, 3442 (January 21, 2014) (SR–ISE–2014–02).

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

[20] *See* notes 4–11, *supra.*

[21] Whereas the Exchange, its affiliates and other equities and options markets allow for sixty (60) days to dispute billing errors, the Cboe Exchanges' billing dispute policy allows for ''three full calendar months.'' *See* note 15, *supra.*

[22] *See* note 12, *supra.*

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[23] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change, which would apply equally to all market data subscribers, would establish a clear process for billing disputes, and is substantially similar to rules adopted by the Cboe Exchanges and rules adopted by other equities and options markets as well as by the Exchange's affiliates for transaction fees. The Exchange does not believe the proposed rule change would impair the ability of market data subscribers or competing venues that also sell market data products to maintain their competitive standing in the financial markets. Moreover, because the Exchange does not propose to alter or modify specific fees or credits applicable to market data subscribers, the proposal does not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[24] and Rule 19b–4(f)(6) thereunder.[25] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[26] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2021–19 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–2021–19. 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–2021–19 and should be submitted on or before April 15, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2021–06116 Filed 3–24–21; 8:45 am]

BILLING CODE 8011–01–P

[23] 15 U.S.C. 78f(b)(8).

[24] 15 U.S.C. 78s(b)(3)(A)(iii).

[25] 17 CFR 240.19b–4(f)(6).

[26] 15 U.S.C. 78s(b)(2)(B).

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91372; No. SR–NYSEArca–2021–18]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the NYSE Arca Options Fee Schedule

March 19, 2021.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on March 10, 2021, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the NYSE Arca Options Fee Schedule (''Fee Schedule'') to extend the waiver of certain Floor-based fixed fees. The Exchange proposes to implement the fee change effective April 1, 2021. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of,

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to modify the Fee Schedule to extend the waiver of certain Floor-based fixed fees for market participants that have been unable to resume their Floor operations to a certain capacity level, as discussed below. The Exchange proposes to implement the fee change effective April 1, 2021.

On March 18, 2020, the Exchange announced that it would temporarily close the Trading Floor, effective Monday, March 23, 2020, as a precautionary measure to prevent the potential spread of COVID–19. Following the temporary closure of the Trading Floor, the Exchange waived certain Floor-based fixed fees for April and May 2020.[4] Although the Trading Floor partially reopened on May 4, 2020 and Floor-based open outcry activity is supported, certain participants have been unable to resume pre-Floor closure levels of operations. As a result, the Exchange extended the fee waiver through March 2021, but only for Floor Broker firms that were unable to operate at more than 50% of their March 2020 on-Floor staffing levels and for Market Maker firms that have vacant or ''unmanned'' Podia for the entire month due to COVID–19 related considerations (the ''Qualifying Firms'').[5] Because the Trading Floor will continue to operate with reduced capacity, the Exchange proposes to extend the fee waiver for Qualifying Firms through the earlier of the first full month of a full reopening of the Trading Floor facilities to Floor personnel or June 2021.[6]

Specifically, as with the prior fee waivers, the proposed fee waiver covers the following fixed fees for Qualifying Firms, which relate directly to Floor operations, are charged only to Floor participants and do not apply to participants that conduct business off-Floor:

- Floor Booths;
- Market Maker Podia;
- Options Floor Access;
- Wire Services; and
- ISP Connection.[7]

The proposed fee change is designed to reduce monthly costs for all Qualifying Firms whose operations continue to be disrupted even though the Trading Floor has partially reopened. In reducing this monthly financial burden, the proposed change would allow Qualifying Firms that had Floor operations in March 2020 to reallocate funds to assist with the cost of shifting and maintaining their prior fully-staffed on-Floor operations to off-Floor and recoup losses as a result of the partial reopening. The Exchange believes that all Qualifying Firms would benefit from this proposed fee change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[9] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. 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.'' [10]

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[11] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in February 2021, the Exchange had less than 11% market share of executed volume of multiply-listed equity and ETF options trades.[12]

This proposed fee change is reasonable, equitable, and not unfairly discriminatory because it would reduce monthly costs for all Qualifying Firms whose operations have been disrupted despite the fact that the Trading Floor has partially reopened because of the social distancing requirements and/or other health concerns related to resuming operation on the Floor. In reducing this monthly financial burden, the proposed change would allow Qualifying Firms that had Floor operations in March 2020 to reallocate funds to assist with the cost of shifting and maintaining their prior fully-staffed on-Floor operations to off-Floor and recoup losses as a result of the partial reopening of the Floor. The Exchange believes that all Qualifying Firms would benefit from this proposed fee change.

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits as it merely continues the previous fee waiver for Qualifying Firms, which affects fees charged only to Floor participants and does not apply to participants that conduct business off-Floor. The Exchange believes it is an equitable allocation of fees and credits to extend the fee waiver for Qualifying Firms because such firms have either no more than half of their Floor staff (as measured by either the March 2020 or Exchange-approved) levels or have vacant podia—and this reduction in staffing levels on the Floor impacts the speed, volume and efficiency with which these firms can operate, which is to their financial detriment.

[4] *See* Securities Exchange Act Release Nos. 88596 (April 8, 2020), 85 FR 20796 (April 14, 2020) (SR–NYSEArca–2020–29); 88812 (May 5, 2020), 85 FR 27787 (May 11, 2020) (SR–NYSEArca–2020–38).

[5] *See* Securities Exchange Act Release Nos. 89038 (June 10, 2020), 85 FR 36447 (June 16, 2020) (SR–NYSEArca–2020–52); 89242 (June 7, 2020), 85 FR 42037 (July 13, 2020) (SR–NYSEArca–2020–60); 89480 (August 5, 2020), 85 FR 48591 (August 11, 2020) (SR–NYSEArca–2020–69); 89694 (August 27, 2020), 85 FR 54608 (September 2, 2020) (SR–NYSEArca–2020–76); 90191 (October 15, 2020), 85 FR 67032 (October 21, 2020) (SR–NYSEArca–2020–90); 90838 (December 31, 2020), 86 FR 657 (January 6, 2021) (SR–NYSEArca–2020–115). *See also* Fee Schedule, NYSE Arca OPTIONS: FLOOR and EQUIPMENT and CO-LOCATION FEES.

[6] *See* proposed Fee Schedule, NYSE Arca OPTIONS: FLOOR and EQUIPMENT and CO-LOCATION FEES.

[7] *See id.*

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4) and (5).

[10] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7–10–04) (''Reg NMS Adopting Release'').

[11] The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, *available here: https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics.*

[12] Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of ETF-based options, *see id.,* the Exchange's market share in multiply-listed equity and ETF options increased from 10.23% for the month of February 2020 to 10.74% for the month of February 2021.

The Exchange believes that the proposal is not unfairly discriminatory because the proposed continuation of the fee waiver would affect all similarly-situated market participants on an equal and non-discriminatory basis.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act, the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed changes would encourage the continued participation of Qualifying Firms, thereby promoting market depth, price discovery and transparency and would enhance order execution opportunities for all market participants. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [13]

Intramarket Competition. The proposed change, which continues the fee waiver for all Qualifying Firms, is designed to reduce monthly costs for those Floor participants whose operations continue to be impacted even though the Trading Floor has partially reopened. In reducing this monthly financial burden, the proposed change would allow Qualifying Firms that had Floor operations in March 2020 to reallocate funds to assist with the cost of shifting and maintaining their previously on-Floor operations to off-Floor. The Exchange believes that the proposed waiver of fees for Qualifying Firms would not impose a disparate burden on competition among market participants on the Exchange because off-Floor market participants are not subject to these Floor-based fixed fees. In addition, Floor-based firms that are not subject to the extent of staffing shortfalls as are Qualifying Firms, *i.e.,* such firms have more than 50% of their March 2020—or Exchange-approved—staffing levels on the Floor and/or have no vacant Podia during the month, do not face the same operational disruption and potential financial impact during the partial reopening of the Floor.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily favor one of the 16 competing option exchanges if they deem fee levels at a venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. Based on publicly-available information, and excluding index-based options, no single exchange currently has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[14] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in February 2021, the Exchange had slightly over 10% market share of executed volume of multiply-listed equity and ETF options trades.[15]

The Exchange believes that the proposed rule change reflects this competitive environment because it waives fees for Qualifying Firms and is designed to reduce monthly costs for Floor participants whose operations continue to be disrupted even though the Trading Floor has partially reopened. In reducing this monthly financial burden, the proposed change would allow affected participants to reallocate funds to assist with the cost of shifting and maintaining their prior fully staffed on-Floor operations to off-Floor.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [16] of the Act and subparagraph (f)(2) of Rule 19b–4 [17] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [18] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2021–18 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–2021–18. 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.

[13] *See* Reg NMS Adopting Release, *supra* note 10, at 37499.

[14] *See supra* note 11.

[15] Based on OCC data, *supra* note 12, the Exchange's market share in multiply-listed equity and ETF options increased from 10.23% for the month of February 2020 to 10.74% for the month of February 2021.

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(2).

[18] 15 U.S.C. 78s(b)(2)(B).

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–2021–18, and should be submitted on or before April 15, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2021–06122 Filed 3–24–21; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91376; File No. SR–ICEEU–2021–002]

Self-Regulatory Organizations; ICE Clear Europe Limited; Order Approving Proposed Rule Change Relating to Amendments to the ICE Clear Europe Price Submission Disciplinary Framework

March 19, 2021.

I. Introduction

On February 2, 2021, ICE Clear Europe Limited (''ICE Clear Europe'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify certain provisions of its Price Submission Disciplinary Framework and to rename it as the ''Price Submission Disciplinary Procedure'' (hereinafter referred to as the ''Procedure'').[3] The proposed rule change was published for comment in the **Federal Register** on February 18, 2021.[4] The Commission did not receive comments regarding the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

ICE Clear Europe proposes to make specific amendments to the current Procedure for investigating and disciplining Clearing Members for missed price submissions when a Clearing Member holds cleared open interest in a single-name or index credit default swap (''CDS'') product.[5] The proposed amendments are summarized below.[6]

Cash Assessments for Missed Submissions and Waivers

The proposed amendments in renumbered Section 2.2.3 (Fixed Cash Assessments for Missed Submissions) would state that a Clearing Member in receipt of a Notice of Investigation issued in respect of an alleged Missed Submission will have five days to submit written comments. The proposed amendments would also provide an additional five days for ICE Clear Europe to review the relevant Clearing Member's comments before sending a Letter of Mindedness to the Clearing Member under Rule 1002(f) at the conclusion of the investigation. ICE Clear Europe represents that these proposed amendments would improve the current process by affording the Clearing Member an opportunity to respond to the initial notice and giving ICE Clear Europe time to assess the Clearing Member's response before determining whether to take further action under the Rules.[7]

The proposed rule change would also clarify when ICE Clear Europe would issue a cash assessment notice to a Clearing Member, regardless of whether ICE Clear Europe receives written comments from the Clearing Member during the ten-day period from the date of a Letter of Mindedness. Specifically, the proposed rule change would provide that ICE Clear Europe will issue a cash assessment notice following the expiry of such ten-day period where it determines that an assessment amount is required to be collected. The proposed rule change would make a drafting clarification to specify that the cash assessment notice would be calculated according to the cash assessment calculation details outlined in the Procedure.

In addition, the proposed rule change would remove the current investigation procedures for one or more Missed Submissions in a month for the type of instrument (index or single-name) involved. Instead, the proposed amendments would update and clarify the procedures by which a Clearing Member may assert that one or more Missed Submissions were due to extraordinary circumstances outside of its control. In such circumstances, the proposed rule change would designate the Head of Regulation and Compliance to determine whether such circumstances apply, rather than the currently designated Head of Clearing Compliance.

ICE Clear Europe also proposes changes in renumbered Section 2.2.3 (Fixed Cash Assessments for Missed Submissions) to the process for granting waivers of the applicable cash assessment amount for Missed Submissions based on the CDS product type. The proposed rule change would clarify that if a waiver is granted, no cash assessment amount would be due for the Missed Submission. Further, the proposed rule change would change the current eligibility provisions for such waivers. ICE Clear Europe represents that, under the current waiver process, a Clearing Member receives only one waiver over the course of its clearing membership for a Missed Submission.[8] The proposed rule change would change that process by providing that a Clearing Member is eligible for one waiver per calendar year for Missed Submissions for single-name products and one waiver per calendar year for Missed Submissions for index products.

The proposed rule change would also expressly limit such waivers to Missed Submissions caused by technical failures. In addition, the proposed rule change would require that Clearing Members must provide an adequate written explanation of the technical failure and a summary of planned remedial actions. The proposed rule change would also specify that only the first instance of a Missed Submission in any calendar year for both single-name and index products will be eligible for a waiver. ICE Clear Europe represents that it believes the proposed approach to waivers strikes a better balance than the current approach between the need for robust submissions under the Policy and the goal of not unnecessarily penalizing Clearing Members for technical failures.[9]

Changes Regarding Missed Submissions

In the definition of the term ''Missed Submissions'' in Section 2.1.2, ICE Clear Europe would change the type of submissions that count as Missed Submissions. Specifically, ICE Clear Europe would remove the statement that spread submissions will be counted as

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Proposed Rule Change Relating to Amendments to the ICE Clear Europe Price Submission Disciplinary Framework, Exchange Act Release No. 91114 (February 11, 2021), 86 FR 10152 (February 18, 2021) (SR–ICEEU–2021–002) (''Notice'').

[4] *See* Notice, *supra* note 3, 86 FR 10152.

[5] Capitalized terms used not defined herein have the meanings specified in the Procedure or the ICE Clear Europe Clearing Rules (the ''Rules''), as applicable.

[6] The following description is substantially excerpted from the Notice.

[7] *See* Notice, 86 FR at 10152.

[8] *Id.*

[9] *See* Notice, 86 FR at 10153.

Missed Submissions, and replace it with a statement that submissions not adhering to the format described in Section 2.2.3 of the Policy will be counted as Missed Submissions. ICE Clear Europe represents that such format requires index submissions to follow market convention in terms of providing prices as spreads, and be either midpoint or bid-offer.[10]

ICE Clear Europe also would make certain non-substantive drafting clarifications to the provisions in this section on Obvious Error submissions where the bid is higher than the high threshold, or the offer is lower than the low threshold. Specifically, ICE Clear Europe would clarify that references to ''Missed Submissions'' shall be deemed to include Obvious Errors on CDX Indices submissions, as applicable.

Document Governance and Exception Handling

The proposed amendments would add new provisions with respect to the governance of the Procedure document and the handling of exception approvals to this document. Specifically, the proposed amendments would state that the document owner is responsible for ensuring that the Procedure remains up-to-date and is reviewed in accordance with ICE Clear Europe's governance processes. The proposed amendments would further provide that the document owner will report material breaches or unapproved deviations from the Procedure to the document owner's Head of Department, the Chief Risk Officer and the Head of Compliance (or their delegates) who together will determine if further escalation is required. Lastly, the proposed amendments would state that exceptions to the Procedure can be approved in accordance with ICE Clear Europe's governance process for the Procedure. ICE Clear Europe represents that the proposed approach to governance and exception handling is consistent with that of other ICE Clear Europe procedures.[11]

General Drafting Clarifications and Improvements

ICE Clear Europe would amend the current document title from ''Price Submission Disciplinary Framework'' to ''Price Submission Disciplinary Procedure,'' and make a conforming word change in Section 2.1.1 (Purpose) from ''framework'' to ''procedure.'' ICE Clear Europe would remove Section 2.2 (End of Day Price Discovery Process) and the related Appendix A: End of Day Price Discovery Process, because these matters are covered in the existing CDS End of Day Price Discovery Policy (the ''Policy''). As a result of this proposed amendment and deletion of this section, ICE Clear Europe would renumber current Section 2.3 (Price Submission Incentives) as 2.2, add a cross-reference to the Policy in Section 1.1 (Overview), and remove a parenthetical cross-reference to such section in the renumbered Price Submission Incentives section.

To aid with readability, ICE Clear Europe would shorten the term ''CDS Clearing Member'' to ''CM'' throughout the Procedure, and also shorten or rephrase certain sentences without changing their substantive meanings. ICE Clear Europe would also replace references to CDX products with references to CDX Indices as a more precise term. In Section 1.1, ICE Clear Europe would update a reference to Markit Group Limited to its current name, IHS Markit.

In Section 2.1.1 (Purpose), ICE Clear Europe proposes to simplify and clarify the stated purpose of the Procedure to provide that the document outlines the procedure to be used internally by ICE Clear Europe when taking disciplinary action in relation to price submissions. In Section 2.1.3 (Legal Basis), ICE Clear Europe would also include a cross-reference to Rule 503(g), rather than restate the relevant text of Rule 503(g).

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.[12] For the reasons given below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act, Section 17A(b)(3)(G) of the Act, Section 17A(b)(3)(H) of the Act,[13] Rule 17Ad–22(e)(2), and Rule 17Ad–22(e)(6)(iv) thereunder.[14]

A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of ICE Clear Europe be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, as well as to assure the safeguarding of securities and funds which are in the custody or control of ICE Clear Europe or for which it is responsible.[15] As discussed above, the proposed rule change would make a number of updates and enhancements to the Procedure.

First, the proposed rule change would amend the current processes for investigating Missed Submissions for disciplinary action in the form of cash assessment amounts, including by specifying the time periods applicable to different aspects of the process, and for granting waivers of cash assessment amounts for Missed Submissions. During an investigation, the proposed rule change would update and clarify the procedures by which a Clearing Member may assert that a Missed Submission was caused by extraordinary circumstances outside of its control, as determined by ICE Clear Europe's Head of Regulation and Compliance. At the conclusion of an investigation, the proposed rule change would clarify that ICE Clear Europe will issue a cash assessment notice following the expiry of the ten-day period from the date of a Letter of Mindedness issued to a Clearing Member under Rule 1002(f), regardless of whether ICE Clear Europe receives written comments from the Clearing Member during such period, where it determines that a cash assessment is required to be collected. The proposed rule change would also make a drafting clarification to specify how the cash assessment amount will be calculated.

With respect to the waiver process, the proposed rule change would introduce new requirements that limit waivers to Missed Submissions caused by technical failures, and would require the Clearing Member to provide an adequate written explanation of the technical failure and a remedial plan to ICE Clear Europe. The proposed rule change would also specify that only the first instance of a Missed Submission in any calendar year for both single-name and index products will be eligible for a waiver.

The Commission believes such proposed amendments to the current processes for investigating Missed Submissions for disciplinary action in the form of cash assessment amounts and for granting waivers of cash assessment amounts for Missed Submissions should further incentivize Clearing Members to avoid repeated Missed Submissions. These improved

[10] *See* Notice, 86 FR at 10152.

[11] *Id.*

[12] 15 U.S.C. 78s(b)(2)(C).

[13] 15 U.S.C. 78q–1(b)(3)(F), 15 U.S.C. 78q–1(b)(3)(G), and 15 U.S.C. 78q–1(b)(3)(H).

[14] 17 CFR 240.17Ad–22(e)(2) and 17 CFR 240.17Ad–22(e)(6)(iv).

[15] 15 U.S.C. 78q–1(b)(3)(F).

processes should, in turn, enhance ICE Clear Europe's overall end-of-day price submission process by helping to ensure that Clearing Members perform their daily price submission obligations that, in turn, inform the calculation and collection of margin requirements for CDS products as part of ICE Clear Europe's overall risk-based margin system and risk management processes. Consequently, the Commission believes that the proposed changes would enhance ICE Clear Europe's ability to manage the risks associated with clearing both single-name and index CDS products, including the calculation of Mark-to-Market Prices under Rule 503(g), and should help to ensure that ICE Clear Europe is able to promptly and accurately clear and settle CDS transactions.

Second, the proposed rule change would update and clarify which submissions will count as Missed Submissions. Specifically, the proposed rule change would remove spread submissions as Missed Submissions and instead, would count submissions that do not adhere to the designated format in the Policy as Missed Submissions. The proposed rule change would also clarify that Obvious Errors on CDX Indices submissions count as Missed Submissions. The Commission finds that these proposed changes would update and clarify the scope of Missed Submissions for Clearing Members and avoid any possible disputes or discrepancies over which submissions will count as Missed Submissions, which could hinder ICE Clear Europe's ability to conduct its end-of-day price discovery process and, in turn, to promptly and accurately calculate and collect margin requirements for CDS products and, in turn, to promptly and accurately clear and settle CDS transactions. Consequently, the Commission believes that these proposed changes should also help promote the prompt and accurate clearance and settlement of CDS transactions by ICE Clear Europe.

Third, the proposed rule change would assign clear and direct responsibilities to the document owner at ICE Clear Europe to review and update the Procedure in accordance with ICE Clear Europe's governance processes, report material breaches to designated officers at ICE Clear Europe, and obtain approvals of any exceptions to the Procedure by following ICE Clear Europe's governance process. The Commission believes that the proposed governance and exception handling changes should help ensure clarity regarding the persons at ICE Clear Europe involved in the governance processes for the Procedure document. The Commission believes that a lack of clarity could lead to potential confusion regarding the proper persons to take action on behalf of ICE Clear Europe, thereby potentially hindering ICE Clear Europe's ability to efficiently administer and manage the Procedure and its end-of-day price discovery process, and, in turn, to promptly and accurately clear and settle CDS transactions.

Fourth, the proposed rule change would remove redundant provisions in the Procedure that are contained in the Policy or in the Rules, and replace them with clear cross-references. The proposed rule change would also shorten or rephrase certain sentences and defined terms, and update certain terms and references. The Commission finds that these proposed drafting clarifications and improvements would enhance the clarity, transparency, and readability of the Procedure for ICE Clear Europe management, employees, and Clearing Members that, in turn, should help them understand their respective authorities, rights, and obligations regarding ICE Clear Europe's clearance and settlement of CDS transactions.

The Commission further believes that the proposed amendments, taken as a whole, would enhance ICE Clear Europe's ability to obtain complete and reliable end-of-day prices that inform its calculation and collection of margin requirements for such CDS products, and help to manage its operational risks. Moreover, the Commission believes these risks, if mismanaged, could threaten ICE Clear Europe's ability to operate and therefore its ability to clear and settle transactions and safeguard funds. As a result, the Commission believes that the proposed changes should promote ICE Clear Europe's ability to assure the safeguarding of securities and funds which are in the custody or control of ICE Clear Europe or for which it is responsible.

Therefore, the Commission believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act.[16]

B. Consistency With Section 17A(b)(3)(G) of the Act

Section 17A(b)(3)(G) of the Act requires, among other things, that ICE Clear Europe's rules provide that Clearing Members shall be appropriately disciplined for violation of any provision of ICE Clear Europe's rules by fine or other fitting sanction.[17] As noted above, the proposed rule change would amend the current Procedure for investigating Missed Submissions for disciplinary action in the form of cash assessment amounts, including by specifying the time periods applicable to different aspects of the investigation process. The proposed rule change would also clarify that ICE Clear Europe will issue a cash assessment notice following the expiry of the ten-day period from the date of a Letter of Mindedness issued to a Clearing Member under Rule 1002(f), regardless of whether ICE Clear Europe receives written comments from the Clearing Member during such period, where it determines that a cash assessment is required to be collected. In addition, the proposed rule change would update and clarify the procedures by which a Clearing Member may assert that a Missed Submission was caused by extraordinary circumstances outside of its control. The proposed rule change would also make a drafting clarification to specify how the cash assessment amount will be calculated and would update and clarify which submissions will count as Missed Submissions. The Commission believes these proposed improvements and drafting clarifications, taken together, would help ICE Clear Europe conduct more informed investigations of the facts and circumstances surrounding an alleged Missed Submission before deciding to impose cash assessments as appropriate and fitting sanctions for violations of the Policy.

The proposed changes would also add waiver eligibility requirements for Missed Submissions. Specifically, the proposed rule change would limit waivers to Missed Submissions caused by technical failures, and would require the Clearing Member to provide an adequate written explanation of the technical failure and a remedial plan to ICE Clear Europe. The Commission believes that these aspects of the proposed rule change should help ICE Clear Europe decide whether to grant waivers where individual circumstances warrant, or impose cash assessment amounts as an appropriate and fitting sanction against Clearing Members that violate the Policy by committing Missed Submissions for any reason other than technical failures that meet the waiver eligibility requirements.

Therefore, the Commission believes that the proposed rule change is consistent with Section 17A(b)(3)(G) of the Act.[18]

[16] 15 U.S.C. 78q–1(b)(3)(F).

[17] 15 U.S.C. 78q–1(b)(3)(G).

[18] 15 U.S.C. 78q–1(b)(3)(G).

C. Consistency With Section 17A(b)(3)(H) of the Act

Section 17A(b)(3)(H) of the Act [19] requires, among other things, that ICE Clear Europe's rules, in general, provide a fair procedure with respect to the disciplining of participants. As discussed above, the proposed rule change would amend the current process for investigating alleged Missed Submissions for disciplinary action in the form of cash assessment amounts, including by specifying the time periods applicable to different aspects of the process. The proposed amendments would also update and clarify the investigative process for Clearing Members to assert that one or more Missed Submissions were due to extraordinary circumstances outside of its control and how ICE Clear Europe's Head of Regulation & Compliance would assess and weigh such circumstances in reaching a determination. The Commission believes these proposed investigative process changes would promote the overall fairness of the Procedure by formalizing the general time frames and procedural steps that precede ICE Clear Europe's final determination of whether to impose a disciplinary cash assessment amount.

The Commission believes that the proposed addition of waiver eligibility requirements would also enhance the fairness of the Procedure for either granting waivers or imposing cash assessment amounts, depending on the particular facts and circumstances of the Missed Submission. The Commission believes that these aspects of the proposed rule change would formalize the process of granting waivers for Missed Submissions caused by technical failures, and facilitate ICE Clear Europe's ability to administer a fair procedure for disciplining Clearing Members for any Missed Submission resulting from a non-technical reason that would warrant a cash assessment amount as calculated under the Procedure.

As noted above, the proposed rule change would also make a number of general drafting improvements to shorten and clarify certain sentences and defined terms and to update references. In particular, the proposed rule change would update and clarify the types of submissions that count as Missed Submissions, including submissions that do not adhere to the designated format in the Policy as Missed Submissions and Obvious Errors on CDX Indices submissions, which the Commission believes would further enhance the fairness of the Procedure by increasing its clarity and readability for Clearing Members.

For these reasons, the Commission believes that the proposed rule change is consistent with Section 17A(b)(3)(H) of the Act.[20]

D. Consistency With Rule 17Ad–22(e)(2) Under the Act

Rule 17Ad–22(e)(2) [21] requires each covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to, among other things, provide for governance arrangements that are clear and transparent and specify clear and direct lines of responsibility. As noted above, the proposed amendments to renumbered Section 2.2.3 (Fixed Cash Assessments for Missed Submissions) would assign clear and direct responsibility to ICE Clear Europe's Head of Regulation & Compliance during investigations of Missed Submissions to determine whether a Clearing Member's circumstances are extraordinary and outside of the Clearing Member's control. In addition, the proposed provisions on document governance and exception handling would assign clear and direct responsibility to the document owner at ICE Clear Europe to ensure that the Procedure remains up-to-date and is reviewed in accordance with ICE Clear Europe's governance processes. The proposed amendments would also clarify the document owner's responsibility to report material breaches or unapproved deviations from the Procedure to the document owner's Head of Department, the Chief Risk Officer and the Head of Compliance (or their delegates) who together will determine if such matters require further escalation to ICE Clear Europe's senior executives. Further, the proposed amendments would clarify how to handle approvals of any exceptions to the Procedure by following ICE Clear Europe's governance process for the Procedure document.

The Commission believes these aspects of the proposed rule change would improve the clarity and transparency of the Procedure document and its governance processes by specifying relevant roles and lines of responsibility within ICE Clear Europe. The Commission believes that the proposed rule change is therefore consistent with Rule 17Ad–22(e)(2).[22]

E. Consistency With Rule 17Ad–22(e)(6)(iv) Under the Act

Rule 17Ad–22(e)(6)(iv) [23] requires each covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, uses reliable sources of timely price data and uses procedures and sound valuation models for addressing circumstances in which pricing data are not readily available or reliable. The Commission believes the proposed rule change is reasonably designed to deter the occurrence of Missed Submissions for CDS instruments that would undermine ICE Clear Europe's ability to maintain the integrity and effectiveness of its end-of-day price discovery process for the provision of reliable prices, which could, in turn, be used to enhance ICE Clear Europe's ability to establish and maintain risk-based margin requirements which rely, in part, on the end-of-day price submissions of Clearing Members.

For these reasons, the Commission believes that the proposed rule change is consistent with Rule 17Ad–22(e)(6)(iv).[24]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A(b)(3)(F) of the Act, Section 17A(b)(3)(G) of the Act, Section 17A(b)(3)(H) of the Act [25] and Rules 17Ad–22(e)(2) and 17Ad–22(e)(6)(iv) thereunder.[26]

It is therefore ordered pursuant to Section 19(b)(2) of the Act [27] that the proposed rule change (SR–ICEEU–2021–002), be, and hereby is, approved.[28]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2021–06119 Filed 3–24–21; 8:45 am]

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[19] 15 U.S.C. 78q–1(b)(3)(H).

[20] 15 U.S.C. 78q–1(b)(3)(H).

[21] 17 CFR 240.17Ad–22(e)(2).

[22] 17 CFR 240.17Ad–22(e)(2).

[23] 17 CFR 240.17Ad–22(e)(6)(iv).

[24] 17 CFR 240.17Ad–22(e)(6)(iv).

[25] 15 U.S.C. 78q–1(b)(3)(F), 15 U.S.C. 78q–1(b)(3)(G) and 15 U.S.C. 78q–1(b)(3)(H).

[26] 17 CFR 240.17Ad–22(e)(2) and 17 CFR 240.17Ad–22(e)(6)(iv).

[27] 15 U.S.C. 78s(b)(2).

[28] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91366; File No. SR–NYSEAMER–2021–14]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify the NYSE American Options Fee Schedule

March 19, 2021.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on March 10, 2021, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the NYSE American Options Fee Schedule (''Fee Schedule'') to extend the waiver of certain Floor-based fixed fees. The Exchange proposes to implement the fee change effective April 1, 2021. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to modify the Fee Schedule to extend the waiver of certain Floor-based fixed fees for market participants that have been unable to resume their Floor operations to a certain capacity level, as discussed below. The Exchange proposes to implement the fee change effective April 1, 2021.

On March 18, 2020, the Exchange announced that it would temporarily close the Trading Floor, effective Monday, March 23, 2020, as a precautionary measure to prevent the potential spread of COVID–19. Following the temporary closure of the Trading Floor, the Exchange waived certain Floor-based fixed fees for April, May and June 2020.[4] Although the Trading Floor partially reopened on May 26, 2020 and Floor-based open outcry activity is supported, certain participants have been unable to resume pre-Floor closure levels of operations. As a result, the Exchange extended the fee waiver through March 2021, but only for Floor Broker firms that were unable to operate at more than 50% of their March 2020 on-Floor staffing levels and for Market Maker firms that have vacant or ''unmanned'' Podia for the entire month due to COVID–19 related considerations (the ''Qualifying Firms'').[5] Because the Trading Floor will continue to operate with reduced capacity, the Exchange proposes to extend the fee waiver for Qualifying Firms through the earlier of the first full month of a full reopening of the Trading Floor facilities to Floor personnel or June 2021.[6]

Specifically, as with the prior fee waivers, the proposed fee waiver covers the following fixed fees for Qualifying Firms, which relate directly to Floor operations, are charged only to Floor participants and do not apply to participants that conduct business off-Floor:

- Floor Access Fee;
- Floor Broker Handheld;
- Transport Charges;
- Floor Market Maker Podia;
- Booth Premises; and
- Wire Services.[7]

The proposed fee change is designed to reduce monthly costs for all Qualifying Firms whose operations continue to be disrupted even though the Trading Floor has partially reopened. In reducing this monthly financial burden, the proposed change would allow Qualifying Firms that had Floor operations in March 2020 to reallocate funds to assist with the cost of shifting and maintaining their prior fully-staffed on-Floor operations to off-Floor and recoup losses as a result of the partial reopening. The Exchange believes that all Qualifying Firms would benefit from this proposed fee change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[9] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. 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

[4] *See* Securities Exchange Act Release Nos. 88595 (April 8, 2020), 85 FR 20737 (April 14, 2020) (SR–NYSEAMER–2020–25) (waiving Floor-based fixed fees); 88840 (May 8, 2020), 85 FR 28992 (May 14, 2020) (SR–NYSEAMER–2020–37) (extending April 2020 fee changes through May 2020); and 89049 (June 11, 2020), 85 FR 36649 (June 17, 2020) (SR–NYSEAMER–2020–44) (extending April and May fee changes through June 2020). *See also* Fee Schedule, Section III. Monthly Trading Permit, Rights, Floor Access and Premium Product Fees, and IV. Monthly Floor Communication, Connectivity, Equipment and Booth or Podia Fees.

[5] *See* Securities Exchange Act Release Nos. 89241 (July 7, 2020), 85 FR 42034 (July 13, 2020) (SR–NYSEAMER–2020–47); 89482 (August 5, 2020), 85 FR 48577 (August 11, 2020) (SR–NYSEAMER–2020–55); 89692 (August 27, 2020), 85 FR 54611 (September 2, 2020) (SR–NYSEAMER–2020–65); 90193 (October 15, 2020), 85 FR 67069 (October 21, 2020) (SR–NYSEAMER–2020–76); 90833 (December 30, 2020), 86 FR 641 (January 6, 2021) (SR–NYSEAMER–2020–87). *See also* Fee Schedule, Section III., Monthly Trading Permit, Rights, Floor Access and Premium Product Fees, and IV. Monthly Floor Communication, Connectivity, Equipment and Booth or Podia Fees.

[6] *See* proposed Fee Schedule, Section III., Monthly Trading Permit, Rights, Floor Access and Premium Product Fees, and IV. Monthly Floor Communication, Connectivity, Equipment and Booth or Podia Fees.

[7] *See id.*

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4) and (5).

broader forms that are most important to investors and listed companies.'' [10]

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[11] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in February 2021, the Exchange had less than 10% market share of executed volume of multiply-listed equity and ETF options trades.[12]

This proposed fee change is reasonable, equitable, and not unfairly discriminatory because it would reduce monthly costs for all Qualifying Firms whose operations have been disrupted despite the fact that the Trading Floor has partially reopened because of the social distancing requirements and/or other health concerns related to resuming operation on the Floor. In reducing this monthly financial burden, the proposed change would allow Qualifying Firms that had Floor operations in March 2020 to reallocate funds to assist with the cost of shifting and maintaining their prior fully-staffed on-Floor operations to off-Floor and recoup losses as a result of the partial reopening of the Floor. The Exchange believes that all Qualifying Firms would benefit from this proposed fee change.

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits as it merely continues the previous fee waiver for Qualifying Firms, which affects fees charged only to Floor participants and does not apply to participants that conduct business off-Floor. The Exchange believes it is an equitable allocation of fees and credits to extend the fee waiver for Qualifying Firms because such firms have either no more than half of their Floor staff (as measured by either the March 2020 or Exchange-approved) levels or have vacant podia—and this reduction in staffing levels on the Floor impacts the speed, volume and efficiency with which these firms can operate, which is to their financial detriment.

The Exchange believes that the proposal is not unfairly discriminatory because the proposed continuation of the fee waiver would affect all similarly-situated market participants on an equal and non-discriminatory basis.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act, the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed changes would encourage the continued participation of Qualifying Firms, thereby promoting market depth, price discovery and transparency and would enhance order execution opportunities for all market participants. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [13]

Intramarket Competition. The proposed change, which continues the fee waiver for all Qualifying Firms, is designed to reduce monthly costs for those Floor participants whose operations continue to be impacted, even though the Trading Floor has partially reopened. In reducing this monthly financial burden, the proposed change would allow Qualifying Firms that had Floor operations in March 2020 to reallocate funds to assist with the cost of shifting and maintaining their previously on-Floor operations to off-Floor. The Exchange believes that the proposed waiver of fees for Qualifying Firms would not impose a disparate burden on competition among market participants on the Exchange because off-Floor market participants are not subject to these Floor-based fixed fees. In addition, Floor-based firms that are not subject to the extent of staffing shortfalls as are Qualifying Firms, *i.e.,* such firms have more than 50% of their March 2020—or Exchange-approved—staffing levels on the Floor and/or have no vacant Podia during the month, do not face the same operational disruption and potential financial impact during the partial reopening of the Floor.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily favor one of the 16 competing option exchanges if they deem fee levels at a venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. Based on publicly-available information, and excluding index-based options, no single exchange currently has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[14] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in February 2021, the Exchange had less than 10% market share of executed volume of multiply-listed equity and ETF options trades.[15]

The Exchange believes that the proposed rule change reflects this competitive environment because it waives fees for Qualifying Firms and is designed to reduce monthly costs for Floor participants whose operations continue to be disrupted even though the Trading Floor has partially reopened. In reducing this monthly financial burden, the proposed change would allow affected participants to reallocate funds to assist with the cost of shifting and maintaining their prior fully-staffed on-Floor operations to off-Floor.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [16] of the Act and subparagraph (f)(2) of Rule 19b–4 [17] thereunder, because it establishes a due,

[10] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7–10–04) (''Reg NMS Adopting Release'').

[11] The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, *available here: https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics.*

[12] Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of ETF-based options, *see id.,* the Exchange's market share in multiply-listed equity and ETF options increased slightly from 8.42% for the month of February 2020 to 8.86% for the month of February 2021.

[13] *See* Reg NMS Adopting Release, *supra* note 10, at 37499.

[14] *See supra* note 11.

[15] Based on OCC data, *supra* note 12, the Exchange's market share in multiply-listed equity and ETF options was 8.42% for the month of February 2020 and 8.86% for the month of February 2021.

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(2).

fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [18] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMER–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–NYSEAMER–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–NYSEAMER–2021–14, and should be submitted on or before April 15, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2021–06123 Filed 3–24–21; 8:45 am]

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[18] 15 U.S.C. 78s(b)(2)(B).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91369; File No. SR–NYSENAT–2021–06]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE National Proprietary Market Data Fee Schedule

March 19, 2021.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on March 10, 2021, NYSE National, Inc. (''NYSE National'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE National Proprietary Market Data Fee Schedule (''Market Data Fee Schedule'') to adopt a billing dispute practice substantially similar to the practice adopted by another group of exchanges for their transaction and market data fees. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Market Data Fee Schedule to adopt a billing dispute practice similar to the practice adopted by another group of exchanges for their transaction and market data fees. As discussed below, the proposed provision would be substantially similar to provision in the fee schedules of the Cboe U.S. Equities markets—Cboe BZX Exchange, Inc. (''BZX Equities''),[4] Cboe BYX Exchange, Inc. (''BYX Equities''),[5] Cboe EDGA Exchange, Inc. (''EDGA Equities''),[6] Cboe EDGX Exchange, Inc. (''EDGX Equities'') [7]—and the Cboe U.S Options markets—Cboe Exchange, Inc. (''Cboe Options''),[8] Cboe C2 Exchange, Inc. (''C2

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* BZX Equities Fee Schedule, available at, *https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/. See also* Securities Exchange Act Release No. 90897 (January 11, 2021), 86 FR 4161 (January 15, 2021) (SR–CboeBZX–2020–094).

[5] *See* BYX Equities Fee Schedule, available at, *https://markets.cboe.com/us/equities/membership/fee_schedule/byx/. See also* Securities Exchange Act Release No. 90899 (January 11, 2021), 86 FR 4156 (January 15, 2021) (SR–CboeBYX–2020–034).

[6] *See* EDGA Equities Fee Schedule, available at, *https://markets.cboe.com/us/equities/membership/fee_schedule/edga/. See also* Securities Exchange Act Release No. 90900 (January 11, 2021), 86 FR 4149 (January 15, 2021) (SR–CboeEDGA–2020–032).

[7] *See* EDGX Equities Fee Schedule, available at, *https://markets.cboe.com/us/equities/membership/fee_schedule/edgx/. See also* Securities Exchange Act Release No. 90901 (January 11, 2021), 86 FR 4137 (January 15, 2021) (SR–CboeEDGX–2020–064).

[8] *See* Cboe Options Fee Schedule, footnote 7, available at, *https://cdn.cboe.com/resources/membership/Cboe_FeeSchedule.pdf. See also* Securities Exchange Act Release No. 91053 (February 3, 2021), 86 FR 8814 (February 9, 2021) (SR–Cboe–2021–010).

Options''),[9] the options platform of Cboe BZX Exchange, Inc. (''BZX Options''),[10] the options platform of Cboe EDGX Exchange, Inc. (''EDGX Options'') (collectively, the ''Cboe Exchanges'').[11] In addition, the Exchange and the Exchange's affiliates, New York Stock Exchange LLC (''NYSE''), NYSE American LLC (''NYSE American''), NYSE Arca, Inc. (''NYSE Arca'') and NYSE Chicago, Inc. (''NYSE Chicago'') as well as other equities and options markets [12] already have in place a similar billing dispute provision for transaction fees.

Background

The Exchange proposes to amend the Market Data Fee Schedule to adopt a billing dispute procedure to prevent market data subscribers from contesting their bills long after they have been sent an invoice. The Exchange and other equities and options markets already have a billing dispute procedure in effect for their transaction fees that allows for sixty (60) days to dispute billing errors.[13] The Cboe Exchanges also have a billing dispute procedure in place for both its equities markets and options markets and apply that procedure to both transaction fees and market data fees on each of the Cboe Exchanges.[14] In contrast to the other exchanges, the Cboe Exchanges' billing dispute policy allows for ''three full calendar months'' to dispute billing errors.[15] Similar to the Cboe Exchanges, the Exchange is proposing a ninety (90) day period for market data subscribers to dispute billing errors.

As proposed, all disputes concerning market data fees and credits billed by the Exchange would have to be submitted to the Exchange in writing and accompanied by supporting documentation. Further, all disputes would have to be submitted no later than ninety (90) days after receipt of a billing invoice. After ninety days, all market data fees assessed by the Exchange would be considered final. The Exchange believes that this requirement, which is substantially similar to that in place on the Cboe Exchanges,[16] will streamline the billing dispute process. The Exchange would resolve an error by crediting or debiting market data subscribers based on the fees or credits that should have applied and will make billing adjustments regardless of whether the error was discovered by the Exchange or by a subscriber that submitted a dispute to the Exchange.

The Exchange believes it is reasonable for market data subscribers to become aware of any potential billing errors within ninety (90) calendar days of receiving an invoice. The Exchange provides all subscribers on-line access to view their current subscriptions and their invoices. In addition to being able to view the level of their subscription, the Exchange also sends subscribers an invoice by mail each month. Given the tools that the Exchange provides to allow subscribers to monitor their billing, requiring that subscribers dispute an invoice within ninety (90) calendar days will encourage them to review their invoices promptly so that any disputed charges can be addressed in a timely manner while the information and data underlying those charges (*e.g.,* applicable fees and subscriber information) is still easily and readily available. This practice will avoid issues that may arise when subscribers do not dispute an invoice in a timely manner, and will conserve Exchange resources that would have to be expended to resolve untimely billing disputes.[17] As such, the proposed rule change would alleviate administrative burdens related to billing disputes, which could divert staff resources away from the Exchange's regulatory and business purposes. The proposed rule change to provide all fees and credits are final after ninety (90) days also provides both the Exchange and subscribers finality and the ability to close their books after a known period of time. Finally, the Exchange notes that it routinely conducts audits of its market data customers to ensure that customers are complying with the terms of the subscriber agreement they have signed. The audit process is independent of the billing process. The audit function is administered by the Exchange's market data compliance group and the billing function is administered by the Exchange's market data operations group. Each group is charged with distinct responsibilities that do not overlap. The proposed billing dispute provision is not intended to circumvent the audit process in any manner and the adoption of the ninety (90) day period to dispute billing errors would not affect subscribers' ability to take a position with respect to billing charges identified through the audit process.

In order for subscribers to be fully aware of this rule regarding fee disputes, the Exchange proposes to include the language proposed for the Market Data Fee Schedule on each customer invoice.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,[18] in general, and Section 6(b)(5) of the Act.[19] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

[9] *See* C2 Options Fee Schedule, available at, *https://markets.cboe.com/us/options/membership/fee_schedule/ctwo/. See also* Securities Exchange Act Release No. 91049 (February 3, 2021), 86 FR 8824 (February 9, 2021) (SR–C2–2021–002).

[10] *See* BZX Options Fee Schedule, available at, *https://markets.cboe.com/us/options/membership/fee_schedule/bzx/. See also* Securities Exchange Act Release No. 90897 (January 11, 2021), 86 FR 4161 (January 15, 2021) (SR–CboeBZX–2020–094).

[11] *See* EDGX Options Fee Schedule, available at, *https://markets.cboe.com/us/options/membership/fee_schedule/edgx/. See also* Securities Exchange Act Release No. 90901 (January 11, 2021), 86 FR 4137 (January 15, 2021) (SR–CboeEDGX–2020–064).

[12] *See* NASDAQ Equity Rules, Equity 7 (Pricing Schedule), Section 70(b) (all fee disputes must be submitted no later than 60 days after receipt of billing invoice, in writing and accompanied by supporting documentation); NASDAQ Options Rules, Options 7 (Pricing Schedule), Section 7(a)–(b) (same); NASDAQ BX Equity Rules, Equity 7 (Pricing Schedule), Section 111(b) (Collection of Exchange Fees and Other Claims and Billing Policy) (same); NASDAQ BX Options Rules, Options 7 (Pricing Schedule), Section 7(a)–(b) (BX Options Fee Disputes) (same); NASDAQ PHLX Equity Rules, Equity 7 (Pricing Schedule), Section 1(a) (same); NASDAQ PHLX Options Rules, Options 7 (Pricing Schedule), Section 1(a) (same); NASDAQ ISE Options Rules, Options 7 (Pricing Schedule), Section 1(b) (same); NASDAQ GEMX Options Rules, Options 7 (Pricing Schedule), Section 1(b) (same); NASDAQ MRX Options Rules, Options 7 (Pricing Schedule), Section 1(b) (same); MIAX Options Fee Schedule, available at *https://www.miaxoptions.com/sites/default/files/fee_schedule-files/MIAX_Options_Fee_Schedule_01_13_21.pdf* (same); MIAX Pearl Fee Schedule, available at *https://www.miaxoptions.com/sites/default/files/fee_schedule-files/MIAX_PEARL_Options_Fee_Schedule_03012021.pdf* (same); and MIAX Emerald Fee Schedule, available at *https://www.miaxoptions.com/sites/default/files/fee_schedule-files/MIAX_Emerald_Fee_Schedule_02_22_21.pdf* (same).

[13] *See id.*

[14] *See* notes 4–11, *supra.*

[15] The Cboe Exchanges' billing dispute policy provides, in relevant part: ''All fees and rebates assessed prior to the three full calendar months before the month in which the Exchange becomes aware of a billing error shall be considered final.''

[16] *See* notes 4–11, *supra.*

[17] The same rationale has been advanced by the other markets that have adopted a similar billing procedure. *See, e.g.,* Securities Exchange Act Release No. 71286 (January 14, 2014), 79 FR 3442, 3442 (January 21, 2014) (SR–ISE–2014–02).

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes the requirement to submit all billing disputes in writing, and with supporting documentation, within ninety (90) days from receipt of the invoice, is reasonable because, as noted above, the Exchange provides ample tools for market data subscribers to properly and swiftly monitor and account for various charges incurred in a given month. Also, the proposal is not unfairly discriminatory because it would apply equally to all market data subscribers. The proposed provision regarding fee disputes in the Market Data Fee Schedule promotes the protection of investors and the public interest by providing a clear and concise time frame for market data subscribers to dispute market data fees and for the Exchange to review such disputes in a timely manner. In addition, the proposed 90-day limitation promotes just and equitable principles of trade because it would be implemented prospectively on all market data subscribers, only applying to invoices issued after the proposed rule change becomes operative. Moreover, the proposed billing dispute language, which will lower the Exchange's administrative burden, is substantially similar to the billing dispute language adopted by the Cboe Exchanges,[20] and with the one difference noted above,[21] the proposed provision is same as that in place at the Exchange's affiliates for transaction fees and at other equities and options markets.[22]

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[23] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change, which would apply equally to all market data subscribers, would establish a clear process for billing disputes, and is substantially similar to rules adopted by the Cboe Exchanges and rules adopted by other equities and options markets as well as by the Exchange's affiliates for transaction fees. The Exchange does not believe the proposed rule change would impair the ability of market data subscribers or competing venues that also sell market data products to maintain their competitive standing in the financial markets. Moreover, because the Exchange does not propose to alter or modify specific fees or credits applicable to market data subscribers, the proposal does not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[24] and Rule 19b–4(f)(6) thereunder.[25] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[26] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSENAT–2021–06 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–2021–06. 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–2021–06 and should be submitted on or before April 15, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2021–06120 Filed 3–24–21; 8:45 am]

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[20] *See* notes 4–11, *supra.*

[21] Whereas the Exchange, its affiliates and other equities and options markets allow for sixty (60) days to dispute billing errors, the Cboe Exchanges' billing dispute policy allows for ''three full calendar months.'' *See* note 15, *supra.*

[22] *See* note 12, *supra.*

[23] 15 U.S.C. 78f(b)(8).

[24] 15 U.S.C. 78s(b)(3)(A)(iii).

[25] 17 CFR 240.19b–4(f)(6).

[26] 15 U.S.C. 78s(b)(2)(B).

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91368; File No. SR–BOX–2020–38]

Self-Regulatory Organizations; BOX Exchange LLC; Order Approving a Proposed Rule Change To Amend BOX Rule 7620 (Accommodation Transactions)

March 19, 2021.

I. Introduction

On December 10, 2020, BOX Exchange LLC (''BOX'' 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 amend BOX Rule 7620 (Accommodation Transactions) to allow Floor Brokers [3] to enter opening cabinet orders at a price of $1 per option contract on behalf of customers and Floor Market Makers,[4] and require all cabinet trades to follow the Exchange's existing open outcry rules pursuant to BOX Rule 7600 series. The proposed rule change was published for comment in the **Federal Register** on December 30, 2020.[5] On February 8, 2021, the Commission extended the time period within which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the proposed rule change.[6] The Commission received no comments on the proposed rule change. The Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

Currently, BOX Rule 7620 defines a ''cabinet order'' as ''a closing limit order at a price of $1 per option contract for the account of a customer or Floor Market Maker.'' [7] Only closing limit orders may be submitted as orders to the cabinet. Although BOX Rule 7620 specifies that ''opening orders'' are not cabinet orders, the rule currently allows opening orders to be matched with cabinet orders in certain specified circumstances.[8]

BOX proposes to amend BOX Rule 7620 to allow all cabinet trades (both opening and closing) to occur via open outcry pursuant to BOX's existing Rule 7600 series. To effectuate this change, BOX proposes to expand the definition of ''cabinet orders'' to include opening orders as well as closing orders.[9] Further, as proposed, the Exchange would preserve the primacy of existing closing cabinet orders by requiring cabinet orders, whether opening or closing, to yield priority to all existing closing cabinet orders represented by the trading crowd.[10] Cabinet trading would not be available in options classes participating in the Penny Interval Program.[11]

Further, under the proposal, as is the case today, only Floor Brokers would be permitted to represent cabinet orders and such orders would only be permitted to execute on the Exchange's Trading Floor.[12] The Exchange proposes to codify that cabinet orders would be subject to the existing BOX Rule 7600 series [13] and therefore would execute in open outcry in the same manner as all other orders execute on the Trading Floor (*i.e.,* in accordance with the order allocation, priority, and execution rules applicable to all Qualified Open Outcry (''QOO'') Orders).[14] In addition, under the proposal, cabinet orders would no longer be subject to separate manual recordation requirements and would instead be subject to the same systematization and order recordation requirements that currently apply to all other QOO Orders.[15]

III. Discussion and Commission Findings

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[16] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[17] which requires that the rules of an exchange be designed, among other things, 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 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 not be designed to permit unfair discrimination between customers, issuers, brokers or dealers. The Commission also finds that the proposed rule change is consistent with Section 6(b)(8) of the Act,[18] which requires that the rules of a national securities exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Commission believes that the proposed rule change to allow bids and offers (whether opening or closing) at a price of $1 per option contract to be executed by Floor Brokers in open outcry on the Exchange's Trading Floor subject to the existing BOX Rule 7600 series appears reasonably designed to provide market participants with an additional means by which they can close out worthless positions in series of options that are not actively traded and thereby avoid unwanted risk. According to the Exchange, opening cabinet trades are not profitable for participants, but participants can use them to change their risk profile. The Exchange asserts that the proposed change is in line with the primary purpose of cabinet trading in that it would allow participants to submit opening cabinet orders in series that are not actively traded to effectively close out (''synthetically'') the risk associated with current positions.[19] The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* BOX Rule 7540 (defining ''Floor Broker'' as ''an individual who is registered with the Exchange for the purpose, while on the Trading Floor, of accepting and handling options orders. A Floor Broker must be registered as an Options Participant prior to registering as a Floor Broker. A Floor Broker may take into his own account, and subsequently liquidate, any position that results from an error made while attempting to execute, as Floor Broker, an order.'').

[4] *See* BOX Rule 8510(b) (defining ''Floor Market Maker'' as an Options Participant of the Exchange located on the Trading Floor who has received permission from the Exchange to trade in options for his own account.'').

[5] *See* Securities Exchange Act Release No. 90792 (December 23, 2020), 85 FR 86610 (''Notice'').

[6] *See* Securities Exchange Act Release No. 91077, 86 FR 9403 (February 12, 2021), in which the Commission designated March 30, 2021 as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[7] *See* BOX Rule 7620.

[8] *See* BOX Rule 7620(c)–(e) (specifying limited circumstances in which an opening order may be matched with a cabinet order). *See also* Notice, *supra* note 5, at 86611–13.

[9] *See* proposed BOX Rule 7620. As proposed, ''cabinet orders'' would be defined as ''bids and offers (whether opening or closing) at a price of $1 per option contract for the account of a customer of Floor Market Maker.''

[10] *See* proposed BOX Rule 7620(c). *See also* Notice, *supra* note 5, at 86612–13.

[11] *See* proposed BOX Rule 7620(b).

[12] *See* BOX Rule 7620. *See also* Notice, *supra* note 5, at 86611.

[13] *See* Proposed BOX Rule 7620.

[14] *See* Notice, *supra* note 5, at 86611.

[15] *See* Notice, *supra* note 5, at 86612. Specifically, BOX Rule 7580(e)(1) would require Floor Brokers to contemporaneously upon receipt of a cabinet order to record specific information about the order onto the Floor Broker's order entry mechanism. *See id.* at 86612 n.17.

[16] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78f(b)(8).

[19] *See* Notice, *supra* note 5, at 86613. *See also* Notice, *supra* note 5, at 86611 n.9–10 and accompanying text (providing an example of the use of an opening cabinet order to synthetically

Commission believes that the proposed rule change will permit market participants to effectively close out worthless positions prior to their expiration using closing or opening cabinet orders in a manner that is consistent with the original purpose of the cabinet and in so doing will allow market participants to better manage their capital and risk exposures. In this regard, the Commission notes that all orders traded pursuant to BOX Rule 7620 must meet the proposed definition of ''cabinet order'' and be bona fide trades. Further, cabinet orders (whether opening or closing) may not be conducted for any improper purpose or be executed in a manner that would be inconsistent with the Exchange's other rules. For example, the Commission believes that it would be inconsistent with the just and equitable principles of trade for a participant to utilize the cabinet trading rules for the purpose of avoiding the exchange's minimum trading increment rules. The Commission believes subjecting cabinet orders to the same order entry, recordation, and processing requirements as currently apply to all QOO Orders will create an electronic audit trail for cabinet orders and should promote consistency and facilitate regulatory oversight of trading on the Trading Floor.

For the reasons set forth above, the Commission believes that the proposed rule change is consistent with the requirements of the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[20] that the proposed rule change (SR–BOX–2020–38) hereby is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Eduardo A. Aleman,

Deputy Secretary.

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close a Market Maker's position in a worthless option and thereby hedge unwanted portfolio risk).

[20] 15 U.S.C. 78s(b)(2).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91367; File No. SR–NYSEAMER–2021–15]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE American Equities Proprietary Market Data Fee Schedule and the NYSE American Options Proprietary Market Data Fee Schedule

March 19, 2021.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on March 10, 2021, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE American Equities Proprietary Market Data Fee Schedule and the NYSE American Options Proprietary Market Data Fee Schedule (together, ''Market Data Fee Schedules'') to adopt a billing dispute practice substantially similar to the practice adopted by another group of exchanges for their transaction and market data fees. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Market Data Fee Schedules to adopt a billing dispute practice similar to the practice adopted by another group of exchanges for their transaction and market data fees. As discussed below, the proposed provision would be substantially similar to provision in the fee schedules of the Cboe U.S. Equities markets—Cboe BZX Exchange, Inc. (''BZX Equities''),[4] Cboe BYX Exchange, Inc. (''BYX Equities''),[5] Cboe EDGA Exchange, Inc. (''EDGA Equities''),[6] Cboe EDGX Exchange, Inc. (''EDGX Equities'') [7]—and the Cboe U.S Options markets—Cboe Exchange, Inc. (''Cboe Options''),[8] Cboe C2 Exchange, Inc. (''C2 Options''),[9] the options platform of Cboe BZX Exchange, Inc. (''BZX Options''),[10] the options platform of Cboe EDGX Exchange, Inc. (''EDGX Options'') (collectively, the ''Cboe Exchanges'').[11] In addition, the Exchange and the Exchange's affiliates, New York Stock Exchange LLC (''NYSE''), NYSE Arca, Inc. (''NYSE Arca''), NYSE Chicago, Inc.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* BZX Equities Fee Schedule, available at, *https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/. See also* Securities Exchange Act Release No. 90897 (January 11, 2021), 86 FR 4161 (January 15, 2021) (SR–CboeBZX–2020–094).

[5] *See* BYX Equities Fee Schedule, available at, *https://markets.cboe.com/us/equities/membership/fee_schedule/byx/. See also* Securities Exchange Act Release No. 90899 (January 11, 2021), 86 FR 4156 (January 15, 2021) (SR–CboeBYX–2020–034).

[6] *See* EDGA Equities Fee Schedule, available at, *https://markets.cboe.com/us/equities/membership/fee_schedule/edga/. See also* Securities Exchange Act Release No. 90900 (January 11, 2021), 86 FR 4149 (January 15, 2021) (SR–CboeEDGA–2020–032).

[7] *See* EDGX Equities Fee Schedule, available at, *https://markets.cboe.com/us/equities/membership/fee_schedule/edgx/. See also* Securities Exchange Act Release No. 90901 (January 11, 2021), 86 FR 4137 (January 15, 2021) (SR–CboeEDGX–2020–064).

[8] *See* Cboe Options Fee Schedule, footnote 7, available at, *https://cdn.cboe.com/resources/membership/Cboe_FeeSchedule.pdf. See also* Securities Exchange Act Release No. 91053 (February 3, 2021), 86 FR 8814 (February 9, 2021) (SR–Cboe–2021–010).

[9] *See* C2 Options Fee Schedule, available at, *https://markets.cboe.com/us/options/membership/fee_schedule/ctwo/. See also* Securities Exchange Act Release No. 91049 (February 3, 2021), 86 FR 8824 (February 9, 2021) (SR–C2–2021–002).

[10] *See* BZX Options Fee Schedule, available at, *https://markets.cboe.com/us/options/membership/fee_schedule/bzx/. See also* Securities Exchange Act Release No. 90897 (January 11, 2021), 86 FR 4161 (January 15, 2021) (SR–CboeBZX–2020–094).

[11] *See* EDGX Options Fee Schedule, available at, *https://markets.cboe.com/us/options/membership/fee_schedule/edgx/. See also* Securities Exchange Act Release No. 90901 (January 11, 2021), 86 FR 4137 (January 15, 2021) (SR–CboeEDGX–2020–064).

(''NYSE Chicago'') and NYSE National, Inc. (''NYSE National'') as well as other equities and options markets [12] already have in place a similar billing dispute provision for transaction fees.

Background

The Exchange proposes to amend the Market Data Fee Schedules to adopt a billing dispute procedure to prevent market data subscribers from contesting their bills long after they have been sent an invoice. The Exchange and other equities and options markets already have a billing dispute procedure in effect for their transaction fees that allows for sixty (60) days to dispute billing errors.[13] The Cboe Exchanges also have a billing dispute procedure in place for both its equities markets and options markets and apply that procedure to both transaction fees and market data fees on each of the Cboe Exchanges.[14] In contrast to the other exchanges, the Cboe Exchanges' billing dispute policy allows for ''three full calendar months'' to dispute billing errors.[15] Similar to the Cboe Exchanges, the Exchange is proposing a ninety (90) day period for market data subscribers to dispute billing errors.

As proposed, all disputes concerning market data fees and credits billed by the Exchange would have to be submitted to the Exchange in writing and accompanied by supporting documentation. Further, all disputes would have to be submitted no later than ninety (90) days after receipt of a billing invoice. After ninety days, all market data fees assessed by the Exchange would be considered final. The Exchange believes that this requirement, which is substantially similar to that in place on the Cboe Exchanges,[16] will streamline the billing dispute process. The Exchange would resolve an error by crediting or debiting market data subscribers based on the fees or credits that should have applied and will make billing adjustments regardless of whether the error was discovered by the Exchange or by a subscriber that submitted a dispute to the Exchange.

The Exchange believes it is reasonable for market data subscribers to become aware of any potential billing errors within ninety (90) calendar days of receiving an invoice. The Exchange provides all subscribers on-line access to view their current subscriptions and their invoices. In addition to being able to view the level of their subscription, the Exchange also sends subscribers an invoice by mail each month. Given the tools that the Exchange provides to allow subscribers to monitor their billing, requiring that subscribers dispute an invoice within ninety (90) calendar days will encourage them to review their invoices promptly so that any disputed charges can be addressed in a timely manner while the information and data underlying those charges (*e.g.,* applicable fees and subscriber information) is still easily and readily available. This practice will avoid issues that may arise when subscribers do not dispute an invoice in a timely manner, and will conserve Exchange resources that would have to be expended to resolve untimely billing disputes.[17] As such, the proposed rule change would alleviate administrative burdens related to billing disputes, which could divert staff resources away from the Exchange's regulatory and business purposes. The proposed rule change to provide all fees and credits are final after ninety (90) days also provides both the Exchange and subscribers finality and the ability to close their books after a known period of time. Finally, the Exchange notes that it routinely conducts audits of its market data customers to ensure that customers are complying with the terms of the subscriber agreement they have signed. The audit process is independent of the billing process. The audit function is administered by the Exchange's market data compliance group and the billing function is administered by the Exchange's market data operations group. Each group is charged with distinct responsibilities that do not overlap. The proposed billing dispute provision is not intended to circumvent the audit process in any manner and the adoption of the ninety (90) day period to dispute billing errors would not affect subscribers' ability to take a position with respect to billing charges identified through the audit process.

In order for subscribers to be fully aware of this rule regarding fee disputes, the Exchange proposes to include the language proposed for the Market Data Fee Schedules on each customer invoice.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,[18] in general, and Section 6(b)(5) of the Act.[19] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes the requirement to submit all billing disputes in writing, and with supporting documentation, within ninety (90) days from receipt of the invoice, is reasonable because, as noted above, the Exchange provides ample tools for market data subscribers to properly and swiftly monitor and account for various charges incurred in a given month. Also, the proposal is not unfairly discriminatory because it would apply equally to all market data subscribers. The proposed provision regarding fee disputes in the Market Data Fee Schedules promotes

[12] *See* NASDAQ Equity Rules, Equity 7 (Pricing Schedule), Section 70(b) (all fee disputes must be submitted no later than 60 days after receipt of billing invoice, in writing and accompanied by supporting documentation); NASDAQ Options Rules, Options 7 (Pricing Schedule), Section 7(a)–(b) (same); NASDAQ BX Equity Rules, Equity 7 (Pricing Schedule), Section 111(b) (Collection of Exchange Fees and Other Claims and Billing Policy) (same); NASDAQ BX Options Rules, Options 7 (Pricing Schedule), Section 7(a)–(b) (BX Options Fee Disputes) (same); NASDAQ PHLX Equity Rules, Equity 7 (Pricing Schedule), Section 1(a) (same); NASDAQ PHLX Options Rules, Options 7 (Pricing Schedule), Section 1(a) (same); NASDAQ ISE Options Rules, Options 7 (Pricing Schedule), Section 1(b) (same); NASDAQ GEMX Options Rules, Options 7 (Pricing Schedule), Section 1(b) (same); NASDAQ MRX Options Rules, Options 7 (Pricing Schedule), Section 1(b) (same); MIAX Options Fee Schedule, available at *https://www.miaxoptions.com/sites/default/files/fee_schedule-files/MIAX_Options_Fee_Schedule_01_13_21.pdf* (same); MIAX Pearl Fee Schedule, available at *https://www.miaxoptions.com/sites/default/files/fee_schedule-files/MIAX_PEARL_Options_Fee_Schedule_03012021.pdf* (same); and MIAX Emerald Fee Schedule, available at *https://www.miaxoptions.com/sites/default/files/fee_schedule-files/MIAX_Emerald_Fee_Schedule_02_22_21.pdf* (same).

[13] *See id.*

[14] *See* notes 4–11, *supra.*

[15] The Cboe Exchanges' billing dispute policy provides, in relevant part: ''All fees and rebates assessed prior to the three full calendar months before the month in which the Exchange becomes aware of a billing error shall be considered final.''

[16] *See* notes 4–11, *supra.*

[17] The same rationale has been advanced by the other markets that have adopted a similar billing procedure. *See, e.g.,* Securities Exchange Act Release No. 71286 (January 14, 2014), 79 FR 3442, 3442 (January 21, 2014) (SR–ISE–2014–02).

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

the protection of investors and the public interest by providing a clear and concise time frame for market data subscribers to dispute market data fees and for the Exchange to review such disputes in a timely manner. In addition, the proposed 90-day limitation promotes just and equitable principles of trade because it would be implemented prospectively on all market data subscribers, only applying to invoices issued after the proposed rule change becomes operative. Moreover, the proposed billing dispute language, which will lower the Exchange's administrative burden, is substantially similar to the billing dispute language adopted by the Cboe Exchanges,[20] and with the one difference noted above,[21] the proposed provision is same as that in place at the Exchange's affiliates for transaction fees and at other equities and options markets.[22]

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[23] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change, which would apply equally to all market data subscribers, would establish a clear process for billing disputes, and is substantially similar to rules adopted by the Cboe Exchanges and rules adopted by other equities and options markets as well as by the Exchange's affiliates for transaction fees. The Exchange does not believe the proposed rule change would impair the ability of market data subscribers or competing venues that also sell market data products to maintain their competitive standing in the financial markets. Moreover, because the Exchange does not propose to alter or modify specific fees or credits applicable to market data subscribers, the proposal does not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[24] and Rule 19b–4(f)(6) thereunder.[25] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[26] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMER–2021–15 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–2021–15. 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–2021–15 and should be submitted on or before April 15, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2021–06118 Filed 3–24–21; 8:45 am]

BILLING CODE 8011–01–P

[20] *See* notes 4–11, *supra.*

[21] Whereas the Exchange, its affiliates and other equities and options markets allow for sixty (60) days to dispute billing errors, the Cboe Exchanges' billing dispute policy allows for ''three full calendar months.'' *See* note 15, *supra.*

[22] *See* note 12, *supra.*

[23] 15 U.S.C. 78f(b)(8).

[24] 15 U.S.C. 78s(b)(3)(A)(iii).

[25] 17 CFR 240.19b–4(f)(6).

[26] 15 U.S.C. 78s(b)(2)(B).

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91370; File No. SR–BX–2021–006]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Books and Records Rules and Update Obsolete NASD References in Its Rulebook

March 19, 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 March 8, 2021, Nasdaq BX, Inc. (''BX'' 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 update the Exchange's books and records provisions; update obsolete references to NASD rules in the Exchange's rulebook (''Rulebook''); and make other related and cleanup changes.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/bx/rules*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In 2008, the Financial Industry Regulatory Authority (FINRA) began a process to harmonize and streamline its rules by retiring, consolidating, and relocating NASD rules into the FINRA rulebook.[3] Consistent with those changes, the Exchange is proposing to update the Exchange's books and records provisions; replace outdated NASD references in its Rulebook; delete unnecessary or duplicative rule text; and consolidate certain Exchange rules. Additionally, the Exchange proposes to make some necessary cleanup changes to improve the readability of its Rulebook.

Generally, where appropriate, the Exchange will replace the term ''Association'' and the ''NASD'' acronym with the acronym ''FINRA.'' Specifically, the Exchange will provide cites to the updated FINRA rules and current internal references as provided in the relocated FINRA rules.

Additionally, the Exchange proposes to delete throughout its Rulebook the paragraphs that refer to the consolidation of NASD rules into the FINRA rulebook, since FINRA has completed the relocation of the NASD rules. Finally, the Exchange proposes to update internal cross-references as necessary.[4]

A. Books and Records Rules

The FINRA Books and Records Filing,[5] amended prior NASD Rule 3110 (Books and Records) and adopted the FINRA Rule 4510 Series (Books and Records Requirements). This new Rule 4510 Series included FINRA Rules 4511 (General Requirements), 4512 (Customer Account Information), 4513 (Records of Written Customer Complaints), 4514 (Authorization Records for Negotiable Instruments Drawn From a Customer's Account), and 4515 (Approval and Documentation of Changes in Account Name or Designation).

Nasdaq Books and Records Amendments

In 2012, The Nasdaq Stock Market's (''Nasdaq'') filed a proposal to mirror the FINRA Books and Records filing.[6] Nasdaq's filing renumbered its then Rule 3110 as Rule 3110A (which was later relocated under Nasdaq General 9, Section 30[7]) and adopted the Nasdaq Rule 4510A Series to parallel the provisions in the FINRA rulebook, as shown in the chart below:

Nasdaq books and records	FINRA books and records
Rule 4511A (Now Nasdaq Gen. 9, Section 43).	FINRA Rule 4511.
Rule 4512A (Now Nasdaq Gen. 9, Section 45).	FINRA Rule 4512.
Rule 4513A (Now Nasdaq Gen. 9, Section 44).	FINRA Rule 4513.
Rule 4514A (Now Nasdaq Gen. 9, Section 46).	FINRA Rule 4514.
Rule 4515A (Now Nasdaq Gen. 9, Section 47).	FINRA Rule 4515.

BX General 9, Section 30

Consistent with the 2012 Nasdaq filing and the Nasdaq rules listed above, the Exchange proposes to amend BX General 9, Section 30 and provide that Exchange members (and their associated persons) shall comply with FINRA Rule 4511 as if such rule were part of the Exchange's rules. Moreover as detailed below, the Exchange proposes to incorporate by reference FINRA Rules 4511 through 4515 under its respective General 9, Sections 43 through 47:

(1) General 9, Section 43

The Exchange proposes to incorporate the FINRA rule by reference, indicating that Exchange members and persons associated with a member shall comply with FINRA Rule 4511 as if such Rule were part of the Exchange rules. Additionally, the Exchange proposes that references to FINRA rules shall be construed as references to the rules of the Exchange rules, and that references to FINRA's books and records shall be construed as references to the Exchange's books and records.

(2) General 9, Section 44

The Exchange proposes to incorporate FINRA Rule 4513 by reference, indicating that Exchange members and persons associated with a member shall comply with FINRA Rule 4513 as if

[3] *See Information Notice,* March 28, 2008 (Rulebook Consolidation Process) at *https://www.finra.org/sites/default/files/NoticeDocument/p038121.pdf.*

[4] The Exchange will request an exemption from the rule filing requirements of Section 19(b) of the Exchange Act for those FINRA rules that it proposes to incorporate by reference. The proposed rule changes that are the subject of this filing will be operative upon the approval of the Exchange's request for an exemption under Section 36 of the Exchange Act from filing proposed rule changes.

[5] *See* Securities Exchange Act Release No. 63784 (January 27, 2011), 76 FR 5850 (February 2, 2011) (SR–FINRA–2010–052) (''FINRA Books and Records Filing'').

[6] *See* Securities Exchange Act Release No. 68123 (October 31, 2012), 77 FR 66658 (November 6, 2012) (SR–NASDAQ–2012–123).

[7] *See* Securities Exchange Act Release No. 87778 (December 17, 2019), 84 FR 70590 (December 23, 2019) (SR–NASDAQ–2019–098).

such Rule were part of the Exchange rules.

(3) General 9, Section 45

With the elimination of rule text within current General 9, Section 30, the Exchange proposes to adopt a new rule, similar to Nasdaq General 9, Section 45, which provides:

(a) Exchange members and persons associated with a member shall comply with FINRA Rule 4512 as if such Rule were part of the Exchange rules.

(b) For purposes of this Rule:

(1) References to Rule 3260 shall be construed as references to General 9, Section 19;

(2) references to Rules 2070, 2090, and 4512 shall be construed as references to General 9, Sections 29, 10, and this Rule, respectively;

(3) references to ''a prior FINRA rule'' shall be construed as references to ''a FINRA or Exchange rule in effect prior to the effectiveness of FINRA Rule 4512'';

(4) The Exchange and FINRA are parties to the Regulatory Contract pursuant to which FINRA has agreed to perform certain functions on behalf of the Exchange. Therefore, Exchange members are complying with this Rule by complying with FINRA Rule 4512 as written, including, for example, providing information required by FINRA staff. In addition, functions performed by FINRA, FINRA departments, and FINRA staff under this Rule are being performed by FINRA on behalf of the Exchange.

(4) General 9, Section 46

The Exchange proposes to incorporate FINRA Rule 4514 by reference, indicating that Exchange members and persons associated with a member shall comply with FINRA Rule 4514 as if such Rule were part of the Exchange rules.

(5) General 9, Section 47

The Exchange proposes to incorporate FINRA Rule 4515 by reference, indicating that Exchange members and persons associated with a member shall comply with FINRA Rule 4515 as if such Rule were part of the Exchange rules. Furthermore, the Exchange proposes that references to FINRA Rule 3260 shall be construed as references to Exchange's General 9, Section 19.

B. Global Changes

As previously indicated, the Exchange also proposes to replace the terms ''Association'' and/or ''NASD'' with the term ''FINRA,'' without making other accompanying changes to the rules (this will also include a few, necessary grammatical changes, such as removing where appropriate the word ''the''). Accordingly, the Exchange will update General 2, Section 5; General 9, Section 1(b); General 9, Section 3; General 9, Section 10; General 9, Section 21; General 9, Section 33; and Rules 2830; 2843; 2848; 11210; IM–11710; 11860; and 11870. The Exchange notes that it will not update references to NASD notices in its Rulebook. Specifically, the notices referenced in General 9, Section 20(e) (''NASD Notice to Members 97–19'') and Rule 4630(d) (''NASD Notice to Members 91–45'') will remain unchanged.

C. Specific NASD Rule Changes

The Exchange proposes the following changes to capture the amendments and relocation of rules in the FINRA rulebook. Additionally, the cross-references updates are intended to keep the Exchange's rules aligned with their corresponding FINRA rules:

General 2, Section 5. Regulation of the Exchange and Its Members

The Exchange proposes to update General 2, Section 5 (''Regulation of the Exchange and Its Members'') by splitting its subsection (b) into two separate subsections and, thus, follow the same rule structure of equivalent General 2, Section 5 in Nasdaq rulebook.

Additionally, as previously informed, given that FINRA has already completed the consolidation and relocation of the NASD rules, the Exchange proposes to delete current subsection (c).

General 2, Section 15. Business Continuity Plans

The Exchange proposes to update the NASD Rule 3510 reference in this rule and replace it with a reference to FINRA Rule 4370 (''Business Continuity Plans and Emergency Contact Information''). FINRA Rule 4370 was adopted to include NASD Rules 3510 (''Business Continuity Plans'') and NASD Rule 3520 (''Emergency Contact Information'') without substantive changes to the rule text.[8]

Additionally, the Exchange proposes to include a new paragraph (b) that will indicate that references in FINRA Rule 4370 to Rule 4517 shall be construed as references to Exchange's General 2, Section 16.

General 3, Section 1. Membership, Registration and Qualification Requirements

The Exchange proposes to make a cleanup change in General 3, Section 1. Specifically, the Exchange proposes to update the text in the rule's introductory text by replacing the reference to BX Rule 0120 with a reference to the General 1 and Equity 1 title. This change is made pursuant to the relocation of Exchange Rules 0111, 0112, 0113, 0120, and 0121 to General 1 and Equity 1 in 2019.[9]

Additionally, the Exchange will update the reference to the BX Rule 1200 Series with a reference to General 4 (''Registration Requirements''),[10] which currently incorporates by reference Nasdaq's registration rules.

General 9, Section 1. General Standards

The Exchange proposes to update the title of current Section 1(b), ''Trading Ahead of Customer Limit Order'' with a title consistent with Nasdaq and FINRA rules: ''Prohibition Against Trading Ahead of Customer Orders.''

Moreover, the Exchange proposes to update the introductory paragraph in Section 1(b), that currently points to NASD Interpretive Material 2110–2 with a reference to FINRA Rule 5320 (''Prohibition Against Trading Ahead of Customer Orders''). In 2009, FINRA proposed to integrate NASD IM–2110–2 and NASD Rule 2111 into FINRA Rule 5320, to govern members' treatment of customer orders and apply the new Rule 5320 to all equity securities uniformly, and to extend the application of NASD Rule 2111 to OTC equity securities.[11] In regard to this FINRA rule consolidation, the Exchange proposes to merge the contents of its Sections 1(b) and (h), as some of their contents will be otherwise duplicative.

Therefore, the Exchange proposes to delete Section 1(b)(1), which currently points to the term ''NASD Rules'' and provides a cross-reference to NASD Interpretive Material 2110–2(a). This is because Section 1(b)'s opening paragraph already requires members to comply with FINRA Rule 5320 as if it was an Exchange rule and FINRA Rule 5320 does not use the term ''NASD Rules.''

Similarly, because current FINRA Rule 5320 does not contain references to NASD's Board of Directors, the Exchange proposes to delete the text under current Section 1(b)(2) and renumber the subsequent subsections.

Moreover, to be consistent with FINRA Rule 5320, the Exchange proposes to remove, update, and insert new cross-references under renumbered Section 1(b)(1). The Exchange will thus delete the cross reference that currently

[8] *See* Securities Exchange Act Release No. 60534 (August 19, 2009), 74 FR 44410 (August 28, 2009) (SR–FINRA–2009–036).

[9] *See* Securities Exchange Act Release No. 87468 (November 5, 2019), 84 FR 61091 (November 12, 2019) (SR–BX–2019–039).

[10] *See* Securities Exchange Act Release No. 85726 (April 26, 2019), 84 FR 18908 (May 2, 2019) (SR–BX–2019–010).

[11] *See* Securities Exchange Act Release No. 63895 (February 11, 2011), 76 FR 9386 (February 17, 2011) (SR–FINRA–2009–090).

points to NASD Rules 2110 since no equivalent rule is provided under FINRA Rule 5320; relatedly, the Exchange will delete the reference to General 9, Section 1. The Exchange also proposes to replace the references to NASD Rules 2320 and 3110, respectively, with references to FINRA Rules 5310, and 4512 and provide the corresponding references in the Exchange rulebook. The Exchange proposes also to insert a cross-reference to FINRA Rule 7440 and the equivalent Exchange Rule 7440A.

The Exchange proposes to delete the text under renumbered Section 1(b)(3) and insert clarifying text indicating that FINRA Rule 5320.02(b) and the reference to Rule 6420 therein shall be disregarded. This is because the Exchange does not list or trade over the counter securities (''OTC'').

The Exchange proposes to update renumbered Section 1(b)(4) since the exemption referenced in it is now located in FINRA Rule 5320, Supplementary Material .03. Relatedly, the Exchange will insert in renumbered Section 1(b)(4) clarifying text indicating that members will comply with the rule's reporting requirements.

The Exchange proposes to update Section 1(c) by replacing the reference to NASD Interpretive Material 2110–3 with a reference to FINRA Rule 5270 (''Front Running of Block Transactions''), which FINRA adopted to broaden the scope of the NASD rule and provide further clarity into activity that FINRA believes is inconsistent with just and equitable principles of trade.[12]

The Exchange also proposes to update Section 1(f) by replacing the reference to NASD Interpretive Material 2110–6 with a reference to FINRA Rule 2232 (''Customer Confirmations''). FINRA Rule 2232 was adopted to streamline and consolidate basic customer confirmation requirements in NASD Rule 2230, NASD IM–2110–6, and Incorporated NYSE Rule 409(f).[13]

The Exchange proposes to update Section 1(g) by replacing the reference to NASD Interpretive Material 2110–7 with a reference to FINRA Rule 2140 (''Interfering With the Transfer of Customer Accounts in the Context of Employment Disputes''). FINRA Rule 2140 was adopted without any material changes to the NASD rule text.[14]

Finally, following the deletion of Section 1(h), the Exchange proposes to re-letter current Section 1(i) (''Use of Manipulative, Deceptive or Other Fraudulent Devices'') as Section 1(h).

General 9, Section 3. Communications With the Public and Section 4. Institutional Sales Material and Correspondence

In 2012, FINRA adopted Rule 2210 (''Communications with the Public'') to encompass, among other provisions, NASD Rules 2210 and 2211, and NASD Interpretive Materials 2210–1 and 2210–4.[15] The Exchange proposes to consolidate the text of General 9, Sections 3 and 4 into current Section 3 and reserve current Section 4, as explained below.

Current General 9, Section 3(a) incorporates by reference NASD Rule 2210 (''Communications with the Public''). The Exchange proposes to update this reference with the name ''FINRA.''

The Exchange also proposes to delete Section 3(b) which currently incorporates by reference NASD IM–2210–1 which, as explained above, was merged into FINRA Rule 2210. Updating current Section 3(b) to incorporate FINRA Rule 2210 will make Section 3(b) redundant. Therefore, Section 3(b) will be deleted as it is no longer necessary. Following the deletion of Section 3(b), the Exchange will re-letter current Section 3(c) as (b), without any changes to the rule text.

The Exchange proposes to delete General 9, Section 4 and relocate some of its contents under current General 9, Section 3. General 9, Section 4(a) will be deleted because Section 3(a) already incorporates the provisions from NASD Rule 2211 which were merged into current FINRA Rule 2210.

Furthermore, the Exchange believes that the exception in current Section 4(a) concerning NASD Rule 2211(d)(3) does not need to be added to General 9, Section 3(a), because that provision is no longer referenced in FINRA Rule 2210.

The Exchange also proposes to adopt current Section 4(b)(1) as Section 3(c), with a minor change. New Section 3(c) will provide that references to FINRA ''membership'' will be construed as references to membership with the Exchange.

Finally, the Exchange proposes to adopt part of the text in current Section 4(b)(2) as Section 3(d). New Section 3(d) will omit references to FINRA Rule 2210 (as such incorporation is already provided in Section 3(a)) and will state that references to FINRA Rules 4512[16] and 3110[17] shall be read, respectively, as references to General 9, Section 45 and Section 20.

General 9, Section 9. Fairness Opinions

The Exchange proposes to update the NASD Rule 2290 reference in this rule and replace it with a reference to FINRA Rule 5150 (''Fairness Opinions''). The aforementioned NASD rule was relocated to FINRA Rule 5150 with no changes to the rule text.[18]

General 9, Section 10. Recommendations to Customers (Suitability)

The Exchange proposes to update the NASD Rule 2310 reference in this rule and replace it with a reference to FINRA Rule 2111 (''Suitability''). The FINRA Suitability rule was adopted in 2010 to include NASD Rule 2310 (Recommendations to Customers (Suitability)) and its related Interpretative Materials.[19]

As previously described, the Exchange will delete the paragraphs that refer to FINRA consolidating the NASD rules into a new FINRA rulebook, since such relocation has been completed. Concerning the second paragraph in Section 10(a), the Exchange notes that it will also delete the cross-reference to Rule 3110, since such reference was not relocated when NASD Rule 2310 was merged into FINRA Rule 2111.

The Exchange also proposes to delete Section 10(b) since, as already described, NASD Rule 2310's interpretive materials were merged into FINRA Rule 2111, which would make Section 10(b) duplicative.

Moreover, the Exchange proposes to assign the letter (b) to the text that begins with ''For purposes of . . .'' and make the following changes:

The Exchange will insert a new subsection (1) which will provide that any references to Rules 2111 and 4512 in FINRA Rule 2111 shall be construed, respectively, as references to Exchange's General 9, Section 10 and 45.

The Exchange will also renumber the next paragraph as (2) and replace the references to ''Association's Rules'' and ''Association Rules'' with the term ''FINRA rules''.

[12] *See* Securities Exchange Act Release No. 67774 (September 4, 2012), 77 FR 55519 (September 10, 2012) (SR–FINRA–2012–025).

[13] *See* Securities Exchange Act Release No. 63150 (October 21, 2010), 75 FR 66173 (October 27, 2010) (SR–FINRA–2009–058).

[14] *See* Securities Exchange Act Release No. 59495 (March 3, 2009), 74 FR 10632 (March 11, 2009) (SR–FINRA–2008–052).

[15] *See* Securities Exchange Act Release No. 66681 (March 29, 2012), 77 FR 20452 (April 4, 2012) (SR–FINRA–2011–035).

[16] *See supra* note 5.

[17] *See* Securities Exchange Act Release No. 71179 (December 23, 2013), 79 FR 79542 (December 30, 2013) (SR–FINRA–2013–025).

[18] *See* Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (SR–FINRA–2008–028).

[19] *See* Securities Exchange Act Release No. 63325 (November 17, 2010), 75 FR 71479 (November 23, 2010) (SR–FINRA–2010–039).

The Exchange will next delete the paragraph that refers to NASD's District Business Conduct Committees and Board of Governors, as such references are not provided in the current FINRA Suitability rule. Similarly, the Exchange will delete the paragraph that references the term ''Association'' since such term is not in the current FINRA rule. Furthermore, the Exchange will also delete the reference to Rule 2840 as such rule is not referenced in FINRA Rule 2111.

The Exchange will insert a new subsection (3) which will clarify that references to Rule 2214 shall be disregarded, and no comparable Exchange Rule shall apply to activities of Exchange Members in connection with investment analysis tools.[20]

Finally, the Exchange proposes to delete the rule text in current Section 10(c) since, as already explained, the Interpretive Materials of NASD Rule 2310 were merged into the FINRA Suitability rule. In its place, the Exchange proposes to adopt the same cross-reference found in Nasdaq's General 9, Section 10(c) to provide that Exchange members will comply with FINRA Rule 2090 (''Know Your Customer'') as if such rule was part of the Rules of the Exchange.

General 9, Section 12. Customer Account Statements

The Exchange proposes to update the NASD Rule 2340 reference in this rule and replace it with a reference to FINRA Rule 2231 (''Customer Account Statements''). FINRA Rule 2231 was adopted without any substantive changes to the NASD rule text.[21]

Moreover, the Exchange proposes to amend Section 12(b) to provide that references in FINRA Rule 2231 to FINRA Rule 2310 (''Direct Participation Programs'') shall be construed as a reference to the corresponding BX Rule 2310A. Additionally, the Exchange proposes to replace the reference to NASD Rule 3110 with FINRA Rule 4512 (''Customer Account Information'') and insert its corresponding cross-reference to General 9, Section 45. Finally, the Exchange proposes to delete the word ''Equity'' (used twice in the subsection) and re-arrange the rules in Section 12(b) to match their corresponding references in the Nasdaq rulebook.

General 9, Section 13. Margin Disclosure Statement

The Exchange proposes to update the NASD Rule 2341 reference in this rule and replace it with a reference to FINRA Rule 2264 (''Margin Disclosure Statement''). FINRA Rule 2264 was adopted with only minor changes to the text of NASD Rule 2341, and those changes were intended to clarify the submission of disclosure statements.[22]

The Exchange also proposes to amend Section 13(b) by updating the reference to NASD Rule 3110 with FINRA Rule 4512 [23] and insert its corresponding cross-reference to General 9, Section 45.

General 9, Section 14. Approval Procedures for Day-Trading Accounts

The Exchange proposes to update the second sentence in Section 14(a) that currently refers to NASD Rule 2361 with FINRA Rule 2270. FINRA Rule 2270 was adopted with minor changes to the text of NASD Rule 2361.[24] The Exchange proposes to insert text indicating that a reference to FINRA Rule 2270 shall be construed as a reference to General 9, Section 14.

The Exchange also proposes to amend Section 14(a) by updating the reference to NASD Rule 3110 with FINRA Rules 4511 and 4512 [25] and their corresponding references to General 9, Sections 30 and 45 (as indicated in the preceding paragraph, the Exchange is cross-referencing General 9, Section 14 with FINRA Rule 2270, and thus cross-referencing this Section 14 with FINRA's Books and Records rules is unnecessary). Finally, the Exchange will insert text indicating that references to FINRA Rules 4210 shall be construed as references to General 9, Section 38.

Similarly, the Exchange proposes to update the second paragraph in Section 14(b) that currently refers to NASD Rule 2360 with a reference to FINRA Rule 2130. FINRA Rule 2130 was adopted with minor changes to the text of NASD Rule 2360.[26] The Exchange also proposes to amend Section 14(b) by updating the reference to NASD Rule 3110 with FINRA Rule 4512 [27] and the corresponding reference to General 9, Section 30 with Section 45, because it corresponds to FINRA Rule 4512.

General 9, Section 16. Charges for Services Performed

The Exchange proposes to update the NASD Rule 2430 reference in this rule and replace it with a reference to FINRA Rule 2122 (''Charges for Services Performed''). FINRA Rule 2122 was adopted without any substantive changes to the NASD rule text.[28]

General 9, Section 17. Net Transactions With Customers

The Exchange proposes to update the NASD Rule 2441 reference in this rule and replace it with a reference to FINRA Rule 2124 (''Net Transactions with Customers''). FINRA Rule 2124 was adopted without any substantive changes to the NASD rule text.[29] The Exchange also proposes to update the a cross-reference to NASD Rule 3110 with references to FINRA Rules 4511 and 4512, which have a corresponding Exchange rule under General 9, Sections 30 and 45.

General 9, Section 19. Discretionary Accounts

The Exchange proposes to letter the first paragraph as subsection (a) and update the NASD Rule 2510 reference in this rule and replace it with a reference to FINRA Rule 3260 (''Discretionary Accounts''). FINRA Rule 3260 was adopted without any substantive changes to the NASD rule text.[30]

Moreover, the Exchange will letter the last paragraph in Section 19 as subsection (b) and update the cross-references to NASD rules with their respective equivalent FINRA rules. Specifically, the Exchange will replace the NASD Rule 3010 reference with FINRA Rule 3110. Additionally, the Exchange will replace the NASD Rule 3110 reference with FINRA Rule 4512.[31] Finally, the Exchange proposes to replace the reference to General 9, Section 30 with Section 45, because it corresponds to FINRA Rule 4512.

General 9, Section 21. Supervisory Control System and Section 22. Annual Certification of Compliance and Supervisory Processes

The Exchange proposes to consolidate Sections 21 and 22 into one rule, Section 21 (''Supervisory Control System, Annual Certification of Compliance and Supervisory Processes''), as explained below. First, the Exchange proposes to update the

[20] The Exchange notes that a correction shall be made in a future filing to current Nasdaq General 9, Section 10(b)(3), which currently points to NASD IM–2210–6, which has been relocated and should actually refer to FINRA Rule 2214.

[21] *See* Securities Exchange Act Release No. 85589 (April 10, 2019), 84 FR 15646 (April 16, 2019) (SR–FINRA–2019–009).

[22] *See* Securities Exchange Act Release No. 60697 (September 21, 2009), 74 FR 49051 (September 25, 2009) (SR–FINRA–2009–052).

[23] *See supra* note 5.

[24] *See* Securities Exchange Act Release No. 61059 (November 24, 2009), 74 FR 62847 (December 1, 2009) (SR–FINRA–2009–059).

[25] *See supra* note 5.

[26] *See supra* note 24.

[27] *See supra* note 5.

[28] *See* Securities Exchange Act Release No. 73714 (December 2, 2014), 79 FR 72743 (December 8, 2014) (SR–FINRA–2014–049).

[29] *See supra* note 8.

[30] *See supra* note 21.

[31] *See supra* note 5.

NASD Rule 3012 reference in this rule and replace it with a reference to FINRA Rule 3120 (''Supervisory Control System''). FINRA Rule 3120 retained the former NASD rule's testing and verification requirements for the member's supervisory procedures and provided requirements for members reporting $200 million or more in gross revenue.[32]

Second, the Exchange proposes to adopt as new Section 21(c) (''Annual Certification of Compliance and Supervisory Processes'') the text in current Section 22(c). Further, the Exchange will update in the relocated subsection the reference to NASD Rule 3013 and replace it with a reference to FINRA Rule 3130 (''Annual Certification of Compliance and Supervisory Processes''). FINRA Rule 3130 was adopted to streamline and combine the requirements of NASD Rule 3013 and IM–3013.[33]

Third, the Exchange proposes to adopt the text under Section 22(c) that begins with the words: ''For purposes of this Rule . . .'' and letter them as new Section 21(d). In Section (d)(2), as previously explained, the Exchange will update the reference to NASD Rule 3013 with FINRA Rule 3130, which shall be read as a reference to Exchange's corresponding rule under General 9, Section 21. Similarly, the Exchange proposes to update the cross-reference to NASD Rule 2110 with FINRA Rule 2010. In 2008, NASD Rule 2110 was renumbered as FINRA Rule 2010 with no changes to the rule text.[34] Additionally, the Exchange will change the General 9, Section 22 reference, which will be reserved, with a reference to Section 21. Moreover, the Exchange proposes to change the reference to General 9, Section 1 with Section 1(a), because it corresponds to FINRA Rule 2010.

Finally, the Exchange will delete and reserve current General 9, Section 22, since its subsections will be duplicative of subsections in Section 21 after the proposed changes.

General 9, Section 23. Outside Business Activities of an Associated Person

The Exchange proposes to update the NASD Rule 3030 reference in this rule and replace it with a reference to FINRA Rule 3270 (''Outside Business Activities of Registered Persons''). FINRA Rule 3270 was adopted to harmonize and simplify the events that constitute an outside business activity, expanding upon the obligations imposed in NASD Rule 3030, by prohibiting any registered person from doing business with another person as a result of any business activity outside the scope of the relationship with his or her member firm, unless prior written notice was provided to the member.[35]

Moreover, the Exchange will update the duplicative cross-reference to NASD Rule 3030 in Section 23(b) (which should have been a reference to NASD Rule 3040) and replace it with a reference to FINRA Rule 3280.[36] The Exchange proposes also to update the reference to General 9, Section 23 with Section 24 (''Private Securities Transactions of an Associated Person''), because it corresponds to FINRA Rule 3280.

General 9, Section 24. Private Securities Transactions of an Associated Person

The Exchange proposes to update the NASD Rule 3040 reference in this rule and replace it with a reference to FINRA Rule 3280 (''Private Securities Transactions of an Associated Person''). FINRA Rule 3280 was adopted without any substantive changes to the NASD rule text.[37]

The Exchange will also update the duplicative cross-reference in Section 24(b)(1) to NASD Rule 3040 (which should have been actually a reference to NASD Rule 3050) with a reference to FINRA Rule 3210.[38] The Exchange proposes also to update the reference to General 9, Section 24 with Section 25 (''Transactions for or by Associated Persons''), because it incorporates FINRA Rule 3210.

Furthermore, the Exchange proposes to correct a typo in the quoted text in General 9, Section 24(b)(2). Specifically, the Exchange will substitute the word ''immediately'' with ''immediate.''

The Exchange proposes also to replace a reference to NASD Rule 2790 with FINRA Rule 5130.[39] The definition of ''immediate family member,'' cross-referenced in General 9, Section 24(b)(2), is currently located under FINRA Rule 5130(i)(5).

General 9, Section 25. Transactions for or by Associated Persons

The Exchange proposes to update the NASD Rule 3050 reference in this rule and replace it with a reference to FINRA Rule 3210 (''Accounts At Other Broker-Dealers and Financial Institutions''). FINRA Rule 3210 was adopted to consolidate NASD Rule 3050, Incorporated NYSE Rules 407 and 407A, and Incorporated NYSE Rule Interpretations 407/01 and 407/02. The rule was designed to streamline the provisions of the NASD and incorporated NYSE rules and to help facilitate effective oversight of the specified trading activities of associated persons of member firms.[40]

General 9, Section 26. Influencing or Rewarding Employees of Others

The Exchange proposes to update the NASD Rule 3060 reference in this rule and replace it with a reference to FINRA Rule 3220 (''Influencing or Rewarding Employees of Others''). FINRA Rule 3220 was adopted without any material changes to the NASD rule text.[41]

General 9, Section 28. Disclosure to Associated Persons When Signing Form U4

The Exchange proposes to update the NASD Rule 3080 reference in this rule and replace it with a reference to FINRA Rule 2263 (''Arbitration Disclosure to Associated Persons Signing or Acknowledging Form U4''). NASD Rule 3080 was transferred into FINRA Rule 2263 which was adopted to improve and clarify the disclosure requirement of Form U4.[42]

General 9, Section 31. Use of Information Obtained in Fiduciary Capacity

The Exchange proposes to update the NASD Rule 3120 reference in this rule and replace it with a reference to FINRA Rule 2060 (''Use of Information Obtained in Fiduciary Capacity''). FINRA Rule 2060 was adopted without any changes to the NASD rule text.[43]

[32] *See supra* note 17.

[33] See Securities Exchange Act Release No. 58661 (September 26, 2008), 73 FR 57395 (October 2, 2008) (SR–FINRA–2008–030).

[34] *See supra* note 18.

[35] See Securities Exchange Act Release No. 62762 (August 23, 2010), 75 FR 53362 (August 31, 2010) (SR–FINRA–2009–042).

[36] See Securities Exchange Act Release No. 75757 (August 25, 2015), 80 FR 52530 (August 31, 2015) (SR–FINRA–2015–030).

[37] Id. *See also* Securities Exchange Act Release No. 80105 (February 24, 2017), 82 FR 12387 (March 2, 2017) (SR–FINRA–2017–004).

[38] See Securities Exchange Act Release No. 77550 (April 7, 2016), 81 FR 21924 (April 13, 2016) (SR–FINRA–2015–029).

[39] See Securities Exchange Act Release No. 58421 (August 25, 2008), 73 FR 51032 (August 29, 2008) (SR–FINRA–2008–025).

[40] *See supra* note 38.

[41] *See* Securities Exchange Act Release No. 58660 (September 26, 2008), 73 FR 57393 (October 2, 2008) (SR–FINRA–2008–027).

[42] *See* Securities Exchange Act Release No. 60348 (July 20, 2009), 74 FR 37077 (July 27, 2009) (SR–FINRA–2009–019).

[43] See Securities Exchange Act Release No. 61071 (November 30, 2009), 74 FR 64109 (December 7, 2009) (SR–FINRA–2009–067).

General 9, Section 33. Reporting Requirements for Clearing Firms

The Exchange proposes to update the NASD Rule 3150 reference in this rule and replace it with a reference to FINRA Rule 4540 (''Reporting Requirements for Clearing Firms''). FINRA Rule 4540 was adopted without any substantive changes to the NASD rule text.[44]

General 9, Section 34. Extensions of Time Under Regulation T and SEC Rule 15c3–3

The Exchange proposes to update the NASD Rule 3160 reference in this rule and replace it with a reference to FINRA Rule 4230 (''Required Submissions for Requests for Extensions of Time Under Regulation T and SEA Rule 15c3–3''). FINRA Rule 4230 was adopted largely based on the text of NASD Rule 3160, with a clarification to the original rule text regarding the reporting obligations of clearing members.[45]

General 9, Section 38. Margin Requirements

The Exchange proposes to update the NASD Rule 2520 references in this rule and replace it with references to FINRA Rule 4210 (''Margin Requirements''). In 2010, NASD Rules 2520, 2521, 2522, and IM–2522 were combined and consolidated into a single rule intended to improve the organization of margin rules and improve their readability.[46]

General 9, Section 49. Payments Involving Publications That Influence the Market Price of a Security

The Exchange proposes to update the NASD Rule 2711 reference in this rule and replace it with a reference to FINRA Rule 2241 (''Research Analysts and Research Reports''). Specifically, the research report's definition referenced in General 9, Section 49(b)(3) was relocated to current FINRA Rule 2241(a)(11). That definition was amended to exclude communications concerning open-end registered investment companies not listed or traded on an exchange.[47]

Exchange Rule 2830. Investment Company Securities

The Exchange proposes to update the NASD Rule 2830 reference in this rule and replace it with a reference to FINRA Rule 2341 (''Investment Company Securities''). FINRA Rule 2341 was adopted without any substantive changes to the NASD rule text.[48]

Moreover, to be consistent with cross-reference updates in current FINRA Rule 2341, the Exchange will update the cross-reference to NASD Rule 2820 with FINRA Rule 2320. Additionally, the Exchange will update Rule 2830(b)(3) by replacing the NASD Rule 2420 reference with FINRA Rule 2040 and update the rule text to track the text of FINRA Rule 2040(a). Finally, the Exchange will replace the NASD Rule 2230 reference with FINRA Rule 2232.

Exchange Rule 2843. Account Approval

The Exchange proposes to update the references to NASD Rules 2860(b)(16) and 2843 in this rule and replace them with references to FINRA Rules 2360(b)(16) (''Opening of Accounts'') and 2352 (''Account Approval''). FINRA Rule 2360(b)(16) was adopted with minor changes to its rule text and FINRA Rule 2352 was adopted without any substantive changes to its rule text.[49]

Exchange Rule 2844. Suitability

The Exchange proposes to update the reference to NASD Rules 2860(b)(19) and 2844 in this rule and replace them with references to FINRA Rules 2360(b)(19) (''Suitability'') and 2353 (''Suitability''). FINRA Rules 2360(b)(19) and 2353 were adopted without any substantive changes to their respective rule text.[50]

Exchange Rule 2845. Discretionary Accounts

The Exchange proposes to update the reference to NASD Rules 2860(b)(18) and 2845 in this rule and replace them with references to FINRA Rules 2360(b)(18) (''Discretionary Accounts'') and 2354 (''Discretionary Accounts''). FINRA Rules 2360(b)(18) and 2354 were adopted without any substantive changes to their respective rule text.[51]

Moreover, to be consistent with cross-reference updates in current FINRA Rule 2360(b)(18), the Exchange proposes to update the cross-reference to NASD Rules 2510 and 3110(c)(4), respectively, with FINRA Rules 3260 and 4512(c). Relatedly, the Exchange proposes to update the references to Exchange Rules 2510 and 3110(c)(4), respectively, with a reference to General 9, Sections 19 and 45.[52]

Exchange Rule 2846. Supervision of Accounts

The Exchange proposes to update the reference to NASD Rules 2860(b)(20) and 2846 in this rule and replace them with references to FINRA Rules 2360(b)(20) (''Supervision of Accounts'') and 2355 (''Supervision of Accounts''). FINRA Rules 2360(b)(20) and 2355 were adopted without any substantive changes to their respective rule text.[53]

Moreover, to be consistent with cross-reference updates in current FINRA Rule 2360(b)(20), the Exchange proposes to update the cross-reference to NASD Rules 3010, 3012, and 3013, respectively, with FINRA Rules 3110, 3120, and 3130. Relatedly, the Exchange proposes to update the references to Exchange Rules 3010, 3012, and 3013 with respective references to General 9, Sections 20 and 21.[54]

Exchange Rule 2847. Customer Complaints

The Exchange proposes to update the reference to NASD Rules 2860(b)(17)(A) and 2847 in this rule and replace them with references to FINRA Rules 2360(b)(17)(A) and 2356. FINRA Rules 2360(b)(17)(A) and 2356 were adopted without any substantive changes to their respective rule text.[55]

Moreover, to be consistent with cross-reference updates in current FINRA Rule 2360(b)(17)(A), the Exchange proposes to update the cross-reference to NASD Rule 3110 with references to FINRA Rules 2268 and the Rule 4510 Series. Relatedly, the Exchange proposes to update the references to Exchange Rule 3110 with a reference to General 9, Section 30.[56] Finally, the Exchange proposes to add text indicating that the reference to Rule 5340 shall be disregarded as such rule does not apply to the Exchange, as the Exchange does not pre-time stamp order tickets in connection with block positioning.

Exchange Rule 2848. Communications With the Public and Customers Concerning Index Warrants, Currency Index Warrants, and Currency Warrants

The Exchange proposes to update the reference to NASD Rule 2848 in this rule and replace it with a reference to FINRA Rule 2357 (''Communications with the Public and Customers

[44] *See supra* note 21.

[45] *See* Securities Exchange Act Release No. 62482 (July 12, 2010), 75 FR 41562 (July 16, 2010) (SR–FINRA–2010–024).

[46] *Id.*

[47] See Securities Exchange Act Release No. 75471 (July 16, 2015), 80 FR 43482 (July 22, 2015) (SR–FINRA–2014–047).

[48] *See* Securities Exchange Act Release No. 78130 (June 22, 2016), 81 FR 42016 (June 28, 2016) (SR–FINRA–2016–019).

[49] *See* Securities Exchange Act Release No. 58932 (November 12, 2008), 73 FR 69696 (November 19, 2008) (SR–FINRA–2008–032).

[50] *Id.*

[51] *Id.*

[52] *See supra* note 9.

[53] *See supra* note 49.

[54] *See supra* note 9.

[55] *See supra* note 49.

[56] *See supra* note 9.

Concerning Index Warrants, Currency Index Warrants and Currency Warrants''). FINRA Rule 2357 was adopted without any substantive changes to the NASD rule text.[57]

Exchange Rule 2849. Maintenance of Records

The Exchange proposes to update the reference to NASD Rules 2860(b)(17)(B) and 2849 in this rule and replace them with references to FINRA Rules 2360(b)(17)(B) and 2358. FINRA Rules 2360(b)(17)(B) and 2358 were adopted without any substantive changes to their respective rule text.[58]

Exchange Rule 3360. Short-Interest Reporting

In 2008, FINRA Rule 4560 was adopted to include the short interest reporting requirements of the substantially similar NASD Rule 3360 and Incorporated NYSE Rules 421(1) and 421.10 with non-substantive changes to the NASD rule text.[59] In 2010, FINRA made further amendments to the rule that were intended to eliminate the definition of ''OTC Equity Security'' in FINRA Rule 4560 (Short-Interest Reporting) and to clarify that the rule applied to all equity securities except restricted equity securities.[60]

The Exchange proposes to update Rule 3360(a) by replacing the NASD Rule 3360 reference with FINRA Rule 4560 (''Short-Interest Reporting''). The Exchange will not update Rule 3360 to include the reference to ''Restricted Equity Securities'' found in FINRA Rule 4560 since such securities are not listed or traded in the Exchange; relatedly, the Exchange will omit the reference to FINRA Rule 6420 since a cross-reference to the definition of Restricted Equity Securities is not required. Further, the Exchange will add the word ''all'' before the word ''securities'' but, unlike the FINRA rule, will not insert the word ''equities'' because the Exchange also lists options securities. Finally, the Exchange will remove a sentence concerning the reporting obligations to reflect changes also made in the FINRA rule.[61]

The Exchange also proposes to amend current Rule 3360(b) and (c) and adopt the text of current FINRA Rule 4560(b) and (c).

Exchange Rule 4200. Definitions

The Exchange proposes to update the NASD Rule 2710(b)(11) reference in this rule and replace it with a reference to FINRA Rule 5190 (''Notification Requirements for Offering Participants''). In 2008, NASD Rules 2710(b)(10) and (11) were relocated into FINRA Rule 5190 to consolidate and streamline all Regulation M-related notice requirements.[62]

The Exchange also proposes to replace in Rule 4200(a)(3) and (b) the cross-reference to Exchange Rule 4623 (''Alternative Trading Systems'') with Exchange Rule 4624. Consistent with FINRA Rule 5190(e), an Exchange member's notification obligation, as described in Rule 4200, is detailed under Exchange Rule 4624 (''Penalty Bids and Syndicate Covering Transactions'').

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[63] in general, and furthers the objectives of Section 6(b)(5) of the Act,[64] in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest by bringing greater transparency to its rules by updating the references to the FINRA rules previously described. The Exchange's proposal is consistent with the Act and will protect investors and the public interest by harmonizing its rules and clarifying outdated references so that Exchange members and the general public can readily locate FINRA rules that are incorporated by reference into the Rulebook.

The amendment to the books and records rules, reference and cross-reference updates, re-lettering, renumbering, deleting unnecessary or duplicative text, consolidating certain Exchange rules, and other minor technical changes will update the Exchange's rules and bring greater transparency to the Exchange's Rulebook. The Exchange believes its proposal will benefit investors and the general public by increasing the transparency of its Rulebook.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed amendments do not impose an undue burden on competition because the amendments to update the references and cross-references in its Rulebook are intended to bring greater clarity to the Exchange's rules. The amendment to the books and records rules, reference and cross-reference updates, re-lettering, renumbering, deleting unnecessary or duplicative text, consolidating certain Exchange rules, and other minor technical changes will update the Exchange's rules bring greater transparency to the Exchange's Rulebook.

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) of the Act[65] and Rule 19b–4(f)(6) thereunder.[66]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

[57] *See supra* note 49.

[58] *See id.*

[59] See Securities Exchange Act Release No. 58461 (September 4, 2008), 73 FR 52710 (September 10, 2008) (SR–FINRA–2008–033).

[60] *See* Securities Exchange Act Release No. 61979 (April 23, 2010), 75 FR 23316 (May 3, 2010) (SR–FINRA–2010–003).

[61] *See* Securities Exchange Act Release No. 66872 (April 27, 2012), 77 FR 26340 (May 3, 2012) (SR–FINRA–2012–001).

[62] See Securities Exchange Act Release No. 58514 (September 11, 2008), 73 FR 54190 (September 18, 2008) (SR–FINRA–2008–039).

[63] 15 U.S.C. 78f(b).

[64] 15 U.S.C. 78f(b)(5).

[65] 15 U.S.C. 78s(b)(3)(A).

[66] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BX–2021–006 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2021–006. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2021–006 and should be submitted on or before April 15, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[67]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2021–06125 Filed 3–24–21; 8:45 am]

BILLING CODE 8011–01–P

[67] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91373; File No. SR–FINRA–2021–004]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Pilot Program Related to FINRA Rule 11892 (Clearly Erroneous Transactions in Exchange-Listed Securities)

March 19, 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 March 15, 2021, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to extend the current pilot program related to FINRA Rule 11892 (Clearly Erroneous Transactions in Exchange-Listed Securities) (''Clearly Erroneous Transaction Pilot'' or ''Pilot'') until October 20, 2021.

The text of the proposed rule change is available on FINRA's website at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA is proposing a rule change to extend the current pilot program related to FINRA Rule 11892 governing clearly erroneous transactions in exchange-listed securities until the close of business on October 20, 2021. Extending the Pilot would provide FINRA and the national securities exchanges additional time to consider a permanent proposal for clearly erroneous transaction reviews.

On September 10, 2010, the Commission approved, on a pilot basis, changes to FINRA Rule 11892 that, among other things: (i) Provided for uniform treatment of clearly erroneous transaction reviews in multi-stock events involving twenty or more securities; and (ii) reduced the ability of FINRA to deviate from the objective standards set forth in the rule.[4] In 2013, FINRA adopted a provision designed to address the operation of the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS (''Plan'').[5] Finally, in 2014, FINRA adopted two additional provisions addressing (i) erroneous transactions that occur over one or more trading days that were based on the same fundamentally incorrect or grossly misinterpreted information resulting in a severe valuation error; and (ii) a disruption or malfunction in the operation of the facilities of a self-regulatory organization or responsible single plan processor in connection with the transmittal or receipt of a trading halt.[6]

On April 9, 2019, FINRA filed a proposed rule change to untie the effectiveness of the Clearly Erroneous Transaction Pilot from the effectiveness of the Plan, and to extend the Pilot's effectiveness to the close of business on October 18, 2019.[7] On October 18, 2019,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* Securities Exchange Act Release No. 62885 (September 10, 2010), 75 FR 56641 (September 16, 2010) (Order Approving File No. SR–FINRA–2010–032).

[5] *See* Securities Exchange Act Release No. 68808 (February 1, 2013), 78 FR 9083 (February 7, 2013) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2013–012).

[6] *See* Securities Exchange Act Release No. 72434 (June 19, 2014), 79 FR 36110 (June 25, 2014) (Order Approving File No. SR–FINRA–2014–021).

[7] *See* Securities Exchange Act Release No. 85612 (April 11, 2019), 84 FR 16107 (April 17, 2019) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2019–011).

FINRA filed a proposed rule change to extend the Pilot's effectiveness until April 20, 2020.[8] On March 27, 2020, FINRA filed a proposed rule change to extend the pilot's effectiveness until October 20, 2020.[9] On October 16, 2020, FINRA filed a proposed rule change to extend the Pilot's effectiveness until April 20, 2021.[10] FINRA now is proposing to further extend the Pilot until October 20, 2021, so that market participants can continue to benefit from the more objective clearly erroneous transaction standards under the Pilot.[11] Extending the Pilot also would provide more time to permit FINRA and the other self-regulatory organizations to consider what changes, if any, to the clearly erroneous transaction rules are appropriate.[12]

FINRA has filed the proposed rule change for immediate effectiveness. The operative date for the amendments will be 30 days from the date of filing.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[13] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning the review of transactions as clearly erroneous. FINRA believes that extending the Pilot under FINRA Rule 11892, until October 20, 2021, would help assure consistent results in handling erroneous trades across the U.S. equities markets, thus furthering fair and orderly markets, the protection of investors and the public interest. Based on the foregoing, FINRA believes the Clearly Erroneous Transaction Pilot should continue to be in effect while FINRA and the national securities exchanges consider a permanent proposal for clearly erroneous transaction reviews.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposal would ensure the continued, uninterrupted operation of harmonized clearly erroneous transaction rules across the U.S. equities markets while FINRA and the national securities exchanges consider further amendments to these rules. FINRA understands that the national securities exchanges also will file similar proposals to extend their clearly erroneous execution pilot programs, as applicable. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days 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[14] and subparagraph (f)(6) of Rule 19b–4 thereunder.[15]

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–FINRA–2021–004 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2021–004. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–

[8] *See* Securities Exchange Act Release No. 87344 (October 18, 2019), 84 FR 57076 (October 24, 2019) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2019–025).

[9] *See* Securities Exchange Act Release No. 88495 (March 27, 2020), 85 FR 18608 (April 2, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2020–008).

[10] *See* Securities Exchange Act Release No. 90219 (October 19, 2020), 85 FR 67574 (October 23, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2020–036).

[11] If the pilot period is not either extended or approved as permanent, the version of Rule 11892 prior to SR–FINRA–2010–032 shall be in effect, and the amendments set forth in SR–FINRA–2014–021 and the provisions of Supplementary Material .03 of the rule shall be null and void.

[12] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019) (Order Approving the Eighteenth Amendment to the National Market System Plan to Address Extraordinary Market Volatility).

[13] 15 U.S.C. 78*o*–3(b)(6).

[14] 15 U.S.C. 78s(b)(3)(A)(iii).

[15] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. FINRA has satisfied this requirement.

2021–004 and should be submitted on or before April 15, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2021–06124 Filed 3–24–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91365; File No. SR–NYSE–2021–17]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Proprietary Market Data Fee Schedule

March 19, 2021.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on March 10, 2021, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Proprietary Market Data Fee Schedule (''Market Data Fee Schedule'') to adopt a billing dispute practice substantially similar to the practice adopted by another group of exchanges for their transaction and market data fees. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Market Data Fee Schedule to adopt a billing dispute practice similar to the practice adopted by another group of exchanges for their transaction and market data fees. As discussed below, the proposed provision would be substantially similar to provision in the fee schedules of the Cboe U.S. Equities markets—Cboe BZX Exchange, Inc. (''BZX Equities''),[4] Cboe BYX Exchange, Inc. (''BYX Equities''),[5] Cboe EDGA Exchange, Inc. (''EDGA Equities''),[6] Cboe EDGX Exchange, Inc. (''EDGX Equities'')[7]—and the Cboe U.S Options markets—Cboe Exchange, Inc. (''Cboe Options''),[8] Cboe C2 Exchange, Inc. (''C2 Options''),[9] the options platform of Cboe BZX Exchange, Inc. (''BZX Options''),[10] the options platform of Cboe EDGX Exchange, Inc. (''EDGX Options'') (collectively, the ''Cboe Exchanges'').[11] In addition, the Exchange and the Exchange's affiliates, NYSE American LLC (''NYSE American''), NYSE Arca, Inc. (''NYSE Arca''), NYSE Chicago, Inc. (''NYSE Chicago'') and NYSE National, Inc. (''NYSE National'') as well as other equities and options markets[12] already have in place a similar billing dispute provision for transaction fees.

Background

The Exchange proposes to amend the Market Data Fee Schedule to adopt a billing dispute procedure to prevent market data subscribers from contesting their bills long after they have been sent an invoice. The Exchange and other equities and options markets already have a billing dispute procedure in effect for their transaction fees that allows for sixty (60) days to dispute billing errors.[13] The Cboe Exchanges also have a billing dispute procedure in place for both its equities markets and options markets and apply that procedure to both transaction fees and market data fees on each of the Cboe Exchanges.[14] In contrast to the other exchanges, the Cboe Exchanges' billing dispute policy allows for ''three full calendar months'' to dispute billing errors.[15] Similar to the Cboe Exchanges, the Exchange is proposing a ninety (90)

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* BZX Equities Fee Schedule, available at, *https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/. See also* Securities Exchange Act Release No. 90897 (January 11, 2021), 86 FR 4161 (January 15, 2021) (SR–CboeBZX–2020–094).

[5] *See* BYX Equities Fee Schedule, available at, *https://markets.cboe.com/us/equities/membership/fee_schedule/byx/. See also* Securities Exchange Act Release No. 90899 (January 11, 2021), 86 FR 4156 (January 15, 2021) (SR–CboeBYX–2020–034).

[6] *See* EDGA Equities Fee Schedule, available at, *https://markets.cboe.com/us/equities/membership/fee_schedule/edga/. See also* Securities Exchange Act Release No. 90900 (January 11, 2021), 86 FR 4149 (January 15, 2021) (SR–CboeEDGA–2020–032).

[7] *See* EDGX Equities Fee Schedule, available at, *https://markets.cboe.com/us/equities/membership/fee_schedule/edgx/. See also* Securities Exchange Act Release No. 90901 (January 11, 2021), 86 FR 4137 (January 15, 2021) (SR–CboeEDGX–2020–064).

[8] *See* Cboe Options Fee Schedule, footnote 7, available at, *https://cdn.cboe.com/resources/membership/Cboe_FeeSchedule.pdf. See also* Securities Exchange Act Release No. 91053 (February 3, 2021), 86 FR 8814 (February 9, 20221) (SR–Cboe–2021–010).

[9] *See* C2 Options Fee Schedule, available at, *https://markets.cboe.com/us/options/membership/fee_schedule/ctwo/. See also* Securities Exchange Act Release No. 91049 (February 3, 2021), 86 FR 8824 (February 9, 2021) (SR–C2–2021–002).

[10] *See* BZX Options Fee Schedule, available at, *https://markets.cboe.com/us/options/membership/fee_schedule/bzx/. See also* Securities Exchange Act Release No. 90897 (January 11, 2021), 86 FR 4161 (January 15, 2021) (SR–CboeBZX–2020–094).

[11] *See* EDGX Options Fee Schedule, available at, *https://markets.cboe.com/us/options/membership/fee_schedule/edgx/. See also* Securities Exchange Act Release No. 90901 (January 11, 2021), 86 FR 4137 (January 15, 2021) (SR–CboeEDGX–2020–064).

[12] *See* NASDAQ Equity Rules, Equity 7 (Pricing Schedule), Section 70(b) (all fee disputes must be submitted no later than 60 days after receipt of billing invoice, in writing and accompanied by supporting documentation); NASDAQ Options Rules, Options 7 (Pricing Schedule), Section 7(a)–(b) (same); NASDAQ BX Equity Rules, Equity 7 (Pricing Schedule), Section 111(b) (Collection of Exchange Fees and Other Claims and Billing Policy) (same); NASDAQ BX Options Rules, Options 7 (Pricing Schedule), Section 7(a)–(b) (BX Options Fee Disputes) (same); NASDAQ PHLX Equity Rules, Equity 7 (Pricing Schedule), Section 1(a) (same); NASDAQ PHLX Options Rules, Options 7 (Pricing Schedule), Section 1(a) (same); NASDAQ ISE Options Rules, Options 7 (Pricing Schedule), Section 1(b) (same); NASDAQ GEMX Options Rules, Options 7 (Pricing Schedule), Section 1(b) (same); NASDAQ MRX Options Rules, Options 7 (Pricing Schedule), Section 1(b) (same); MIAX Options Fee Schedule, available at *https://www.miaxoptions.com/sites/default/files/fee_schedule-files/MIAX_Options_Fee_Schedule_01_13_21.pdf* (same); MIAX Pearl Fee Schedule, available at *https://www.miaxoptions.com/sites/default/files/fee_schedule-files/MIAX_PEARL_Options_Fee_Schedule_03012021.pdf* (same); and MIAX Emerald Fee Schedule, available at *https://www.miaxoptions.com/sites/default/files/fee_schedule-files/MIAX_Emerald_Fee_Schedule_02_22_21.pdf* (same).

[13] *See id.*

[14] *See* notes 4–11, *supra.*

[15] The Cboe Exchanges' billing dispute policy provides, in relevant part: ''All fees and rebates assessed prior to the three full calendar months before the month in which the Exchange becomes aware of a billing error shall be considered final.''

day period for market data subscribers to dispute billing errors.

As proposed, all disputes concerning market data fees and credits billed by the Exchange would have to be submitted to the Exchange in writing and accompanied by supporting documentation. Further, all disputes would have to be submitted no later than ninety (90) days after receipt of a billing invoice. After ninety days, all market data fees assessed by the Exchange would be considered final. The Exchange believes that this requirement, which is substantially similar to that in place on the Cboe Exchanges,[16] will streamline the billing dispute process. The Exchange would resolve an error by crediting or debiting market data subscribers based on the fees or credits that should have applied and will make billing adjustments regardless of whether the error was discovered by the Exchange or by a subscriber that submitted a dispute to the Exchange.

The Exchange believes it is reasonable for market data subscribers to become aware of any potential billing errors within ninety (90) calendar days of receiving an invoice. The Exchange provides all subscribers on-line access to view their current subscriptions and their invoices. In addition to being able to view the level of their subscription, the Exchange also sends subscribers an invoice by mail each month. Given the tools that the Exchange provides to allow subscribers to monitor their billing, requiring that subscribers dispute an invoice within ninety (90) calendar days will encourage them to review their invoices promptly so that any disputed charges can be addressed in a timely manner while the information and data underlying those charges (*e.g.,* applicable fees and subscriber information) is still easily and readily available. This practice will avoid issues that may arise when subscribers do not dispute an invoice in a timely manner, and will conserve Exchange resources that would have to be expended to resolve untimely billing disputes.[17] As such, the proposed rule change would alleviate administrative burdens related to billing disputes, which could divert staff resources away from the Exchange's regulatory and business purposes. The proposed rule change to provide all fees and credits are final after ninety (90) days also provides both the Exchange and subscribers finality and the ability to close their books after a known period of time. Finally, the Exchange notes that it routinely conducts audits of its market data customers to ensure that customers are complying with the terms of the subscriber agreement they have signed. The audit process is independent of the billing process. The audit function is administered by the Exchange's market data compliance group and the billing function is administered by the Exchange's market data operations group. Each group is charged with distinct responsibilities that do not overlap. The proposed billing dispute provision is not intended to circumvent the audit process in any manner and the adoption of the ninety (90) day period to dispute billing errors would not affect subscribers' ability to take a position with respect to billing charges identified through the audit process.

In order for subscribers to be fully aware of this rule regarding fee disputes, the Exchange proposes to include the language proposed for the Market Data Fee Schedule on each customer invoice.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,[18] in general, and Section 6(b)(5) of the Act.[19] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes the requirement to submit all billing disputes in writing, and with supporting documentation, within ninety (90) days from receipt of the invoice, is reasonable because, as noted above, the Exchange provides ample tools for market data subscribers to properly and swiftly monitor and account for various charges incurred in a given month. Also, the proposal is not unfairly discriminatory because it would apply equally to all market data subscribers. The proposed provision regarding fee disputes in the Market Data Fee Schedule promotes the protection of investors and the public interest by providing a clear and concise time frame for market data subscribers to dispute market data fees and for the Exchange to review such disputes in a timely manner. In addition, the proposed 90-day limitation promotes just and equitable principles of trade because it would be implemented prospectively on all market data subscribers, only applying to invoices issued after the proposed rule change becomes operative. Moreover, the proposed billing dispute language, which will lower the Exchange's administrative burden, is substantially similar to the billing dispute language adopted by the Cboe Exchanges,[20] and with the one difference noted above,[21] the proposed provision is same as that in place at the Exchange's affiliates for transaction fees and at other equities and options markets.[22]

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[23] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change, which would apply equally to all market data subscribers, would establish a clear process for billing disputes, and is substantially similar to rules adopted by the Cboe Exchanges and rules adopted by other equities and options markets as well as by the Exchange's affiliates for transaction fees. The Exchange does not believe the proposed rule change would impair the ability of market data subscribers or competing venues that also sell market data products to maintain their competitive standing in the financial markets. Moreover, because the Exchange does not propose to alter or modify specific fees or credits applicable to market data subscribers,

[16] *See* notes 4–11, *supra.*

[17] The same rationale has been advanced by the other markets that have adopted a similar billing procedure. *See, e.g.,* Securities Exchange Act Release No. 71286 (January 14, 2014), 79 FR 3442, 3442 (January 21, 2014) (SR–ISE–2014–02).

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

[20] *See* notes 4–11, *supra.*

[21] Whereas the Exchange, its affiliates and other equities and options markets allow for sixty (60) days to dispute billing errors, the Cboe Exchanges' billing dispute policy allows for ''three full calendar months.'' *See* note 15, *supra.*

[22] *See* note 12, *supra.*

[23] 15 U.S.C. 78f(b)(8).

the proposal does not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [24] and Rule 19b–4(f)(6) thereunder.[25] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [26] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2021–17 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–2021–17. 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–2021–17 and should be submitted on or before April 15, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2021–06121 Filed 3–24–21; 8:45 am]

BILLING CODE 8011–01–P

[24] 15 U.S.C. 78s(b)(3)(A)(iii).

[25] 17 CFR 240.19b–4(f)(6).

[26] 15 U.S.C. 78s(b)(2)(B).

[27] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[License No. 02/02–0646]

RMCF II SBIC Fund, L.P.; Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under the Small Business Investment Act of 1958, as amended, under Section 309 of the Act and Section 107.1900 of the Small Business Administration Rules and Regulations (13 CFR 107.1900) to function as a small business investment company under the Small Business Investment Company License No. 02/02–0646 issued to RMCF II SBIC Fund, L.P. said license is hereby declared null and void.

United States Small Business Administration.

Thomas G. Morris,

Acting Associate Administrator, Office of Investment and Innovation.

[FR Doc. 2021–06162 Filed 3–24–21; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16864 and #16865; Washington Disaster Number WA–00091]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of Washington

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Washington (FEMA–4584–DR), dated 02/04/2021. Incident: Wildfires and Straight-line Winds. Incident Period: 09/01/2020 through 09/19/2020.

DATES: Issued on 03/19/2021.

Physical Loan Application Deadline Date: 04/05/2021.

Economic Injury (EIDL) Loan Application Deadline Date: 11/04/2021.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Washington, dated 02/04/2021, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Ferry.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Cynthia Pitts,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2021–06160 Filed 3–24–21; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[License No. 09/09–0475]

Alpine Investors v. SBIC, L.P.; Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under the Small Business Investment Act of 1958, as amended, under Section 309 of the Act and Section 107.1900 of the Small Business Administration Rules and Regulations (13 CFR 107.1900) to function as a small business investment company under the Small Business Investment Company License No. 09/09–0475 issued to *Alpine Investors* v. *SBIC, L.P.,* said license is hereby declared null and void.

United States Small Business Administration.

Thomas G. Morris,

Acting Associate Administrator, Office of Investment and Innovation.

[FR Doc. 2021–06158 Filed 3–24–21; 8:45 am]

BILLING CODE 8026–03–P

DEPARTMENT OF STATE

[Public Notice 11383]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: ''Claude & Francois-Xavier Lalanne: Nature Transformed'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the exhibition ''Claude & Francois-Xavier Lalanne: Nature Transformed'' at the Sterling and Francine Clark Art Institute, Williamstown, Massachusetts and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Chi D. Tran, Program Administrator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*),

Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000.

Matthew R. Lussenhop,

Acting Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2021–06213 Filed 3–24–21; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 11385]

30-Day Notice of Proposed Information Collection: TechGirls Evaluation

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: Submit comments up to April 26, 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: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, may be sent to Natalie Donahue, Chief of Evaluation, Bureau of Educational and Cultural Affairs, 2200 C Street NW, Washington, DC 20037 who may be reached at (202) 632–6193 or *ecaevaluation@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* TechGirls Evaluation.
- *OMB Control Number:* None.
- *Type of Request:* New collection.
- *Originating Office:* Bureau of Educational and Cultural Affairs (ECA).
- *Form Number:* No form.
- *Respondents:* TechGirls program alumnae, their host families, their job shadow hosts, and ECA implementing partner program staff.
- *Estimated Number of Alumnae Survey Respondents:* 214.
- *Estimated Number of Alumnae Survey Responses:* 160.
- *Average Time per Alumnae Survey:* 46 minutes.
- *Total Estimated Alumnae Survey Burden Time:* 122.6 hours.
- *Estimated Number of Host Family Survey Respondents:* 60.
- *Estimated Number of Host Family Survey Responses:* 30.
- *Average Time per Host Family Survey:* 29 minutes.
- *Total Estimated Host Family Survey Burden Time:* 14.5 hours.
- *Estimated Number of Job Shadow Host Survey Respondents:* 41.
- *Estimated Number of Job Shadow Host Survey Responses:* 21.
- *Average Time per Job Shadow Host Survey:* 16 minutes.
- *Total Estimated Job Shadow Host Survey Burden Time:* 5.6 hours.
- *Estimated Number of Implementing Partner Staff Respondents:* 39.
- *Estimated Number of Implementing Partner Staff Responses:* 20.
- *Average Time per Implementing Partner Staff Survey:* 16 minutes.
- *Total Estimated Implementing Partner Staff Survey Burden Time:* 5.3 hours.
- *Total Estimated Burden Time:* 148 annual hours.
- *Frequency:* Once.
- *Obligation to Respond:* Voluntary.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the

use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

TechGirls enables students aged 15–17 to gain exposure to a range of careers in science, technology, engineering, and mathematics (STEM) through a month-long summer scholarship program in the United States. The program includes programming bootcamp, leadership skills development, job shadow with women in STEM fields, and a home stay with U.S. families. In addition to exposure to career and educational pathways, participants gain understanding of the United States and its culture and create a network of STEM-focused alumnae upon their return home. The authority for the program is the Mutual Educational and Cultural Exchange Act of 1961, as amended (22 U.S.C. 2451 *et seq.*).

In order to assess the efficacy and impact of TechGirls, the U.S. Department of State's Bureau of Educational and Cultural Affairs (ECA) intends to conduct an evaluation of the program, which will include collection of data from program alumnae between 2012 and 2019, program staff, host families in the United States, and job shadow hosts. As the TechGirls program has been running for almost 10 years, ECA is conducting this evaluation to determine the extent to which the program is achieving its long-term goals. In order to do so, ECA has contracted Dexis Consulting Group to conduct surveys with alumnae and surveys with their host families, program staff, and job shadow hosts.

Methodology

As baseline information is limited to initial profiles, it is necessary to collect information directly from program alumnae to assess the outcomes of the TechGirls experience, particularly in the areas of educational and career trajectories and networking with others. Additional perspectives will be sought from the participants' host families and job shadow hosts. All of these groups will receive online surveys.

Kevin E. Bryant,

Deputy Director, Office of Directives Management, Department of State.

[FR Doc. 2021–06208 Filed 3–24–21; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 11382]

Determination and Certification Under Section 490(b)(1)(A) of the Foreign Assistance Act Relating to the Largest Exporting and Importing Countries of Certain Precursor Chemicals

Pursuant to Section 490(b)(1)(A) of the Foreign Assistance Act of 1961, as amended, I hereby determine and certify the top five exporting and importing countries and economies of pseudoephedrine and ephedrine (the People's Republic of China, Denmark, France, Germany, India, Indonesia, Republic of Korea, Singapore, Switzerland, Turkey, and the United Kingdom) have cooperated fully with the United States, or have taken adequate steps on their own, to achieve full compliance with the goals and objectives established by the 1988 UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

This determination and certification shall be published in the **Federal Register**, and copies shall be provided to Congress together with the accompanying Memorandum of Justification.

Dated: February 19, 2021.

Daniel B. Smith,

Acting Deputy Secretary of State.

[FR Doc. 2021–06178 Filed 3–24–21; 8:45 am]

BILLING CODE 4710–17–P

DEPARTMENT OF STATE

[Public Notice 11386]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: "Cézanne: The Drawings" Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the exhibition ''Cézanne: The Drawings'' at The Museum of Modern Art, New York, New York, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Chi D. Tran, Program Administrator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000.

Matthew R. Lussenhop,

Acting Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2021–06212 Filed 3–24–21; 8:45 am]

BILLING CODE 4710–05–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36472]

CSX Corporation and CSX Transportation, Inc., et al.—Control and Merger—Pan Am Systems, Inc., Pan Am Railways, Inc., Boston and Maine Corporation, Maine Central Railroad Company, Northern Railroad, Pan Am Southern LLC, Portland Terminal Company, Springfield Terminal Railway Company, Stony Brook Railroad Company, and Vermont & Massachusetts Railroad Company

AGENCY: Surface Transportation Board.

ACTION: Decision No. 1 in Docket No. FD 36472; Notice of Receipt of Prefiling Notification.

SUMMARY: The Surface Transportation Board (Board) [1] has reviewed the submission filed February 25, 2021, by CSX Corporation (CSXC), CSX Transportation Inc. (CSXT),[2] 747 Merger Sub 2, Inc. (747 Merger Sub 2), Pan Am Systems, Inc. (Systems), Pan Am

[1] This decision embraces the following dockets: *Norfolk Southern Railway—Trackage Rights Exemption—CSX Transportation, Inc.,* Docket No. FD 36472 (Sub-No. 1); *Norfolk Southern Railway—Trackage Rights Exemption—Providence & Worcester Railroad,* Docket No. FD 36472 (Sub-No 2); *Norfolk Southern Railway—Trackage Rights Exemption—Boston & Maine Corp.,* Docket No. FD 36472 (Sub-No. 3); *Norfolk Southern Railway—Trackage Rights Exemption—Pan Am Southern LLC,* Docket No. FD 36472 (Sub-No. 4); *Pittsburg & Shawmut Railroad—Operation Exemption—Pan Am Southern LLC,* Docket No. FD 36472 (Sub-No. 5); *SMS Rail Lines of New York, LLC—Discontinuance Exemption—in Albany County, N.Y.,* Docket No. AB 1312X.

[2] CSXT is a wholly owned subsidiary of CSXC. CSXC and CSXT are referred to collectively as CSX.

Railways, Inc. (PAR), Boston and Maine Corporation (Boston & Maine), Maine Central Railroad Company (Maine Central), Northern Railroad (Northern), Portland Terminal Company (Portland Terminal), Springfield Terminal Railway Company (Springfield Terminal), Stony Brook Railroad Company (Stony Brook), and Vermont & Massachusetts Railroad Company (V&M) (collectively, Applicants). The submission is styled as an application for a ''minor'' transaction seeking Board approval for: (1) CSXC, CSXT, and 747 Merger Sub 2 to control the seven railroads controlled by Systems and PAR,[3] and (2) CSXT to merge six of the seven railroads into CSXT. This proposal is referred to as the ''Proposed Transaction.''

The Board finds that the Proposed Transaction would be a ''significant'' transaction. The Board's regulations require that applicants give notice two to four months prior to the filing of an application in a ''significant'' transaction. Because Applicants argue that the Proposed Transaction is a ''minor'' transaction, they did not file the required prefiling notification before their February 25, 2021 submission seeking Board approval of this ''significant'' transaction and did not pay the filing fee for a ''significant'' transaction. Their submission cannot be treated as an application at this time. The Board will, however, consider the February 25, 2021 submission a prefiling notification[4] and publish notice of it in the **Federal Register**, which will permit Applicants to perfect their application by supplementing their submission with the requisite information for a ''significant'' transaction in accordance with the Board's regulations, between April 25 and June 25, 2021 (*i.e.,* two to four months after the Notice was filed).

When filing a prefiling notification, merger applicants in a ''significant'' transaction must propose a procedural schedule for Board review of their proposed transaction. As part of their tender of an application for a ''minor'' transaction, Applicants had proposed a procedural schedule that tracks the statutory deadlines for processing ''minor'' applications. Because the Board finds the proposed transaction to be ''significant,'' Applicants must file with the Board, no later than April 1, 2021, a revised proposed procedural schedule that reflects the Board's determination that this is a ''significant'' transaction. The proposed procedural schedule should indicate the approximate filing date of its supplement perfecting its application for a ''significant'' transaction, which date, as noted, must be between April 25 and June 25, 2021. Comments on the proposed procedural schedule will be due 10 days after publication of the proposed procedural schedule in the **Federal Register**.

The Board's regulations also call for merger applicants to indicate in their prefiling notification the year to be used for the impact analysis required in ''significant'' transactions. In their Notice, Applicants used operating data from 2019 in their Operating Plan-Minor (Exhibit 15). The Board therefore will designate 2019 as the year to be used for impact analysis in the application unless Applicants indicate otherwise when they submit the proposed procedural schedule.

In addition, Applicants must submit the difference between the filing fee for a ''minor'' transaction (which Applicants already have paid) and the fee for a ''significant'' transaction when they file their application for a ''significant'' transaction.

DATES: Applicants must, by April 1, 2021, file a proposed procedural schedule with the Board.

ADDRESSES: Any filing submitted in this proceeding should be filed with the Board via e-filing on the Board's website. In addition, one copy of each filing must be sent (and may be sent by email only if service by email is acceptable to the recipient) to each of the following: (1) Secretary of Transportation, 1200 New Jersey Avenue, SE, Washington, DC 20590; (2) Attorney General of the United States, c/o Assistant Attorney General, Antitrust Division, Room 3109, Department of Justice, Washington, DC 20530; (3) CSX's and 747 Merger Sub 2's representative, Anthony J. LaRocca, Steptoe & Johnson LLP, 1330 Connecticut Ave. NW, Washington, DC 20036; (4) Systems', PAR's, and PAR Railroads' representative, Robert B. Culliford, Pan Am Systems, Inc., 1700 Iron Horse Park, North Billerica, MA 01862; and (5) any other person designated as a Party of Record on the service list.

FOR FURTHER INFORMATION CONTACT: Amy Ziehm at (202) 245–0391. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Systems directly and wholly owns PAR, which in turn directly and wholly owns Boston & Maine, Maine Central, Portland Terminal, and Springfield Terminal. Boston & Maine directly and wholly owns Northern and Stony Brook. Boston & Maine also owns a 98% interest in V&M. The PAR Railroads own rail lines and provide rail service on a freight rail network (PAR System) in New England, from Maine in the north to the Boston region in the south.[5] Springfield Terminal operates rail service on the PAR System on behalf of the PAR Railroads pursuant to leases over lines owned and leased by the other PAR Railroads. (Notice 2–3.)

Boston & Maine also owns a 50% interest in Pan Am Southern LLC (PAS), a Class II carrier. (*Id.* at 3.) PAS is a 50/50 joint venture between Boston & Maine and Norfolk Southern Railway Company (NSR). (*Id.*) PAS runs between upstate New York and a point just past Ayer, Mass., where it connects with the PAR System. (Notice, Ex. 22, V.S. Reishus 6.) PAS also uses a north-south route running between Vermont and Connecticut over lines owned by Genesee & Wyoming, Inc. (GWI), which connects with the PAS mainline at East Deerfield, Mass., and connects with other PAS lines in Connecticut.[6] (*Id.,* Ex. 22, V.S. Reishus 6.) Springfield Terminal, also a Class II rail carrier, operates PAS as PAS's agent. (Notice 3.) NSR has trackage rights over the PAS line between Mechanicville, N.Y., and Ayer, but Springfield Terminal currently operates NSR trains over that segment pursuant to a haulage agreement between PAS and NSR. (Notice, Ex. 15, Operating Plan-Minor 6.)

CSXT, a Class I rail carrier, is a wholly owned subsidiary of CSXC. CSXT owns and operates approximately 19,500 miles of railroad in 23 states and the District of Columbia, as well as in the Canadian Provinces of Ontario and Quebec. (Notice 28.) Applicants state that CSXT's access to New England shippers occurs primarily through its own mainline, which connects with several New England railroads

[3] Systems directly and wholly owns PAR, which in turn directly and wholly owns four rail carriers: Boston & Maine, Maine Central, Portland Terminal, and Springfield Terminal. Boston & Maine directly and wholly owns Northern and Stony Brook, as well as a 98% interest in V&M. These seven rail carriers will be referred to collectively as the PAR Railroads.

[4] Because the Board will treat the February 25, 2021 submission as the prefiling notification, that submission will be referred to as the ''Notice.''

[5] Applicants state that the PAR System consists of approximately 808 route miles of rail lines, including approximately 724.53 owned and leased (including perpetual freight easement) route miles and approximately 83.62 trackage-rights route miles in Massachusetts, Maine, New Hampshire, and Vermont. (Notice 26.)

[6] PAS's network consists of approximately 425 route miles, including approximately 281.38 owned route miles (including perpetual freight easement) and approximately 143.62 trackage-rights route miles. (Notice 31.)

including with the PAR System at Barbers Station, Mass., near Worcester, Mass. (Notice, Ex. 22, V.S. Reishus 6.) Applicants state that CSXT also serves New England shippers by interlining with PAS at Rotterdam Junction, N.Y. (*Id.,* Ex. 22, V.S. Reishus at 6.)

Under the Proposed Transaction, CSX and 747 Merger Sub 2 would acquire control of the PAR Railroads, and CSXT would merge the PAR Railroads, except V&M, into CSXT.[7] (Notice 2.) As CSXT would wholly own and control Boston & Maine, CSX and 747 Merger Sub 2 also seek authority to acquire Boston & Maine's 50% joint ownership in PAS. (*Id.* at 4.) Applicants state that CSXT, NSR, and GWI have entered into agreements regarding the operation of PAS upon consummation of the Proposed Transaction, specifically: (1) A settlement agreement between CSXT and NSR (NSR Settlement Agreement), which includes an agreement relating to operations at Ayer; and (2) a Term Sheet Agreement among CSXT, NSR and GWI. (*Id.* at 4–5.) Applicants state that these two agreements contemplate transactions (Related Transactions) that are integrally related to the Proposed Transaction and require Board authorization: (1) Pittsburgh & Shawmut Railroad, LLC, d/b/a Berkshire & Eastern Railroad (B&E), a Class III rail carrier and a wholly owned subsidiary of GWI, seeks authority to replace Springfield Terminal as the operator of PAS,[8] and (2) NSR seeks trackage rights over existing lines owned by four carriers (CSXT, Boston & Maine, Providence & Worcester Railroad Company (P&W) (a GWI subsidiary), and PAS) to allow NSR additional flexibility with respect to NSR's existing service to an intermodal facility located on the PAS network at Ayer.[9] (Notice 4–7; *id.,* Ex. 15, Operating Plan-Minor 2–3.)

Related Filings. In connection with the Related Transactions, several verified notices of exemption and a petition for exemption were filed concurrently.

NSR Trackage Rights Authority. NSR has filed verified notices of exemption under 49 CFR 1180.2(d)(7) for overhead trackage rights pursuant to trackage rights agreements with CSXT, P&W, Boston & Maine, and PAS.[10] NSR states that trackage rights being acquired pursuant to these verified notices of exemption would not take effect until the Proposed Transaction is consummated. Applicants state in their Notice that the trackage rights would allow NSR, upon consummation of the Proposed Transaction, to move up to one train pair per day, carrying intermodal and automotive vehicles traffic, between NSR's connection with CSXT at Voorheesville, N.Y., and the intermodal terminal located near Ayer, over CSXT's east-west rail line between Voorheesville and Worcester, then over P&W's rail line between Worcester and Barbers Station, then over Boston & Maine's rail line between Barbers Station and Harvard, Mass., and finally over PAS's rail line between Harvard and Ayer. (Notice 6.) Specifically:

- In *Norfolk Southern Railway—Trackage Rights Exemption—CSX Transportation, Inc.,* Docket No. FD 36472 (Sub-No. 1), NSR seeks approximately 161.5 miles of overhead trackage rights on CSXT's mainline between approximately Voorheesville (at or near milepost QG 22.5) and Worcester (at or near milepost QB 44.5) (inclusive of appurtenant passing tracks and sidings).
- In *Norfolk Southern Railway—Trackage Rights Exemption—Providence & Worcester Railroad,* Docket No. FD 36472 (Sub-No. 2), NSR seeks approximately 2.90 miles of overhead trackage rights on P&W's mainline between a connection with the tracks of CSXT at Worcester at milepost 0.0, over Track 1 extending from the east side of Green Street to the point of merger of said Track 1 and the Main Track so called at milepost 1.05, south of Garden Street, and over said Main Track thereafter from milepost 1.05 to P&W's Gardner Branch baseline station 153+50, which is the point of connection with the tracks of Boston & Maine at Barbers Station at milepost 2.90.
- In *Norfolk Southern Railway—Trackage Rights Exemption—Boston & Maine Corp.,* Docket No. FD 36472 (Sub-No. 3), NSR seeks approximately 22.08 miles of overhead trackage rights on Boston & Maine's line from milepost X 2.92 at Barber, Mass.,[11] and connection to P&W, to milepost X 25.0 at Harvard and connection to PAS.
- In *Norfolk Southern Railway—Trackage Rights Exemption—Pan Am Southern LLC,* Docket No. FD 36472 (Sub-No. 4), NSR seeks approximately 3.01 miles of overhead trackage rights on PAS's line from milepost X 25.0 at Harvard, and connection to Boston & Maine, to milepost X 28.01 at Ayer.

Discontinuance Authority Over NSR Line. In *SMS Rail Lines of New York, LLC—Discontinuance Exemption—in Albany County, N.Y.,* Docket No. AB 1312X, NSR filed, on behalf of SMS Rail Lines of New York, LLC (SMS) and with SMS's consent, a verified notice of exemption for SMS to discontinue common carrier service and terminate its lease operations over approximately 15 miles of rail line owned by NSR located between milepost 11.00 in Voorheesville and a point 50 feet south of the centerline of the bridge at milepost 26.14 (or engineering station 6136+/-) in Delanson, N.Y., including the use of wye track and any track leading to the Northeast Industrial Park at milepost 12.1 and 12.29, in Albany County, N.Y.

B&E Operating Authority. In *Pittsburg & Shawmut Railroad—Operation Exemption—Pan Am Southern LLC,* Docket No. FD 36472 (Sub-No. 5), B&E has filed a petition for exemption under 49 U.S.C. 10502 and 49 CFR part 1121 from the provisions of 49 U.S.C. 11323(a)(2) and 11324 to allow B&E to enter into contracts to operate the approximately 425 route miles of lines and incidental trackage rights of PAS currently being operated by Springfield Terminal.[12] B&E notes that its petition

[7] Specifically, Systems would be merged with 747 Merger Sub 1, Inc., with Systems surviving. Immediately thereafter, Systems would be merged with 747 Merger Sub 2, with 747 Merger Sub 2 surviving and the separate corporate existence of Systems ceasing. 747 Merger Sub 2, as the surviving corporation, would be renamed Pan Am Systems, Inc., and would be a wholly owned subsidiary of CSXC. Concurrent with closing, CSXC would contribute Pan Am Systems, Inc., and all of its subsidiaries to CSXT. CSXT would thereafter control the rail carrier subsidiaries of Pan Am Systems, Inc., and would merge those subsidiaries, except V&M, into CSXT at a later date. (Notice 3.)

[8] As described below, this operating agreement is the subject of the petition for exemption filed in Docket No. FD 36472 (Sub-No. 5). Applicants state that they anticipate consummating the Proposed Transaction and Related Transactions at the same time; however, CSXT, NSR, and GWI have agreed that, if the Proposed Transaction is consummated prior to the replacement of Springfield Terminal by B&E and the initiation of PAS operations by B&E, then Springfield Terminal would continue to operate PAS until Springfield Terminal is replaced as the PAS operator. (Notice 5–6.)

[9] As described below, these proposed trackage rights are the subjects of verified notices of exemption that have been filed in Docket Nos. FD 36472 (Sub-No. 1), FD 36472 (Sub-No. 2), FD 36472 (Sub-No. 3), and FD 36472 (Sub-No. 4).

[10] NSR has filed a public version and highly confidential versions of the trackage rights agreements in each of these sub-dockets. A motion for protective order was filed and a protective order issued on March 3, 2021, in Docket No. FD 36472, which by its terms applies to related proceedings. To ensure clarity in the administrative record, however, the Board will issue the same protective order in this decision for all of the related proceedings. *See* the Appendix to this decision.

[11] In the verified notice, NSR uses milepost X 2.92 at Barber, Mass., to describe the overhead trackage rights it seeks. The trackage rights agreement governing this transaction refers to this point as being in Barbers Station, Mass.

[12] NSR has filed a public version and highly confidential versions of the Term Sheet Agreement, entered into among GWI, CSXT and NSR, which contains the significant terms of the operating

Continued

is filed as a transaction integrally related to, and dependent upon, approval of the Proposed Transaction.

Public Interest Considerations. Applicants assert that the Proposed Transaction, combined with the Related Transactions, would substantially enhance competition by improving access to New England over multiple rail routes and would have no adverse impact on competition. (Notice 5, 7.) Applicants state that the Proposed Transaction would be an end-to-end combination of two railroad networks and would allow CSXT to convert interline operations between CSXT and the PAR System to efficient, single-line service. (Notice, Ex. 22, V.S. Pelkey 4.) Applicants further state that the Proposed Transaction would allow CSXT to expand its operations into New England, giving CSXT's existing customers more direct and efficient access to New England markets and giving the PAR System's existing customers better rail service and single-line access to the rest of CSXT's rail network. (*Id.,* Ex. 22, V.S. Pelkey 2.) Applicants assert that this single-line service would reduce switching and interchange, eliminate the need to coordinate a hand-off between separate rail carriers, result in a savings in transit times, and reduce the chance of unexpected problems in the physical interchange of traffic between two independent carriers. (*Id.,* Ex. 22, V.S. Pelkey 4.)

According to Applicants, the Related Transactions would strengthen PAS as an independent route to New England for all carriers that connect to PAS and that the agreements underlying the Related Transactions would enhance competition and improve rail service. (Notice 4.) As part of the Related Transactions, Applicants state that PAS would replace Springfield Terminal with B&E as the contract operator of PAS, and that B&E would operate and set rates for PAS in a non-discriminatory fashion as to all rail carriers that have the ability to interchange traffic with PAS or otherwise connect to PAS. (*Id.* at 8.) Applicants thus argue that CSXT would not have any control over the rates set by PAS, as rate-setting would be exclusively the responsibility of B&E. (Notice, Ex. 22, V.S. Pelkey 11.) Applicants further note that CSXT would retain Boston & Maine's one-half interest in PAS and would be able to use PAS as an alternative means to access New England, but CSXT would not be able to affect the access of other carriers to New England over PAS. (*Id.,* Ex. 22, V.S. Pelkey 11.) Further, Applicants assert that GWI's operating experience and familiarity with the New England rail market would improve PAS operations and rail service. (Notice 13.)

Applicants state that the trackage rights to be obtained by NSR would allow NSR additional flexibility with respect to its existing service to intermodal and automotive facilities at Ayer. (*Id.* at 5.) By obtaining trackage rights over existing lines owned by CSXT, Boston & Maine, P&W, and PAS, NSR would be able to run double-stack intermodal trains into the Boston area, an option that the current PAS route does not accommodate. (Notice, Ex. 22, V.S. Pelkey 11.) Additionally, Applicants assert that the Related Transactions would enhance rail capacity in New England and operations in and around Ayer by modifying existing trackage rights caps on PAS's Island Line, a short segment of rail line between Harvard and the terminus of PAS, just east of Ayer, which would ensure that an integrated CSXT/PAR System rail network would be able to meet demand for rail service in New England through a route that avoids the congested Boston metropolitan area. (*Id.,* Ex. 22, V.S. Pelkey 11–12.) Lastly, Applicants state that the NSR Settlement Agreement sets forth certain principles to strengthen existing operations of PAS lines and that CSXT has agreed to fund the construction of certain improvements in facilities in Ayer to ensure efficient operations. (*Id.,* Ex. 22, V.S. Pelkey 12.)

Classification of the Proposed Transaction. When a transaction does not involve the merger or control of two or more Class I railroads, its classification will differ depending upon whether the transaction would have ''regional or national transportation significance.'' 49 U.S.C 11325. Under 49 CFR 1180.2, a transaction that does not involve two or more Class I railroads is to be classified as ''minor''—and thus not having regional or national transportation significance—if a determination can be made that either: (1) The transaction clearly will not have any anticompetitive effects; or (2) any anticompetitive effects will clearly be outweighed by the transaction's anticipated contribution to the public interest in meeting significant transportation needs. A transaction not involving the control or merger of two or more Class I railroads is to be classified as ''significant'' if neither of these determinations can be made.

A transaction classified as ''significant'' must meet different procedural and informational requirements than one classified as ''minor.'' For example, applicants are required to submit more detailed information regarding competitive effects, operating plans, and other issues for a ''significant'' transaction than for a ''minor'' transaction. 49 CFR 1180.6(c), 1180.7(a) & (c); 1180.8(b). Responsive applications are not permitted for a ''minor'' transaction but are allowed for a ''significant'' transaction. 49 CFR 1180.4(d). The time limit for Board review is shorter for a ''minor'' transaction and prefiling notification is not required. 49 U.S.C. 11325(d); 49 CFR 1180.4(e). Finally, the filing fee for a ''significant'' transaction is higher than the fee for a ''minor'' transaction. 49 CFR 1002.2(f).

Applicants contend that the Proposed Transaction is ''minor'' because it is clear, with the commitments Applicants are making,[13] that the transaction would not have any adverse impact on competition, as: (1) No shipper would experience a reduction in the number of serving carriers, (2) no existing routes would be closed, (3) no existing interchange options would be eliminated, (4) no short lines that connect with PAR Railroads would lose a connecting alternative, (5) no Class I carriers that currently have access to New England would lose that access, and (6) CSXT commits to keeping open existing gateways on commercially reasonable terms and to ensuring access to rate regulation remedies if shippers are dissatisfied with rates for connections to other railroads. (Notice 10.)

Applicants also assert that the agreements with NSR and GWI and the Related Transactions would ensure that no adverse competitive impact would result from CSXT's acquisition of Springfield Terminal, the current operator over PAS, as well as Boston & Maine's 50% interest in PAS. (*Id.* at 11.) According to Applicants, Springfield Terminal would be replaced by B&E as the operator over PAS and as the entity to set rates on PAS, and, as a result, CSXT would not have pricing or operational control power over two generally parallel lines. (Notice 11; *id.,* Ex. 22, V.S. Reishus 20–21.) And,

agreement to be entered into between PAS and B&E. As discussed above, the Board will issue the same protective order that was issued on March 3, 2021, in Docket No. FD 36472, for all of the related proceedings. *See* the Appendix to this decision.

[13] These commitments include: (i) CSXT's commitment to provide switching services to reach PAS to certain shippers that will lose a rail alternative as a result of the Proposed Transaction; (ii) the gateway and rate relief commitments described below; and (iii) price and service commitments made by CSXT and NSR to address potential adverse competitive impacts arising from operation of PAS by a GWI subsidiary. (Notice, Ex. 22, V.S. Pelkey 13–16.)

although PAS currently serves two customers that also are served by a GWI-owned carrier and PAS interchanges with one railroad, Vermont Railway (VTR), that also interchanges with a GWI-owned carrier, Applicants argue that there would be no adverse impact on competition as a result of B&E operating PAS, because CSXT and NSR, as owners of PAS, have agreed to certain concessions to those shippers and the interchanging railroad that would preserve existing competitive options. (Notice 11; *id.,* Ex. 22, V.S. Reishus 23–25.)

Applicants contend that the public benefits from the Proposed Transaction are significant and clearly outweigh any potential adverse competitive effects. Applicants note that the Proposed Transaction would unify two already interconnected rail networks to produce efficient single-line service, which would expand market opportunities for shippers on the PAR Railroads and CSXT. (Notice 12.) Applicants state that the Proposed Transaction would bring about improved service, increased reliability, and highly consistent rail operations that would enhance competition and remove truck traffic from roads. (*Id.*) Additionally, Applicants state that the agreements reached with NSR and GWI involve capacity additions in the vicinity of Ayer and the establishment of operating protocols that would improve the efficiency and reliability of operations on PAS. (*Id.* at 13.) Further, Applicants contend that B&E, as a GWI subsidiary, would bring GWI's quality service to PAS shippers and that operating PAS would allow B&E to share resources and facilities among other GWI-owned rail carriers that would create opportunities for efficiencies and cost savings. (*Id.* at 13.)

The purpose of the test articulated in section 1180.2 is to allow the Board to lessen the regulatory burden when ''a determination can *clearly* be made, at the time the application is filed, that the transaction passes muster under'' the statute. *See R.R. Consolidation Procs.: Definition of, & Requirements Applicable to, ''Significant Transactions,''* 9 I.C.C.2d 1198, 1200 (1993) (emphasis in original). Designating a transaction under the regulations at section 1180.2 permits the Board to select the most appropriate procedures to apply to a proposed transaction. *See Canadian Pac. Ry.—Control—Dakota, Minn. & E. R.R.,* FD 35081, slip op. at 6 (STB served Nov. 2, 2007). It is not the purpose of section 1180.2(b) to force the Board to make an advance determination on the extent of the likely competitive effects or to weigh those effects against the public benefits in cases where more information would be helpful. *Id.* Any broader reading of the regulation could effectively require a preliminary determination on the ultimate issue in the case even where the Board regards such a determination as premature. *Id.*

Here, the Board cannot make the determination that the transaction clearly would not have any anticompetitive effects, based on the current record. Under the Proposed Transaction, CSXT would acquire control of over 1,200 miles of rail line throughout the New England area, including joint ownership with NSR of a Class II carrier that currently competes with CSXT's mainline in the region. Applicants acknowledge that, because PAS owns a route that is roughly parallel to an existing CSXT route from upstate New York to the Boston area, CSXT's joint control of PAS and its acquisition of Springfield Terminal could give CSXT ''some influence over competition for movements into New England,'' but for the agreements reached with NSR and GWI. (Notice, Ex. 22, V.S. Huneke 3; *see also id.,* Ex. 22, V.S. Reishus 20 (noting the possibility that, if CSXT were to retain pricing or operational control of PAS, ''the transaction could present certain competitive concerns'').) In fact, when the Board authorized the creation of PAS in 2009, it noted that the transaction ''would significantly increase competition between railroads by providing an upgraded east-west main line route to compete with a parallel main line route operated by CSXT.'' *Norfolk S. Ry.—Joint Control & Operating/Pooling Agreements—Pan Am S. LLC,* FD 35147, slip op. at 5 (STB served Mar. 10, 2009). The competitive impact of CSXT acquiring joint ownership of PAS and Springfield Terminal is not clear at this time, notwithstanding the remedial measures that Applicants have proposed.

Further, Applicants have identified ''limited instances where the operation of PAS by a GWI-owned railroad could raise competitive concerns'' for one railroad, VTR, that also interchanges with a GWI-owned carrier, and two customers that are currently served by PAS and a GWI-owned railroad and would be served by only GWI-owned railroads as a result of the Proposed and Related Transactions. (Notice, Ex. 22, V.S. Reishus 13, 23–25.) Applicants have also identified a small number of jointly served PAS–CSXT shippers in Springfield, Mass., (*id.,* Ex. 22, V.S. Reishus 20 n.44), as well as four shippers that are being served independently by both the PAR System and CSXT, three of which are located in Everett, Mass., an inner industrial suburb near Boston ''with difficult rail connections to reach the less congested portion of the freight rail network'' (*id.,* Ex. 22, V.S. Reishus 19). Thus, the record currently before the Board does not *clearly* establish that the transaction would not have any anticompetitive effects.

While Applicants have taken steps to attempt to address these potential competitive concerns, such as entering into the agreements with NSR and GWI and making various price, interchange, and other commitments (and requesting that the Board impose the terms of the NSR Settlement Agreement and various commitments as conditions of its approval of the Proposed Transaction), classifying this transaction as ''significant'' would provide the Board with the additional information and time needed to develop a more comprehensive record so that the Board may analyze the competitive concerns identified here (and any others not apparent from the Notice) and consider whether Applicants' proposed remedies, including the conditions that Applicants have requested the Board impose, adequately address these concerns.[14]

Applicants' submission asserts that there are anticipated benefits associated with the transaction. Based on the information the Board has about the possible competitive impacts today, the Board is unable to conclude at this stage that any anticompetitive impacts would clearly be outweighed by the potential contribution to the public interest in meeting significant transportation needs. However, the classification of this transaction as ''significant'' should not be read as any indication of how the Board might ultimately assess and weigh the benefits and any impacts on competition after development of a more complete record.

[14] Vermont Rail System (VRS), a business name used by six short line railroads controlled by Trans Rail Holding Company, including VTR; the Commonwealth of Massachusetts Department of Transportation, on behalf of itself and its concurrently-supervised agency, the Massachusetts Bay Transportation Authority (collectively, MassDOT/MBTA); Republic Services, Inc., ECDC Environmental, L.C., and Devens Recycling Center, LLC (collectively, Republic); the State of Vermont, acting through its Agency of Transportation (VTrans); Massachusetts Water Resources Authority; and several commonwealth officials filed comments, asserting, among other things, that the Proposed Transaction should be processed under the Board's procedures for a ''significant'' transaction. On March 18, 2021, Applicants filed a reply. As discussed, the Board finds this to be a ''significant'' transaction and will evaluate both the Proposed Transaction and the Related Transactions, including B&E's proposed operations on PAS, when considering the merits of the application.

The Board finds the Proposed Transaction to be ''significant'' and is therefore unable to accept the February 25, 2021 submission as an application. However, as noted, the Board will consider the February 25, 2021 submission a prefiling notification and publish notice of it in the **Federal Register**, which will permit Applicants to perfect their application by supplementing their submission with the requisite information for a ''significant'' transaction, within two to four months of the February 25, 2021 submission. *See* 49 CFR 1180.4(b), 1180.6(c), 1180.7(a) & (c), 1180.8(b). As discussed above, the Board will designate 2019 as the year to be used for impact analysis in the application unless Applicants indicate otherwise when they submit the proposed procedural schedule. Upon filing a supplement perfecting their application for a ''significant'' transaction, Applicants will be required to pay the remainder of the filing fee applicable for a ''significant'' transaction. *See* 49 CFR 1002.2(f).

Procedural Schedule. The Board's determination that this transaction is ''significant'' necessitates a different procedural schedule than that proposed by Applicants. Applicants must file with the Board no later than April 1, 2021, a revised proposed procedural schedule that reflects the Board's determination that this is a ''significant'' transaction. The proposed procedural schedule shall indicate the approximate filing date of the supplement that will perfect the application in accordance with 49 CFR 1180.4(b). Comments on the proposed procedural schedule will be due 10 days after publication of the proposed procedural schedule in the **Federal Register**.[15]

Service List. Every filing made by a Party of Record must have its own certificate of service indicating that all Parties of Record on the service list have been served with a copy of the filing. Members of the United States Congress and Governors are not Parties of Record and need not be served with copies of filings, unless any Member or Governor has requested to be, and is designated as, a Party of Record.

In past proceedings, the Board has served a notice containing the official service list and required each Party of Record to serve copies of all filings previously submitted by that party upon all other Parties of Record (to the extent such filings have not previously been served upon such other parties), and to file a certificate of service with the Board indicating that it had done so. Given the availability of the service list generated on the Board's website for individual proceedings, the Board finds it unnecessary to serve an official service list.

Service of Decisions, Orders, and Notices. The Board will serve copies of its decisions, orders, and notices on those persons who are designated on the service list as a Party of Record or Non-Party. All other interested persons are encouraged to secure copies of decisions, orders, and notices via the Board's website at *www.stb.gov.*

Submissions Received Prior to February 25, 2021. Prior to receiving Applicants' Notice, the Board received 26 letters regarding the Proposed Transaction. As no formal docket existed at the time of their submission, they have been held as correspondence. Those submissions will be included in the record of Docket No. FD 36472 and need not be served on Parties of Record at this time. However, all filings going forward must comply with the service requirements set forth above.

Access to Filings. Under the Board's rules, any document filed with the Board (including applications, pleadings, etc.) shall be promptly furnished to interested persons on request, unless subject to a protective order. 49 CFR 1180.4(a)(3). The Notice and other filings in Docket No. FD 36472 will be furnished to interested persons upon request and will also be available on the Board's website at *www.stb.gov.*[16] In addition, the Notice and other filings by Applicants may be obtained from Applicants' representatives at the addresses indicated above.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The submission filed by Applicants on February 25, 2021, is treated as the prefiling notification of the anticipated application.

2. Applicants are directed to supplement the prefiling notification by submitting a revised proposed procedural schedule with the Board no later than April 1, 2021, that is consistent with the Board's determination that this is a ''significant'' transaction.

3. Applicants are directed to perfect their application for a ''significant'' transaction, as described above, and to submit the difference between the filing fee for a ''minor'' transaction and the fee for a ''significant'' transaction, between April 25 and June 25, 2021.

4. The protective order previously issued on March 3, 2021, is issued for Docket Nos. FD 36472 (Sub-No. 1); FD 36472 (Sub-No. 2); FD 36472 (Sub-No. 3); FD 36472 (Sub-No. 4); FD 36472 (Sub-No. 5); and AB 1312X, and is included in the Appendix to this decision.

5. Filings submitted prior to February 25, 2021, will be placed in the record of Docket No. FD 36472.

6. This decision is effective on March 25, 2021.

Decided: March 19, 2021.

By the Board, Board Members Begeman, Fuchs, Oberman, Primus, and Schultz.

Jeffrey Herzig,

Clearance Clerk.

Appendix

Protective Order

1. For purposes of this Protective Order:

(a) ''Confidential Documents'' means documents and other tangible materials containing or reflecting Confidential Information.

(b) ''Confidential Information'' means traffic data (including but not limited to waybills, abstracts, study movement sheets, and any documents or computer tapes containing data derived from waybills, abstracts, study movement sheets, or other data bases, and cost workpapers); the identification of potential shippers and receivers, in conjunction with shipperspecific or other traffic data; the confidential terms of contracts with shippers, or carriers or licensees; confidential financial and cost data; and other confidential or proprietary business or personal information.

(c) ''Designated Material'' means any documents designated or stamped as ''CONFIDENTIAL'' or ''HIGHLY CONFIDENTIAL'' in accordance with paragraph 2 or 3 of this Protective Order and any Confidential Information contained in such materials.

(d) ''Proceedings'' means those before the Surface Transportation Board (''Board'')

[15] The Brotherhood of Maintenance of Way Employes Division/IBT; Brotherhood of Railroad Signalmen; International Association of Sheet Metal, Air, Rail and Transportation Workers-Mechanical Division; and National Conference of Firemen and Oilers, 32BJ/SEIU (collectively, Allied Rail Unions); the Transportation Communications Union/IAM; the District Lodge 19 of the International Association of Machinists and Aerospace Workers; the American Train Dispatchers Association; the International Association of Sheet Metal, Air, Rail and Transportation Workers Transportation Division; VRS; MassDOT/MBTA; Republic; and VTrans filed comments on the procedural schedule proposed in Applicants' February 25, 2021 submission. Because Applicants are ordered to submit a revised proposed procedural schedule that reflects the Board's determination that the Proposed Transaction is ''significant,'' parties are invited to comment on the revised proposed procedural schedule after it is published in the **Federal Register**, as described above.

[16] Applicants have filed a public version and highly confidential version of the Notice. The highly confidential version may be obtained subject to the protective order issued by the Board on March 3, 2021.

concerning the Application for CSX Corporation (''CSXC''), CSX Transportation, Inc. (''CSXT'') (CSXC and CSXT are collectively referred to as ''CSX''), and 747 Merger Sub No. 2, Inc. to acquire control of and merge certain subsidiaries of Pan An Systems, Inc. (''Systems'') filed in STB Docket No. FD 36472, and any related proceedings before the Board, including Docket Nos. FD 36472 (Sub-No. 1), FD 36472 (Sub-No. 2), FD 36472 (Sub-No. 3), FD 36472 (Sub-No. 4), FD 36472 (Sub-No. 5), and AB 1312X, and any judicial review proceedings arising from STB Docket No. FD 36472 or from any related proceedings before the Board.

2. If any party to these Proceedings determines that any part of a document it submits, discovery request it propounds, discovery response it produces, transcript of a deposition or hearing in which it participates, or of a pleading or other paper to be submitted, filed, or served in these Proceedings contains Confidential Information or consists of Confidential Documents, then that party may designate and stamp such Confidential Information and Confidential Documents as ''CONFIDENTIAL.'' Any information or documents designated or stamped as ''CONFIDENTIAL'' shall be handled as provided for hereinafter.

3. If any party to these Proceedings determines that any part of a document it submits, discovery request it propounds, a discovery response it produces, transcript of a deposition or hearing in which it participates, pleading or other paper to be submitted, filed, or served in these Proceedings contains shipper-specific rate or cost data; or other competitively sensitive or proprietary information, then that party may designate and stamp such Confidential Information as ''HIGHLY CONFIDENTIAL.'' Any information or documents so designated or stamped shall be handled as provided hereinafter.

4. Information and documents designated or stamped as ''CONFIDENTIAL'' may not be disclosed in any way, directly or indirectly, or to any person or entity except to an employee, counsel, consultant, or agent of a party to these Proceedings, or an employee of such counsel, consultant, or agent, who, before receiving access to such information or documents, has been given and has read a copy of this Protective Order, has agreed to be bound by its terms by signing a confidentiality undertaking substantially in the form set forth at Exhibit A to this Protective Order, and has provided a copy of the confidentiality undertaking to counsel for CSX and Systems.

5. Information and documents designated or stamped as ''HIGHLY CONFIDENTIAL'' may not be disclosed in any way, directly or indirectly, to any employee of a party to these Proceedings, or to any other person or entity except to an outside counsel or outside consultant to a party to these proceedings, or to an employee of such outside counsel or outside counsel or outside consultant, who, before receiving access to such information or documents, has been given and has read a copy of this Protective Order, has agreed to be bound by its terms by signing a confidentiality undertaking substantially in the form set forth at Exhibit B to this Protective Order, and has provided a copy of the confidentiality undertaking to counsel for CSX and Systems.

6. All parties must file simultaneously a public version of any Highly Confidential or Confidential submission filed with the Board whether the submission is designated a Highly Confidential Version or Confidential Version. When filing a Highly Confidential Version, the filing party does not need to file a Confidential Version with the Board, but must make available (simultaneously with the party's submission to the Board of its Highly Confidential Version) a Confidential Version reviewable by any other party's in-house counsel. The Confidential Version may be served on other parties in electronic format only. In lieu of preparing a Confidential Version, the filing party may (simultaneously with the party's submission to the Board of its Highly Confidential Version) make available to outside counsel for any other party a list of all ''highly confidential'' information that must be redacted from its Highly Confidential Version prior to review by in-house personnel, and outside counsel for any other party must then redact that material from the Highly Confidential Version before permitting any clients to review the submission.

7. Any party to these Proceedings may challenge the designation by any other party of information or documents as ''CONFIDENTIAL'' or as ''HIGHLY CONFIDENTIAL'' by filing a motion with the Board or with an administrative law judge or other officer to whom authority has been lawfully delegated by the Board to adjudicate such challenges.

8. Designated Material may not be used for any purposes, including without limitation any business, commercial or competitive purposes, other than the preparation and presentation of evidence and argument in STB Docket No. FD 36472, any related proceedings before the Board, and/or any judicial review proceedings in connection with STB Docket No. FD 36472 and/or with any related proceedings.

9. Any party who receives Designated Material in discovery shall destroy such materials and any notes or documents reflecting such materials (other than file copies of pleadings or other documents filed with the Board and retained by outside counsel for a party to these Proceedings) at the earlier of: (a) Such time as the party receiving the materials withdraws from these Proceedings, or (b) the completion of these Proceedings, including any petitions for reconsideration, appeals or remands.

10. No party may include Designated Material in any pleading, brief, discovery request or response, or other document submitted to the Board, unless the pleading or other document is submitted under seal, in a package clearly marked on the outside as ''Confidential Materials Subject to Protective Order. See 49 CFR 1104.14. All pleadings and other documents so submitted shall be kept confidential by the Board and shall not be placed in the public docket in these Proceedings except by order of the Board or of an administrative law judge or other officer in the exercise of authority lawfully delegated by the Board.

11. No party may include Designated Material in any pleading, brief, discovery request or response, or other document submitted to any forum other than this Board in these Proceedings unless: (a) The pleading or other document is submitted under seal in accordance with a protective order that requires the pleading or other document to be kept confidential by that tribunal and not be placed in the public docket in the proceeding, or (b) the pleading or other document is submitted in a sealed package clearly marked, ''Confidential Materials Subject to Request for Protective Order,'' and is accompanied by a motion to that tribunal requesting issuance of a protective order that would require the pleading or other document be kept confidential and not be placed in the public docket in the proceeding, and requesting that if the motion for protective order is not issued by that tribunal, the pleading or other document be returned to the filing party.

12. No party may present or otherwise use any Designated Material at a Board hearing in these Proceedings, unless that party has previously submitted, under seal, all proposed exhibits and other documents containing or reflecting such Designated Material to the Board, to an administrative law judge or to another officer to whom relevant authority has been lawfully delegated by the Board, and has accompanied such submission with a written request that the Board, administrative law judge or other officer: (a) Restrict attendance at the hearing during any discussion of such Designated Material, and (b) restrict access to any portion of the record or briefs reflecting discussion of such Designated Material in accordance with this Protective Order.

13. If any party intends to use any Designated Material in the course of any deposition in these Proceedings, that party shall so advise counsel for the party producing the Designated Material, counsel for the deponent, and all other counsel attending the deposition. Attendance at any portion of the deposition at which any Designated Material is used or discussed shall be restricted to persons who may review that material under the terms of this Protective Order. All portions of deposition transcripts or exhibits that consist of, refer to, or otherwise disclose Designated Material shall be filed under seal and be otherwise handled as provided in paragraph 10 of this Protective Order.

14. To the extent that materials reflecting Confidential Information are produced by a party in these Proceedings, and are held and/or used by the receiving person in compliance with paragraphs 1, 2 or 3 above, such production, disclosure, holding, and use of the materials and of the data that the materials contain are deemed essential for the disposition of this and any related proceedings and will not be deemed a violation of 49 U.S.C. 11904 or of any other relevant provision of the ICC Termination Act of 1995.

15. All parties must comply with all of the provisions of this Protective Order unless the Board or an administrative law judge or other

officer exercising authority lawfully delegated by the Board determines that good cause has been shown warranting suspension of any of the provisions herein.

16. Nothing in this Protective Order restricts the right of any party to disclose voluntarily any Confidential Information originated by that party, or to disclose voluntarily any Confidential Documents originated by that party, if such Confidential Information or Confidential Documents do not contain or reflect any Confidential Information originated by any other party.

Exhibit A

UNDERTAKING CONFIDENTIAL MATERIAL

I, _____, have read the Protective Order served on _____, 2021 governing the production and use of Confidential Information and Confidential Documents in STB Docket Nos. FD 36472, FD 36472 (Sub-No. 1), FD 36472 (Sub-No. 2), FD 36472 (Sub-No. 3), FD 36472 (Sub-No. 4), FD 36472 (Sub-No. 5), and AB 1312X, understand the same, and agree to be bound by its terms. I agree not to use or to permit the use of any Confidential Information or Confidential Documents obtained pursuant to that Protective Order, or to use or to permit the use of any methodologies or techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and presentation of evidence and argument in STB Docket No. FD 36472, any related proceedings before the Surface Transportation Board (''Board''), and/or any judicial review proceedings in connection with STB Docket No. FD 36472 and/or with any related proceedings. I further agree not to disclose any Confidential Information, Confidential Documents, methodologies, techniques, or data obtained pursuant to the Protective Order except to persons who are also bound by the terms of the Order and who have executed Undertakings in the form hereof, and that at the conclusion of this proceeding (including any proceeding on administrative review, judicial review, or remand), I will promptly destroy any documents containing or reflecting materials designated or stamped as ''CONFIDENTIAL,'' other than file copies, kept by outside counsel, of pleadings and other documents filed with the Board.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that Applicants or other parties producing Confidential Information or Confidential Documents shall be entitled to specific performance and injunctive and/or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

Signed: _____

Name:

Affiliation: _____

Dated: _____

Exhibit B

UNDERTAKING HIGHLY CONFIDENTIAL MATERIAL

I, _____ am outside [counsel] [consultant] for _____, for whom I am acting in this proceeding. I have read the Protective Order served on _____, 2021, governing the production and use of Confidential Information and Confidential Documents in STB Docket Nos. FD 36472, FD 36472 (Sub-No. 1), FD 36472 (Sub-No. 2), FD 36472 (Sub-No. 3), FD 36472 (Sub-No. 4), FD 36472 (Sub-No. 5), and AB 1312X, understand the same, and agree to be bound by its terms. I agree not to use or to permit the use of any Confidential Information or Confidential Documents obtained pursuant to that Protective Order, or to use or to permit the use of any methodologies or techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and presentation of evidence and argument in STB Docket No. FD 36472, any related proceedings before the Surface Transportation Board (''Board''), or any judicial review proceedings in connection with STB Docket No. FD 36472 and/or with any related proceedings. I further agree not to disclose any Confidential Information, Confidential Documents, methodologies, techniques, or data obtained pursuant to the Protective Order except to persons who are also bound by the terms of the Order and who have executed undertakings in the form hereof.

I also understand and agree, as a condition precedent to my receiving, reviewing, or using copies of any information or documents designated or stamped as ''HIGHLY CONFIDENTIAL,'' that I will take all necessary steps to ensure that said information or documents be kept on a confidential basis by any outside counsel or outside consultants working with me; that under no circumstances will I permit access to said materials or information by employees of my client or its subsidiaries, affiliates, or owners; and that at the conclusion of this proceeding (including any proceeding on administrative review, judicial review, or remand), I will promptly destroy any documents containing or reflecting information or documents designated or stamped as ''HIGHLY CONFIDENTIAL,'' other than file copies, kept by outside counsel, of pleadings and other documents filed with the Board.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that Applicants or other parties producing Confidential Information or Confidential Documents shall be entitled to specific performance and injunctive and/or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

Signed: _____

OUTSIDE [COUNSEL] [CONSULTANT]

Dated: _____

[FR Doc. 2021–06211 Filed 3–24–21; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–1999–6480; FMCSA–2000–7006; FMCSA–2000–7363; FMCSA–2000–8398; FMCSA–2001–10578; FMCSA–2002–12294; FMCSA–2002–13411; FMCSA–2004–19477; FMCSA–2005–23238; FMCSA–2006–24783; FMCSA–2006–26066; FMCSA–2008–0021; FMCSA–2008–0266; FMCSA–2008–0340; FMCSA–2009–0011; FMCSA–2009–0303; FMCSA–2010–0187; FMCSA–2010–0354; FMCSA–2010–0385; FMCSA–2011–0276; FMCSA–2011–0379; FMCSA–2012–0161; FMCSA–2012–0339; FMCSA–2013–0174; FMCSA–2014–0002; FMCSA–2014–0003; FMCSA–2014–0006; FMCSA–2014–0007; FMCSA–2014–0299; FMCSA–2014–0300; FMCSA–2014–0301; FMCSA–2016–0027; FMCSA–2016–0031; FMCSA–2016–0033; FMCSA–2016–0210; FMCSA–2016–0212; FMCSA–2018–0207; FMCSA–2018–0209]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to renew exemptions for 53 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these individuals to continue to operate CMVs in interstate commerce without meeting the vision requirement in one eye.

DATES: Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates provided below.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Comments

To view comments go to *www.regulations.gov.* Insert the docket number, FMCSA–1999–6480, FMCSA–2000–7006, FMCSA–2000–7363, FMCSA–2000–8398, FMCSA–2001–10578, FMCSA–2002–12294, FMCSA–2002–13411, FMCSA–2004–19477, FMCSA–2005–23238, FMCSA–2006–24783, FMCSA–2006–26066, FMCSA-2008–0021, FMCSA–2008–0266, FMCSA–2008–0340, FMCSA–2009–0011, FMCSA–2009–0303, FMCSA–2010–0187, FMCSA–2010–0354, FMCSA–2010–0385, FMCSA–2011–0276, FMCSA–2011–0379, FMCSA–2012–0161, FMCSA–2012–0339, FMCSA–2013–0174, FMCSA–2014–0002, FMCSA–2014–0003, FMCSA–2014–0006, FMCSA–2014–0007, FMCSA–2014–0299, FMCSA–2014–0300, FMCSA–2014–0301, FMCSA–2016–0027, FMCSA–2016–0031, FMCSA–2016–0033, FMCSA–2016–0210, FMCSA–2016–0212, FMCSA–2018–0207, or FMCSA–2018–0209 in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

B. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.transportation.gov/privacy.*

II. Background

On February 1, 2021, FMCSA published a notice announcing its decision to renew exemptions for 53 individuals from the vision requirement in 49 CFR 391.41(b)(10) to operate a CMV in interstate commerce and requested comments from the public (86 FR 7769). The public comment period ended on March 3, 2021, and two comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that renewing these exemptions would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with the current regulation § 391.41(b)(10).

The physical qualification standard for drivers regarding vision found in § 391.41(b)(10) states that a person is physically qualified to drive a CMV if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber.

III. Discussion of Comments

FMCSA received two comments in this proceeding. An anonymous individual submitted a comment stating that commercial drivers should be held to stricter driving requirements, including acceptable vision in both eyes, due to their hours of work. Another anonymous individual submitted a comment disagreeing with the Agency's decision to grant the exemptions citing safety concerns.

FMCSA evaluated the eligibility of each of these applicants and determined that granting the exemptions would result in a level of safety that is equal to, or greater than, that which would exist without the exemptions. As discussed in Section IV: Basis for Renewing Exemptions of the Request for Comment Notice published on February 1, 2021 (86 FR 7769), each individual possesses a valid license to operate a CMV, and each individual has submitted evidence that he or she has continued to safely operate a CMV in interstate commerce for a 2-year period with their exemption. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce.

IV. Conclusion

Based on its evaluation of the 53 renewal exemption applications and comments received, FMCSA confirms its decision to exempt the following drivers from the vision requirement in § 391.41(b)(10).

In accordance with 49 U.S.C. 31136(e) and 31315(b), the following groups of drivers received renewed exemptions in the month of March and are discussed below. As of March 1, 2021, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following 44 individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (64 FR 68195; 65 FR 20245; 65 FR 20251; 65 FR 45817; 65 FR 57230; 65 FR 77066; 66 FR 53826; 66 FR 66966; 67 FR 38311; 67 FR 46016; 67 FR 57266; 67 FR 57267; 68 FR 1654; 68 FR 69434; 69 FR 26921; 69 FR 52741; 69 FR 64806; 69 FR 71098; 70 FR 2705; 70 FR 7545; 70 FR 44946; 70 FR 53412; 70 FR 74102; 71 FR 5105; 71 FR 19600; 71 FR 27033; 71 FR 32184; 71 FR 32185; 71 FR 41311; 71 FR 53489; 71 FR 63379; 72 FR 1051; 72 FR 1054; 72 FR 1056; 73 FR 11989; 73 FR 15567; 73 FR 27015; 73 FR 28186; 73 FR 42403; 73 FR 51336; 73 FR 51689; 73 FR 63047; 73 FR 75803; 73 FR 76439; 73 FR 78421; 73 FR 78423; 74 FR 6209; 74 FR 60021; 74 FR 60022; 75 FR 4623; 75 FR 9480; 75 FR 13653; 75 FR 19674; 75 FR 22176; 75 FR 27623; 75 FR 38602; 75 FR 47883; 75 FR 52062; 75 FR 63257; 75 FR 64396; 75 FR 72863; 75 FR 77492; 75 FR 79079; 75 FR 79083; 75 FR 79084; 76 FR 2190; 76 FR 4413; 76 FR 5425; 76 FR 67248; 76 FR 75942; 76 FR 79761; 77 FR 543; 77 FR 15184; 77 FR 17107; 77 FR 17108; 77 FR 23797; 77 FR 27850; 77 FR 29447; 77 FR 41879; 77 FR 52389; 77 FR 52391; 77 FR 60010; 77 FR 64582; 77 FR 74273; 77 FR 74734; 77 FR 75496; 77 FR 76166; 78 FR 800; 78 FR 1919; 78 FR 11731; 78 FR 12817; 78 FR 67452; 78 FR 67460; 78 FR 76707; 79 FR 1908; 79 FR 10606; 79 FR 14333; 79 FR 14571; 79 FR 17642; 79 FR 18391; 79 FR 22003; 79 FR 23797; 79 FR 27043; 79 FR 28588; 79 FR 35212; 79 FR 37842; 79 FR 38659; 79 FR 38661; 79 FR 41735; 79 FR 46300; 79 FR 47175; 79 FR 53514; 79 FR 56104; 79 FR 73397; 79 FR 73686; 79 FR 73687; 79 FR 74169; 80 FR 603; 80 FR 2473; 80 FR 3723; 80 FR 8751; 80 FR 9304; 80 FR 18693; 80 FR 67481; 81 FR 15401; 81 FR 20433; 81 FR 20435; 81 FR 26305; 81 FR 28138; 81 FR 52514; 81 FR 59266; 81 FR 66724; 81 FR 68098; 81 FR 71173; 81 FR 72664; 81 FR 74494; 81 FR 80161; 81 FR 81230; 81 FR 86063; 81 FR 90050; 81 FR 91239; 81 FR 94013; 81 FR 96165; 81 FR 96196; 82 FR 12683; 82 FR 13043; 82 FR 13048; 83 FR 2306; 83 FR 6919; 83 FR 15195; 83 FR 28325; 83 FR 28332; 83 FR 34661; 83 FR 53724; 83 FR 56140; 83 FR 56902; 84 FR 2309; 84 FR 2311; 84 FR 2314; 84 FR 16320):

Kurtis A. Anderson (SD)
Alan A. Andrews (NE)
Teddy S. Bioni (PA)
Duane N. Brojer (NM)
Chad L. Burnham (ME)
Derric D. Burrell (AL)
Laurence R. Casey (MA)
Thomas A. Crowell (NC)
Kevin J. Embrey (IN)
Douglas K. Esp (MT)

Liam F. Gilliland (MA)
Gary A. Goostree (OH)
Brian G. Hagen (IL)
Todd M. Harguth (MN)
Guadalupe J. Hernandez (IN)
Clarence K. Hill (NC)
Justin A. Hooper (MO)
Samuel L. Klaphake (MN)
Dennis E. Krone (IL)
John C. Lewis (SC)
Ernest B. Martin (KY)
Terrence L. McKinney (TX)
Norman Mullins (OH)
Robert H. Nelson (VA)
Lance C. Phares (NY)
Jack E. Potts, Jr. (PA)
Don C. Powell (NY)
Monte L. Purciful (IN)
Luis Ramos (FL)
George S. Rayson (OH)
Charles D. Reddick (GA)
Antonio Rivera (PA)
Ricky D. Rostad (MN)
Julius Simmons, Jr. (SC)
William T. Smiley (MD)
Michael G. Somma (NY)
Joshua R. Stanley (OK)
Douglas R. Strickland (NC)
David M. Taylor (MO)
Bruce A. Walker (WI)
Scott C. Westphal (MN)
Edward C. Williams (AL)
Steven E. Williams (GA)
Olen L. Williams, Jr. (TN)

The drivers were included in docket number FMCSA–1999–6480; FMCSA–2000–7006; FMCSA–2000–7363; FMCSA–2001–10578; FMCSA–2002–12294; FMCSA–2004–19477; FMCSA–2005–23238; FMCSA–2006–24783; FMCSA–2006–26066; FMCSA–2008–0021; FMCSA–2008–0266; FMCSA–2008–0340; FMCSA–2009–0011; FMCSA–2009–0303; FMCSA–2010–0187; FMCSA–2010–0354; FMCSA–2010–0385; FMCSA–2011–0276; FMCSA–2011–0379; FMCSA–2012–0161; FMCSA–2012–0339; FMCSA–2013–0174; FMCSA–2014–0002; FMCSA–2014–0003; FMCSA–2014–0006; FMCSA–2014–0007; FMCSA–2014–0299; FMCSA–2014–0300; FMCSA–2016–0027; FMCSA–2016–0031; FMCSA–2016–0033; FMCSA–2016–0210; FMCSA–2016–0212; FMCSA–2018–0207. Their exemptions were applicable as of March 1, 2021, and will expire on March 1, 2023.

As of March 4, 2021, and in accordance with 49 U.S.C. 31136(e) and 31315(b), Ralph J. Miles (OR) has satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (67 FR 76439; 68 FR 10298; 70 FR 7545; 72 FR 7812; 74 FR 6689; 76 FR 9859; 78 FR 8689; 80 FR 7678; 82 FR 13043; 84 FR 16320).

This driver was included in docket number FMCSA–2002–13411. The exemption was applicable as of March 4, 2021, and will expire on March 4, 2023.

As of March 7, 2021, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following two individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (80 FR 6162; 80 FR 20562; 82 FR 13043; 84 FR 16320):

Steven D. Ellsworth (IL); and Richard A. Pierce (MO)

The drivers were included in docket number FMCSA–2014–0301. Their exemptions were applicable as of March 7, 2021, and will expire on March 7, 2023.

As of March 9, 2021, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following three individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (84 FR 2323; 84 FR 16336):

Henry J. Hughes (MN); Emmanuel A. Sepulveda (CA); and Nyrone Whyte (CT)

The drivers were included in docket number FMCSA–2018–0209. Their exemptions were applicable as of March 9, 2021, and will expire on March 9, 2023.

As of March 23, 2021, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following three individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (65 FR 78256; 66 FR 16311; 67 FR 76439; 68 FR 10298; 68 FR 13360; 70 FR 7545; 70 FR 12265; 72 FR 7812; 72 FR 11426; 73 FR 51689; 73 FR 63047; 74 FR 6689; 74 FR 8302; 75 FR 77949; 76 FR 9859; 76 FR 11215; 78 FR 8689; 78 FR 12822; 80 FR 15859; 82 FR 13043; 84 FR 16320):

Howard K. Bradley (VA); Thomas F. Marczewski (WI); and Wade D. Taylor (MO)

The drivers were included in docket numbers FMCSA–2000–8398; FMCSA–2002–13411; FMCSA–2008–0266. Their exemptions are applicable as of March 23, 2021, and will expire on March 23, 2023.

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Larry W. Minor,
Associate Administrator for Policy.

[FR Doc. 2021–06148 Filed 3–24–21; 8:45 am]
BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2003–14223; FMCSA–2005–20027; FMCSA–2009–0054; FMCSA–2010–0114; FMCSA–2010–0385; FMCSA–2011–0057; FMCSA–2012–0338; FMCSA–2013–0021; FMCSA–2013–0022; FMCSA–2013–0023; FMCSA–2014–0010; FMCSA–2014–0302; FMCSA–2016–0028; FMCSA–2016–0206; FMCSA–2019–0008]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew exemptions for 17 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these individuals to continue to operate CMVs in interstate commerce without meeting the vision requirements in one eye.

DATES: Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates stated in the discussions below. Comments must be received on or before April 26, 2021.

ADDRESSES: You may submit comments identified by the Federal Docket Management System (FDMS) Docket No. FMCSA–2003–14223, Docket No. FMCSA–2005–20027, Docket No. FMCSA–2009–0054, Docket No. FMCSA–2010–0114, Docket No. FMCSA–2010–0385, Docket No. FMCSA–2011–0057, Docket No. FMCSA–2012–0338, Docket No. FMCSA–2013–0021, Docket No. FMCSA–2013–0022, Docket No. FMCSA–2013–0023, Docket No. FMCSA–2014–0010, Docket No. FMCSA–2014–0302, Docket No. FMCSA–2016–0028, Docket No. FMCSA–2016–0206, or Docket No.

FMCSA–2019–0008 using any of the following methods:

• *Federal eRulemaking Portal:* Go to *www.regulations.gov,* insert the docket number, FMCSA–2003–14223, FMCSA–2005–20027, FMCSA–2009–0054, FMCSA–2010–0114, FMCSA–2010–0385, FMCSA–2011–0057, FMCSA–2012–0338, FMCSA–2013–0021, FMCSA–2013–0022, FMCSA–2013–0023, FMCSA–2014–0010, FMCSA–2014–0302, FMCSA–2016–0028, FMCSA–2016–0206, FMCSA–2019–0008 in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click on the ''Comment'' button. Follow the online instructions for submitting comments.

• *Mail:* Dockets Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

• *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.

• *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2003–14223; FMCSA–2005–20027; FMCSA–2009–0054, FMCSA–2010–0114; FMCSA–2010–0385; FMCSA–2011–0057; FMCSA–2012–0338; FMCSA–2013–0021; FMCSA–2013–0022; FMCSA–2013–0023; FMCSA–2014–0010; FMCSA–2014–0302; FMCSA–2016–0028; FMCSA–2016–0206; FMCSA–2019–0008), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *www.regulations.gov,* insert the docket number, FMCSA–2003–14223, FMCSA–2005–20027, FMCSA–2009–0054, FMCSA–2010–0114, FMCSA–2010–0385, FMCSA–2011–0057, FMCSA–2012–0338, FMCSA–2013–0021, FMCSA–2013–0022, FMCSA–2013–0023, FMCSA–2014–0010, FMCSA–2014–0302, FMCSA–2016–0028, FMCSA–2016–0206, or FMCSA–2019–0008 in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, click the ''Comment'' button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

B. Viewing Comments

To view comments go to *www.regulations.gov.* Insert the docket number, FMCSA–2003–14223, FMCSA–2005–20027, FMCSA–2009–0054, FMCSA–2010–0114, FMCSA–2010–0385, FMCSA–2011–0057, FMCSA–2012–0338, FMCSA–2013–0021, FMCSA–2013–0022, FMCSA–2013–0023, FMCSA–2014–0010, FMCSA–2014–0302, FMCSA–2016–0028, FMCSA–2016–0206, or FMCSA–2019–0008 in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

C. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.transportation.gov/privacy.*

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The physical qualification standard for drivers regarding vision found in 49 CFR 391.41(b)(10) states that a person is physically qualified to drive a CMV if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber.

The 17 individuals listed in this notice have requested renewal of their exemptions from the vision standard in § 391.41(b)(10), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable 2-year period.

III. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49

U.S.C. 31136(e) and 31315(b), FMCSA will take immediate steps to revoke the exemption of a driver.

IV. Basis for Renewing Exemptions

In accordance with 49 U.S.C. 31136(e) and 31315(b), each of the 17 applicants has satisfied the renewal conditions for obtaining an exemption from the vision standard (see 68 FR 10301, 68 FR 19596, 70 FR 2701, 70 FR 16886, 70 FR 16887, 72 FR 11425, 72 FR 18726, 74 FR 8842, 74 FR 11988, 74 FR 11991, 74 FR 21427, 75 FR 34209, 75 FR 47886, 75 FR 77942, 76 FR 5425, 76 FR 12216, 76 FR 17483, 76 FR 18824, 76 FR 21796, 76 FR 29024, 77 FR 52388, 77 FR 74731, 78 FR 10251, 78 FR 12811, 78 FR 12815, 78 FR 14405, 78 FR 14410, 78 FR 18667, 78 FR 20379, 78 FR 22596, 78 FR 22602, 78 FR 24296, 79 FR 24298, 79 FR 51643, 79 FR 52388, 79 FR 64001, 80 FR 3723, 80 FR 12248, 80 FR 12251, 80 FR 12254, 80 FR 14220, 80 FR 15859, 80 FR 16500, 80 FR 16502, 80 FR 16509, 80 FR 20558, 80 FR 29152, 81 FR 39320, 81 FR 60115, 81 FR 66720, 81 FR 71173, 81 FR 72642, 81 FR 80161, 81 FR 96165, 82 FR 13043, 82 FR 15277, 82 FR 18818, 82 FR 18949, 82 FR 23712, 83 FR 34661, 83 FR 56902, 84 FR 2311, 84 FR 2326, 84 FR 12665, 84 FR 16320, 84 FR 16333, 84 FR 21401, 84 FR 27688). They have submitted evidence showing that the vision in the better eye continues to meet the requirement specified at § 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past 2 years indicates each applicant continues to meet the vision exemption requirements. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

In accordance with 49 U.S.C. 31136(e) and 31315(b), the following groups of drivers received renewed exemptions in the month of May and are discussed below. As of May 7, 2021, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following 15 individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (68 FR 10301, 68 FR 19596, 70 FR 2701, 70 FR 16886, 70 FR 16887, 72 FR 11425, 72 FR 18726, 74 FR 8842, 74 FR 11988, 74 FR 11991, 74 FR 21427, 75 FR 34209, 75 FR 47886, 75 FR 77942, 76 FR 5425, 76 FR 12216, 76 FR 17483, 76 FR 21796, 77 FR 52388, 77 FR 74731, 78 FR 10251, 78 FR 12811, 78 FR 12815, 78 FR 14405, 78 FR 14410, 78 FR 18667, 78 FR 20379, 78 FR 22596, 78 FR 22602, 78 FR 24296, 79 FR 51643, 79 FR 52388, 79 FR 64001, 80 FR 3723, 80 FR 12248, 80 FR 12251, 80 FR 12254, 80 FR 14220, 80 FR 15859, 80 FR 16500, 80 FR 16502, 80 FR 16509, 80 FR 29152, 81 FR 39320, 81 FR 60115, 81 FR 66720, 81 FR 71173, 81 FR 72642, 81 FR 80161, 81 FR 96165, 82 FR 13043, 82 FR 15277, 82 FR 18818, 82 FR 18949, 82 FR 23712, 83 FR 34661, 83 FR 56902, 84 FR 2311, 84 FR 2326, 84 FR 12665, 84 FR 16320, 84 FR 21401):

Michael L. Bergman (KS)
Keith E. Breeding (IN)
Lee A. Clason (NE)
Ryan E. Cox (WI)
Michael P. Curtin (IL)
David M. Field (NH)
Daryl G. Gibson (FL)
Terry R. Hunt (FL)
Oscar Juarez (ID)
Jose M. Limon-Alvarado (WA)
Eugene R. Lydick (VA)
Steve A. Reece (TN)
Gale L. Smith (PA)
Christopher M. Vincent (NC)
Steven M. Vujicic (IL)

The drivers were included in docket numbers FMCSA–2003–14223, FMCSA–2005–20027, FMCSA–2009–0054, FMCSA–2010–0114, FMCSA–2010–0385, FMCSA–2012–0338, FMCSA–2013–0021, FMCSA–2013–0022, FMCSA–2013–0023, FMCSA–2014–0010, FMCSA–2014–0302, FMCSA–2016–0028, and FMCSA–2016–0206. Their exemptions are applicable as of May 7, 2021, and will expire on May 7, 2023.

As of May 19, 2021, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following individual has satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (76 FR 18824, 76 FR 29024, 79 FR 24298, 80 FR 20558, 82 FR 18949, 84 FR 12665):

James O. Cook (GA)

The driver was included in docket number FMCSA–2011–0057. The exemption is applicable as of May 19, 2021, and will expire on May 19, 2023.

As of May 21, 2021, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following individual has satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (84 FR 16333, 84 FR 27688):

Samuel Sanchez (DE)

The driver was included in docket number FMCSA–2019–0008. The exemption is applicable as of May 21, 2021, and will expire on May 21, 2023.

V. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) Each driver must undergo an annual physical examination (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a certified medical examiner (ME), as defined by § 390.5, who attests that the driver is otherwise physically qualified under § 391.41; (2) each driver must provide a copy of the ophthalmologist's or optometrist's report to the ME at the time of the annual medical examination; and (3) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file or keep a copy of his/her driver's qualification if he/her is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VI. Conclusion

Based upon its evaluation of the 17 exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the vision requirement in § 391.41(b)(10), subject to the requirements cited above. In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for two years unless revoked earlier by FMCSA.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2021–06149 Filed 3–24–21; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Action

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; or Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treasury.gov/ofac*).

Notice of OFAC Actions

On March 22, 2021, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

Individuals

1. HLAING, Than, Burma; DOB 1965; Gender Male; Deputy Minister for Home Affairs and Chief of Burma Police Force (individual) [BURMA–EO14014].

Designated pursuant to section 1(a)(iii)(C) of Executive Order of February 10, 2021, ''Blocking Property With Respect To The Situation In Burma'' (''E.O. 14014'') for being a foreign person determined to be or has been a leader of the Burma Police Force, an entity that has, or whose members have, engaged in actions or policies that prohibit, limit or penalize the exercise of freedom of expression or assembly by people in Burma.

2. SOE, Aung, Naypyitaw, Burma; DOB 03 Dec 1963; POB Pa Thein Town, Burma; nationality Burma; Gender Male (individual) [BURMA–EO14014].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14014 for being a foreign person who is or has been a leader or official of the military or security forces of Burma, or any successor entity to any of the foregoing.

Entities

1. 33RD LIGHT INFANTRY DIVISION OF THE BURMESE ARMY, Sagaing, Burma [BURMA–EO14014].

Designated pursuant to section 1(a)(ii)(C) of E.O. 14014 for being responsible for or complicit in, or having directly or indirectly engaged or attempted to engage in, actions or policies that prohibit, limit, or penalize the exercise of freedom of expression or assembly by people in Burma.

2. 77TH LIGHT INFANTRY DIVISION OF THE BURMESE ARMY, Pegu, Burma [BURMA–EO14014].

Designated pursuant to section 1(a)(ii)(C) of E.O. 14014 for being responsible for or complicit in, or having directly or indirectly engaged or attempted to engage in, actions or policies that prohibit, limit, or penalize the exercise of freedom of expression or assembly by people in Burma.

Dated: March 22, 2021.

Bradley T. Smith,

Acting Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2021–06150 Filed 3–24–21; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

United States Mint

Prominent American Women Honored on the Reverse of Quarter-Dollar Coins—Request for Recommendations

AGENCY: United States Mint, Department of the Treasury.

ACTION: Request.

SUMMARY: The Circulating Collectible Coin Redesign Act of 2020 directs the Secretary of the Treasury (Secretary) to redesign and issue quarter-dollar coins that feature designs on the reverse emblematic of the accomplishments of a prominent American woman (Program). As part of the Program, each year, over a four-year period (2022–2025), the United States Mint (Mint) will issue quarter-dollar coins bearing up to five different reverse designs, each emblematic of the accomplishments and contributions of one prominent woman of the United States. The contributions may come from a wide spectrum of accomplishments and fields, including but not limited to suffrage, civil rights, abolition, government, humanities, science, space, and arts.

SUPPLEMENTARY INFORMATION: The Secretary will select the women to be honored after soliciting recommendations from the general public, and in consultation with the Smithsonian Institution's American Women's History Initiative, the National Women's History Museum, and the Bipartisan Women's Caucus (Consultants). As the Act requires that the designs may not feature any living person, all of the women honored must be deceased.

In accordance with the selection process developed by the Secretary, the public is now invited to submit recommended candidate honorees via the following web portal established by the National Women's History Museum: *https://forms.gle/3BgR3BLbFfJ69XdYA.*

FOR FURTHER INFORMATION CONTACT: The United States Mint; 801 9th Street NW, Washington, DC 20220; or email *womenonquarters@usmint.treas.gov.*

Authority: Public Law 116–330.

Eric Anderson,

Executive Secretary, United States Mint.

[FR Doc. 2021–06164 Filed 3–24–21; 8:45 am]

BILLING CODE P

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