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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0654; Project Identifier MCAI–2021–00682–E; Amendment 39–21684; AD 2021–17–01]

RIN 2120–AA64

Airworthiness Directives; Austro Engine GmbH Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Austro Engine GmbH E4 and E4P model diesel piston engines. This AD was prompted by a report of oil pressure loss on an E4 model diesel piston engine. This AD requires removing a certain oil pump from service and replacing it with a part eligible for installation. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective August 23, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 23, 2021.

The FAA must receive comments on this AD by September 20, 2021.

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

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

For service information identified in this final rule, contact Austro Engine GmbH, Rudolf-Diesel-Strasse 11, 2700 Weiner Neustadt, Austria; phone: +43 2622 23000 2525; website: *www.austroengine.at.* 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–2021–0654.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0654; 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, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for the Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Wego Wang, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7134; fax: (781) 238–7199; email: *wego.wang@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, issued EASA Emergency AD 2021–0143–E, dated June 16, 2021 (referred to after this as ''the MCAI''), to address the unsafe condition on these products. The MCAI states:

> An occurrence was reported of oil pressure loss on an E4 engine. Subsequent investigation determined that a certain batch of oil pumps was produced with a dimensional deviation on the inner gear/shaft. The inner gear/shaft of those pumps may come into contact with the pump housing, which might create debris and cause jamming of the oil pump.
>
> This condition, if not corrected, could lead to engine in-flight shut-down with consequent forced landing, possibly resulting in damage to the aeroplane and injury to occupants.
>
> To address this potential unsafe condition, Austro Engine published the [service bulletin] to provide instructions to replace the affected oil pumps.
>
> For the reason described above, this [EASA] AD requires replacement of affected parts with serviceable parts, as defined in this [EASA] AD. This [EASA] AD also prohibits (re)installation of affected parts on all engines.

You may obtain further information by examining the MCAI in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0654.

FAA's Determination

This product has been approved by EASA and is approved for operation in the United States. Pursuant to our bilateral agreement with the European Community, EASA has notified the FAA of the unsafe condition described in the MCAI and service information. The FAA is issuing this AD because the agency evaluated all the relevant information provided by EASA and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Austro Engine Mandatory Service Bulletin No. MSB–E4–031/1, Revision No. 1, dated July 1, 2021. This service information specifies procedures for replacing the affected oil pump installed on E4 and E4P model diesel piston engines. In addition, this service information identifies the applicable part number and serial numbers of affected oil pumps requiring replacement and an additional oil pump replacement option. 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**.

AD Requirements

This AD requires removing the affected oil pump from service and replacing it with a part eligible for installation.

Justification for Immediate Adoption and Determination of the Effective Date

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5

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

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies foregoing notice and comment prior to adoption of this rule. The FAA received a report of oil pressure loss on an E4 model diesel piston engine. The manufacturer subsequently determined that the oil pressure loss was caused by certain oil pumps produced with a dimensional deviation on the inner gear/shaft that may have contacted the pump housing. This contact might create debris and cause oil pump blockage. Austro Engine issued service information providing instructions for replacement of a certain oil pump installed on E4 and E4P model diesel piston engines.

A jammed oil pump can result in failure of the engine, in-flight shutdown, and loss of the airplane. The FAA considers a jammed oil pump to be an urgent safety issue that requires immediate action to avoid loss of the airplane. The actions required by this AD must be done before further flight after the AD's effective date. Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B). In addition, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days, for the same reasons the FAA found good cause to forego notice and comment.

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2021–0654 and Project Identifier MCAI–2021–00682–E'' at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Wego Wang, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Regulatory Flexibility Act

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

Costs of Compliance

The FAA estimates that this AD affects 10 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
Remove and replace the oil pump	16 work-hours × $85 per hour = $1,360	$1,445	$2,805	$28,050

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

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

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

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

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:

2021–17–01 Austro Engine GmbH: Amendment 39–21684; Docket No. FAA–2021–0654; Project Identifier MCAI–2021–00682–E.

(a) Effective Date

This airworthiness directive (AD) is effective August 23, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Austro Engine GmbH E4 and E4P model diesel piston engines.

(d) Subject

Joint Aircraft System Component (JASC) Code 8550, Reciprocating Engine Oil System.

(e) Unsafe Condition

This AD was prompted by a report of oil pressure loss on an E4 model diesel piston engine. The FAA is issuing this AD to prevent failure of the engine. The unsafe condition, if not addressed, could result in failure of the engine, in-flight shutdown, and loss of the airplane.

(f) Compliance

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

(g) Required Actions

Before further flight after the effective date of this AD, remove the oil pump, part number (P/N) E4A–50–000–BHY, with a serial number (S/N) listed in paragraph 1.2., Engines Affected, Tables 2 and 3, of Austro Engine GmbH Mandatory Service Bulletin No. MSB–E4–031/1, Revision No. 1, dated July 1, 2021 (the MSB), from service and replace with a part eligible for installation using the Accomplishment/Instructions, paragraph 2.2.1 or paragraph 2.2.2., of the MSB, as applicable.

(h) No Communication or Reporting Requirements

The instructions to contact the manufacturer and report information to the manufacturer in the Accomplishment/Instructions, paragraph 2.2, of the MSB, are not required by this AD.

(i) Installation Prohibition

After the effective date of this AD, do not install onto any engine an oil pump with P/N E4A–50–000–BHY and an S/N listed in paragraph 1.2., Engines Affected, Tables 2 and 3, of the MSB.

(j) Definitions

For the purpose of this AD, a ''part eligible for installation'' is an oil pump that is not P/N E4A–50–000–BHY or an oil pump P/N E4A–50–000–BHY and an S/N that is not listed in paragraph 1.2., Engines Affected, Tables 2 and 3, of the MSB.

(k) Special Flight Permit

Special flight permits, as described in Section 21.197 and Section 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199), are subject to the requirements of paragraph (k)(1) and (2) of this AD.

(1) Operators of a twin-engine airplane that has one or two Model E4 engines in configuration ''–B'' or ''–C'' or Model E4P engines installed may perform a one-time non-revenue ferry flight to a location where the engine can be removed from service. This ferry flight must be performed with only essential flight crew.

(2) All other ferry flights are prohibited.

(l) 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 ECO Branch, 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.

(m) Related Information

(1) For more information about this AD, contact Wego Wang, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7134; fax: (781) 238–7199; email: *wego.wang@faa.gov.*

(2) Refer to European Union Aviation Safety Agency (EASA) AD 2021–0143–E, dated June 16, 2021, for more information. You may examine the EASA AD in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0654.

(n) Material Incorporated by Reference

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

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

(i) Austro Engine Mandatory Service Bulletin No. MSB–E4–031/1, Revision No. 1, dated July 1, 2021.

(ii) [Reserved]

(3) For Austro Engine service information identified in this AD, you may contact Austro Engine GmbH, Rudolf-Diesel-Strasse 11, 2700 Weiner Neustadt, Austria; phone: +43 2622 23000 2525; website: *www.austroengine.at.*

(4) 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.

(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: *fr.inspection@nara.gov,* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on August 2, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–16895 Filed 8–4–21; 11:15 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 153 and 157

[Docket No. RM20–15–002; Order No. 871–C]

Limiting Authorizations to Proceed With Construction Activities Pending Rehearing

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Order addressing arguments raised on rehearing and clarification.

SUMMARY: The Federal Energy Regulatory Commission addresses requests for rehearing and clarification of Order No. 871–B.

DATES: The effective date of the document published on May 13, 2021 (86 FR 26,150), is confirmed: June 14, 2021.

FOR FURTHER INFORMATION CONTACT: Tara DiJohn, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–8671, *tara.dijohn@ferc.gov.*

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1. On May 4, 2021, the Federal Energy Regulatory Commission (Commission) issued an order addressing arguments raised on rehearing and clarification, and setting aside, in part, its prior Order No. 871.[1] Order No. 871–B revised the rule previously adopted by the Commission in Order No. 871 [2] to narrow the scope of its application and to incorporate a time limitation for the Commission to preclude issuances of authorizations to proceed with construction activities. Order No. 871–B also announced a new general policy of presumptively staying certificate orders issued pursuant to section 7(c) of the Natural Gas Act (NGA) [3] during the 30-day rehearing period and pending Commission resolution of any timely requests for rehearing filed by landowners. On June 3, 2021, the Interstate Natural Gas Association of America (INGAA), the Enbridge Gas Pipelines (Enbridge),[4] and Mountain Valley Pipeline, LLC (Mountain Valley) requested clarification and rehearing of Order No. 871–B.

2. Pursuant to *Allegheny Defense Project* v. *FERC,*[5] the rehearing requests filed in this proceeding may be deemed denied by operation of law. However, as permitted by section 19(a) of the NGA,[6] we are modifying the discussion in Order No. 871–B and continue to reach the same result in this proceeding, as discussed below.[7]

I. Background

3. In Order No. 871, the Commission explained that historically, due to the complex nature of the matters raised on rehearing of orders granting authorizations under NGA sections 3 and 7, the Commission had often issued an order (known as a tolling order) by the thirtieth day following the filing of a rehearing request, allowing itself additional time to provide thoughtful, well-considered attention to the issues raised on rehearing.

4. In order to balance its commitment to expeditiously responding to parties' concerns in comprehensive orders on rehearing and the serious concerns posed by the possibility of construction proceeding prior to the completion of agency review, the Commission, in Order No. 871, exercised its discretion by amending its regulations to add new § 157.23, which precludes the issuance of authorizations to proceed with construction of projects authorized under NGA sections 3 and 7 during the period for filing requests for rehearing of the initial orders or while rehearing is pending.[8]

5. Three weeks after the Commission issued Order No. 871, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) issued an *en banc* decision in *Allegheny.*[9] The court held that the Commission's use of tolling orders solely to allow itself additional time to consider an application for rehearing does not preclude operation of the NGA's deemed denial provision,[10] which enables a rehearing applicant to seek judicial review after thirty days of agency inaction.[11] The court explained that, to prevent an application for rehearing from being deemed denied, the Commission must act on an application for rehearing within thirty days of its filing by taking one of the four NGA-enumerated actions: grant rehearing, deny rehearing, or abrogate or modify its order without further hearing.[12]

6. Shortly thereafter, on July 9, 2020, the Commission received three timely

[1] *Limiting Authorizations to Proceed with Construction Activities Pending Rehearing,* Order No. 871–B, 86 FR 26150 (May 13, 2021), 175 FERC ¶ 61,098 (2021).

[2] The Commission issued its June 9, 2020 Order No. 871 to preclude the issuance of authorizations to proceed with construction activities with respect to orders granting authorizations under sections 3 and 7 of the Natural Gas Act (NGA) until the Commission acts on the merits of any timely-filed request for rehearing or until the deadline for filing a timely request for rehearing has passed with no such request being filed. *Limiting Authorizations to Proceed with Construction Activities Pending Rehearing,* Order No. 871, 85 FR 40113 (Jul. 06, 2020), 171 FERC ¶ 61,201 (2020).

[3] 15 U.S.C. 717f(c).

[4] The Enbridge Gas Pipelines include Algonquin Gas Transmission, LLC; Big Sandy Pipeline, LLC; Bobcat Gas Storage; East Tennessee Natural Gas, LLC; Garden Banks Gas Pipeline, LLC, Market Hub Partners Holding, LLC; Mississippi Canyon Gas Pipeline, LLC; Saltville Gas Storage Company L.L.C.; and Texas Eastern Transmission, LP. The Enbridge Gas Pipelines also include natural gas companies in which affiliates of the Enbridge Gas Pipelines own a joint venture interest, including Alliance Pipeline L.P., Gulfstream Natural Gas System, L.L.C.; Maritimes & Northeast Pipeline, L.L.C.; Nautilus Pipeline Company, L.L.C., NEXUS Gas Transmission, LLC; Sabal Trail Transmission, LLC; Southeast Supply Header, LLC; and Steckman Ridge, LP.

[5] 964 F.3d 1 (D.C. Cir. 2020) (en banc) (*Allegheny*).

[6] 15 U.S.C. 717r(a) (''Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b), the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it under the provisions of this chapter.'').

[7] *Allegheny,* 964 F.3d at 16–17. The Commission is not changing the outcome of Order No. 871–B. *See Smith Lake Improvement & Stakeholders Ass'n* v. *FERC,* 809 F.3d 55, 56–57 (D.C. Cir. 2015).

[8] Order No. 871 also revised § 153.4 (general requirements for NGA section 3 applications) of the Commission's regulations to incorporate a cross-reference to § 157.23.

[9] 964 F.3d 1.

[10] 15 U.S.C. 717r(a).

[11] *Allegheny,* 964 F.3d at 18–19.

[12] *See id.* at 13 (quoting 15 U.S.C. 717r(a)).

requests for clarification and rehearing of Order No. 871. To facilitate reconsideration of Order No. 871 and ensure a complete record for further action, the Commission in Order No. 871–A subsequently provided interested parties an opportunity to comment on the arguments raised on rehearing and specific questions posed by the Commission.[13] In response, the Commission received twelve initial briefs and five reply briefs from a variety of stakeholders, including states, landowners, natural gas companies, and a consortium of public interest organizations.[14]

7. In consideration of the arguments raised on rehearing and in the briefs, the Commission in Order No. 871–B revised § 157.23 of its regulations to provide that the rule prohibiting the issuance of construction authorizations pending rehearing will apply only when a request for rehearing raises issues reflecting opposition to project construction, operation, or need.[15] Order No. 871–B further revised the rule to provide that the rule's restriction on issuing construction authorizations while a qualifying rehearing request remains pending will expire 90 days following the date that such request may be deemed denied by operation of law under NGA section 19(a).[16]

8. In addition, the Commission in Order No. 871–B announced its intent to stay its NGA section 7(c) certificate orders during the 30-day rehearing period and pending Commission resolution of any timely requests for rehearing filed by landowners.[17] We explained that this policy will be applied on a particularized basis, subject to certain exceptions and, if imposed, any stay would be lifted no later than 90 days following the date that a qualifying request for rehearing may be deemed denied by operation of law.[18]

9. On June 3, 2021, INGAA and Enbridge filed requests for clarification and rehearing of Order No. 871–B.[19] On the same day, Mountain Valley filed a request for clarification, or, in the alternative, rehearing.[20]

II. Discussion

10. INGAA's and Enbridge's petitions include several requests for clarification, or, in the alternative, rehearing of the rule, as revised in Order No. 871–B, and of the Commission's announcement that it would prospectively stay certain section 7(c) certificate orders pending rehearing. Mountain Valley's petition is focused on a single issue regarding the rule's application: whether the rule would apply if rehearing is sought of an amendment order approving a minor mid-construction change that would typically be submitted as a variance request. Below, we first respond to the various requests for clarification or rehearing of the revised rule and then to requests for clarification or rehearing of the Commission's policy of staying section 7(c) certificate orders pending rehearing.

A. Rule Limiting Construction Authorizations Pending Rehearing

1. Opposition to Project Need

11. In Order No. 871–B, the Commission revised § 157.23(b) of its regulations as follows:

> With respect to orders issued pursuant to 15 U.S.C. 717b or 15 U.S.C. 717f(c) authorizing the construction of new natural gas transportation, export, or import facilities, no authorization to proceed with construction activities will be issued:
>
> (a) until the time for the filing of a request for rehearing under 15 U.S.C. 717r(a) has expired with no such request being filed, or
>
> (b) if a timely request for rehearing *raising issues reflecting opposition to project construction, operation, or need* is filed, until: *(i) The request is no longer pending before the Commission, (ii) the record of the proceeding is filed with the court of appeals, or (iii) 90 days has passed after the date that the request for rehearing may be deemed to have been denied under 15 U.S.C. 717r(a).*[21]

12. INGAA and Enbridge request that the Commission clarify the meaning of ''opposition to project . . . need.'' Specifically, INGAA and Enbridge urge the Commission to clarify that this phrase refers only to situations in which a project opponent claims that there is insufficient evidence of *market* need for a project under the NGA section 7 economic balancing test.[22] INGAA maintains that ''virtually any generic opposition to a project'' could be viewed as an argument that the new facilities are not ''needed,'' and that if not clarified, this phrasing could prohibit the issuance of construction authorization whenever *any* rehearing request is filed by a party generally opposed to development.[23] Similarly, Enbridge posits that parties could delay construction for months by claiming on rehearing that a project is not needed because of ''broad climate change concerns.''[24]

13. We deny INGAA's and Enbridge's requests for clarification on this issue. The petitioners' interpretation construes the language of the rule too narrowly. Adopting this suggestion ''would exclude from the rule's purview rehearing requests raising environmental matters or general opposition to a project, as well as rehearing requests filed by members of communities that would be impacted by the construction of new natural gas facilities.''[25] The Commission has already stated that we did not intend such a result.[26] We continue to find it appropriate ''to refrain from permitting construction to proceed until the Commission has acted upon any request for rehearing that opposes project construction and operation or raises issues regarding project need, *regardless of the basis* or whether rehearing is sought by an affected landowner.''[27]

2. Amendment Orders Authorizing Mid-Construction Changes

14. INGAA and Mountain Valley seek clarification that the rule does not apply to amendment orders that authorize limited changes while project construction is ongoing, which the they refer to as ''mid-construction changes,'' or, in the alternative, rehearing.[28] INGAA explains that mid-construction changes—such as construction method changes, temporary workspaces changes, and minor route realignments that do not involve new facilities or new landowners—are traditionally filed by project developers as variance requests.[29] However, INGAA notes that

[13] *Limiting Authorizations to Proceed with Construction Activities Pending Rehearing,* Order No. 871–A, 86 FR 7643 (Feb. 1, 2021), 174 FERC ¶ 61,050 (2021).

[14] *See* Order No. 871–B, 175 FERC ¶ 61,098 at PP 8–9 (describing briefs received).

[15] Order No. 871–B, 175 FERC ¶ 61,098 at PP 14, 30.

[16] *Id.* PP 26, 30.

[17] *Id.* PP 43–51.

[18] *See id.* PP 46, 51.

[19] INGAA's June 3, 2021 Request for Clarification and Rehearing (INGAA Rehearing); Enbridge's June 3, 2021 Request for Clarification and Rehearing (Enbridge Rehearing).

[20] Mountain Valley's June 3, 2021 Request for Clarification or, in the Alternative, Rehearing (Mountain Valley Rehearing).

[21] Order No. 871–B, 175 FERC ¶ 61,098 at P 30 (emphasis in the original reflecting adopted revisions to § 157.23).

[22] *See* INGAA Rehearing at 9; Enbridge Rehearing at 13–14.

[23] INGAA Rehearing at 10, 11.

[24] Enbridge Rehearing at 13.

[25] Order No. 871–B, 175 FERC ¶ 61,098 at P 15.

[26] *Id.*

[27] *Id.* (emphasis added).

[28] *See* INGAA Rehearing at 11–20; Mountain Valley Rehearing at 5–9.

[29] *See* INGAA Rehearing at 13–15 (providing examples of prior variance approvals allowing: temporary modification to location of temporary access road to accommodate imminent longwall mining activities in vicinity of construction area, a minor pipeline route shift to avoid an obstruction placed on approved pipeline route, modifications to pipeline route and road crossing method due to unanticipated subsurface conditions).

the Commission can convert mid-construction changes submitted as a variance request into certificate amendment proceedings. In addition, a project developer may on its own accord decide to seek approval of certain mid-construction changes by filing an amendment application rather than a variance request.[30] INGAA and Mountain Valley seek assurance that the rule would not apply to amendment orders authorizing mid-construction changes that would traditionally be approved through the variance process. To support this request, INGAA and Mountain Valley point to the language of § 157.23's introductory text, which references orders authorizing ''the construction of new natural gas transportation, export, or import facilities,'' and explain that the type of mid-construction amendment proceedings for which it seeks clarification do not involve new facilities.[31]

15. If the Commission declines to grant clarification, INGAA and Mountain Valley request rehearing of this issue. If the Commission agrees that the rule does not apply to orders authorizing limited mid-construction changes, INGAA further asks the Commission to clarify that it retains discretion to issue an authorization to proceed with construction during the 30-day rehearing period following such an order.[32]

16. In Order No. 871–B, we explained that the rule limiting construction authorizations would not apply to a request for rehearing of an non-initial order that merely implements the terms, conditions, or provisions of an initial authorizing order, ''such as a delegated order issuing a notice to proceed with construction, approving a variance request, or allowing the applicant to place the project, or a portion thereof, in service.'' [33] With respect to amendment orders, the Commission stated that the rule would apply only to the facilities approved by the amendment order for which rehearing is sought: it would not relate back to any facilities previously approved by the Commission in the initial authorizing order that remain unchanged by the amendment order.[34]

17. The Commission has already provided substantial guidance in response to INGAA's previous requests for clarification regarding the rule's application to non-initial and amendment orders. The scenario now posed by INGAA and Mountain Valley on rehearing of Order No. 871–B is a slightly different factual scenario. But the Commission is not required to identify and address every conceivable permutation of facts under which questions about the rule's application may arise.[35] Therefore, it is premature to address the possible range of future mid-construction changes. As a general matter, we think it likely that the rule would not apply if rehearing is sought of an amendment order approving a mid-construction change that is generally consistent with the terms and conditions of the original authorization order and does not involve new facilities or new landowners. However, we will consider the circumstances of each request on a case-by-case basis, and will indicate in the Commission's order in each case whether the rule applies.

3. Post-*Allegheny* Rehearing Treatment

18. Enbridge contends that the Commission erred by determining that an order granting rehearing for further proceedings would vacate the certificate authorization,[36] arguing that the Commission cannot revoke certificate authority merely by issuing an interlocutory order granting rehearing or establishing a hearing, briefing schedule, investigation or other similar proceeding, but rather, must make a specific finding on the issues with the requisite support.[37] According to Enbridge, an interlocutory order revoking a certificate would improperly place the certificate holder in ''legal limbo'' as an aggrieved party unable to seek rehearing and appeal of the interlocutory action.[38] Enbridge urges the Commission to establish a specific timeframe for issuance of a substantive order following a grant of rehearing subject to further proceedings or to set a deadline after which a construction authorization may issue.[39]

19. INGAA takes a different tack, suggesting that the Commission adopt a case-by-case approach to determining whether an initial order will be vacated when rehearing is granted.[40] Specifically, INGAA asks the Commission to clarify that it did not adopt a blanket rule that a grant of rehearing for further procedures means the entire underlying order is vacated,[41] that it will instead employ a case-by-case approach for determining whether grant of rehearing would result in vacatur,[42] and that the entire certificate authorization will not be vacated if the Commission seeks additional briefing or information on one or more targeted issues.[43]

20. Both INGAA and Enbridge note that the Commission's prior practice of issuing tolling orders did not result in vacatur of underlying order.[44] Thus, despite changing its procedures for handling requests for rehearing following *Allegheny,* INGAA and Enbridge argue that the Commission has departed from longstanding practice and failed to acknowledge such departure.[45]

21. In response to INGAA's request, Order No. 871–B posited four post-*Allegheny* scenarios that could arise following the filing of a request for rehearing to explain when such a request would remain pending before the Commission and, thus, preclude the issuance of a construction authorization.[46] The fourth scenario addressed a situation contemplated by the *Allegheny* court, where the Commission could ''grant rehearing for the express purpose of revisiting and substantively reconsidering a prior decision,'' where it ''needed additional time to allow for supplemental briefing or further hearing processes.'' [47] In Order No. 871–B, the Commission stated that ''[u]nder those circumstances, *i.e.,* where the Commission grants rehearing without issuing a final order, the original

[30] *See, e.g.,* Mountain Valley Rehearing at 5 (describing its amendment application submitted in Docket No. CP21–57–000 requesting Commission authorization to change the crossing method for specific wetlands and waterbodies to be crossed by the Mountain Valley Pipeline Project from open-cut crossings to one of several trenchless methods). Nothing in this order prejudges action on the amendment application.

[31] INGAA Rehearing at 15–16 (noting that the term ''facilities'' refers to the physical plant approved by the Commission in the original certificate order); Mountain Valley Rehearing at 5.

[32] INGAA Rehearing at 18–20.

[33] Order No. 871–B, 175 FERC ¶ 61,098 at P 17.

[34] *Id.* P 18.

[35] *See, e.g., Motor Vehicle Mfrs. Ass'n of U.S., Inc.* v. *State Farm Mut. Auto. Ins. Co.,* 463 U.S. 29, 51 (1983) (''It is true that a rulemaking 'cannot be found wanting simply because the agency failed to include every alternative device and thought conceivable by the mind of man . . . regardless of how uncommon or unknown that alternative may have been[.]'') (quoting *Vt. Yankee Nuclear Power Corp.* v. *Nat. Res. Def. Council, Inc.,* 435 U.S. 519, 551 (1978)).

[36] Enbridge Rehearing at 9–10.

[37] *Id.* at 9.

[38] *Id.* at 10.

[39] *Id.* at 10–11.

[40] INGAA Rehearing at 20–23.

[41] *See id.* at 20–22.

[42] *Id.* at 22.

[43] *Id.*

[44] *See* INGAA Rehearing at 23; Enbridge Rehearing at 10.

[45] *See* INGAA Rehearing at 23 (citing *FCC* v. *Fox Television Stations, Inc.,* 556 U.S. 502, 515 (2009) (agencies must ''provide reasoned explanation'' and show good reasons for a change in position, but ''need not demonstrate to a court's satisfaction that the reasons for the new policy are *better* than the reasons for the old one'') (emphasis in the original)); Enbridge Rehearing at 10 (same).

[46] *See* Order No. 871–B, 175 FERC ¶ 61,098 at PP 19–29.

[47] *Id.* P 27 (citing 964 F.3d at 16).

authorization would no longer be in effect and the provisions of Order No. 871 would no longer apply since there would be no final order pursuant to which a notice to proceed could be issued.'' [48]

22. As an initial matter, Enbridge and INGAA err to the extent that they suggest the Commission determined that original authorization orders necessarily would be vacated or revoked by an interlocutory order granting rehearing for further procedures, as described by the *Allegheny* court. We merely stated, in response to a prior request for clarification from INGAA, that under the specified circumstances contemplated by the *Allegheny* court, the provisions of Order No. 871 ''would no longer apply since there would be no final order pursuant to which a notice to proceed could be issued.'' [49] We agree with INGAA that a case-by-case approach is necessary for the Commission to determine the effect that a grant of rehearing for further procedures would have on the underlying authorization. In the order granting rehearing for further procedures, we will indicate the order's effect on the underlying authorization.

23. The Commission previously declined a request to establish a deadline for issuing a final merits order following a grant of rehearing for further procedures.[50] As we stated at the time, timelines associated with supplemental briefing or evidentiary submissions may vary based on the complexity of the issues warranting further procedures.[51] Thus, we continue to find that a case-by-case approach is warranted in the event that the Commission grants rehearing because it ''need[s] additional time to allow for supplemental briefing or further hearing processes.'' [52]

4. Additional Clarifications to Regulation Text

24. INGAA argues that § 157.23(b) should be revised to add the phrase ''the earliest of the time at which,'' as italicized below:

If a timely request for rehearing raising issues reflecting opposition to project construction, operation, or need is filed, *until the earliest of the time at which:* (1) The request is no longer pending before the Commission, (2) the record of the proceeding is filed with the court of appeals, or (3) 90 days has passed after the date that the request for rehearing may be deemed to have been denied under 15 U.S.C. 717r(a).[53]

INGAA contends that this addition would clarify and better reflect what it understands to be the Commission's intent, as reflected by the Commission's use of the conjunction ''or'' and references throughout Order No. 871–B that suggest that the restriction on issuance of construction authorizations will apply until the earliest of the three ''triggering events'' contemplated by the rule.[54] If the suggested change is not adopted, INGAA fears that project opponents may argue that no authorization to proceed with construction should be issued until the occurrence of the later of the three ''triggering events'' comes to pass.[55]

25. INGAA is correct in its interpretation that a construction authorization may be issued upon the earliest occurrence of the three triggering events enumerated in the regulation. However, we decline to further revise the regulatory language. As currently drafted, the rule uses the conjunction ''or'' which serves to distinguish the three scenarios as alternatives and signals that a construction authorization may issue once the earliest of the three events occurs.

26. In addition, INGAA renews its request that the Commission revise § 157.23 to expressly state that the rule may be waived for good cause shown.[56] INGAA urges the Commission to consider cases finding in other contexts that agencies' authority to waive their own rules is not unlimited and that agencies are bound by, and courts must enforce, the unambiguous terms of regulations.[57]

27. The Commission previously declined to adopt INGAA's suggestion to incorporate into the rule an explicit waiver provision, finding it retains authority to waive its own regulations.[58] INGAA raises no new arguments that cause us to reconsider that decision.

5. Effective Date of Construction Authorization Issuances

28. Enbridge urges the Commission to clarify that its staff may issue authorizations to proceed with construction prior to the deadline established by the rule so long as the authorization *does not become effective until* the occurrence of the earliest of the three triggering events enumerated in the rule (*i.e.,* the rehearing request is no longer pending before the Commission, the record of the proceeding is filed with the court of appeals, or 90 days after the date that the request may be deemed denied).[59] Allowing project developers to obtain advance confirmation from Commission staff that all preconstruction conditions have been satisfied would, according to Enbridge, help project developers set and meet construction milestones, lessen the chance of additional regulatory delays, and would reflect the Commission's articulated goal of achieving an appropriate balance of interests.[60]

29. The Commission denies the requested clarification. We believe that, in practice, a conditional construction authorization of the nature Enbridge suggests has the potential to create uncertainty for project developers, stakeholders, and Commission staff alike as to the effective date of the authorization, which outweighs the purported benefits that Enbridge identifies. Moreover, the advance notice contemplated by Enbridge fails to account for a change in status of a project developer's compliance with the terms of its section 7 certificate or section 3 authorization that could arise in the interim. We believe that a cleaner approach is for the Commission to issue authorizations to proceed with construction once all requisite conditions have been satisfied *and* the rule's prohibition on such issuance has elapsed.

6. Procedural Nature of Rule

30. INGAA urges the Commission to reconsider its determination that Order No. 871–B is a procedural rule not subject to the Administrative Procedure Act's (APA) notice and comment procedures.[61] Where a project developer has already fulfilled the necessary prerequisites for beginning construction, INGAA argues that the Commission failed to explain how it has ''unfettered discretion'' to refuse to allow construction of facilities it has already found required by the public

[48] *Id.*

[49] *Id.*

[50] *Id.* P 28.

[51] *Id.*

[52] *Allegheny,* 964 F.3d at 16.

[53] INGAA Rehearing at 24.

[54] *Id.* at 24–25.

[55] *Id.* at 25.

[56] *Id.* at 28–29.

[57] *Id.* at 28 (citing *Reuters Ltd.* v. *FCC,* 781 F.2d 946, 950 (D.C. Cir. 1986) (finding that FCC failed to follow its rules and regulations in resolving dispute between competing applicants for microwave radio station licenses); *Erie Boulevard Hydropower, LP* v. *FERC,* 878 F.3d 258, 269 (D.C. Cir. 2017) (stating that ''an agency action fails to comply with its regulations, that action may be set aside as arbitrary and capricious'' and that ''[a]n agency decision that departs from agency precedent without explanation is similarly arbitrary and capricious.'') (citations omitted); *Kisor* v. *Wilkie,* 139 S. Ct. 2400, 2415 (2019) (explaining that when there is ''only one reasonable construction of a regulation,'' *Auer* deference is not appropriate and a court must not defer to any other reading of the regulation); 5 U.S.C. 706(2)).

[58] Order No. 871–B, 175 FERC ¶ 61,098 at P 29.

[59] Enbridge Rehearing at 11–12.

[60] *Id.* at 12.

[61] *See* INGAA Rehearing at 25–28.

convenience and necessity.[62] INGAA also characterizes as misleading the ''85-day'' figure—cited in Order No. 871–B to illustrate that over a five year period, on average, 85 days elapsed between issuance of an initial order and issuance of an authorization to proceed with construction—for it fails to account for project differences and assumes that developers rely on average figures when planning project construction and in-service deadlines.[63] According to INGAA, the rule ''dramatically changes'' the timeline for when a project can be placed in service and ''implicate[s] the investment-backed expectations of all project developers.'' [64]

31. The Commission previously responded to concerns that the rule adopted in Order No. 871 was not a procedural rule and thus should have been issued following the APA's notice and comment requirements.[65] As we explained, the APA's notice and comment procedures were not required because the rule neither substantially ''alters the rights or interests'' of regulated natural gas companies nor changes the agency's substantive outcomes.[66] We also explained that the timing of when to permit construction to begin is a matter entirely within the Commission's existing discretion and not a matter of right.[67] INGAA's arguments on rehearing do not demonstrate an error in the Commission's analysis.[68]

32. Order No. 871 is premised on the Commission's desire to balance its commitment to expeditiously respond to parties' concerns in comprehensive orders on rehearing and the serious concerns posed by the possibility of construction proceeding prior to the completion of agency review.[69] In Order No. 871–B, we cited the average 85-day span between an initial authorizing order and issuance of a construction authorization only to illustrate that in many cases construction cannot begin immediately upon issuance of an order authorizing new facilities under NGA sections 3 or 7.[70]

B. Policy of Presumptively Staying Section 7(c) Certificate Orders

33. In Order No. 871–B, the Commission announced a new policy of presumptively staying an NGA section 7(c) certificate order during the 30-day period for seeking rehearing and pending Commission resolution of any timely requests for rehearing filed by a landowner, until the earlier of the date on which the Commission (1) issues a substantive order on rehearing or otherwise indicates that the Commission will not take further action, or (2) 90 days following the date that a request for rehearing may be deemed to have been denied under NGA section 19(a). We explained that this policy will not apply where the pipeline developer has, at the time of the certificate order, already acquired all necessary property interests or where no landowner protested the section 7 application. In addition, we explained that the stay will automatically lift following the close of the 30-day period for seeking rehearing if no landowner files a timely request for rehearing of the certificate order. As we explained, this policy balances the competing interests at stake, including the project developer's interest in proceeding with construction when it has obtained all necessary permits, and a project opponent's interest in being able to challenge the Commission's ultimate decision in a timely manner.

1. Policy Does Not Violate NGA or APA

34. INGAA and Enbridge argue that the stay policy is unlawful, under the NGA and the APA, because it seeks to achieve an objective—conditioning a certificate holder's eminent domain authority—that is directly prohibited by statute through indirect means.[71] INGAA and Enbridge contend that because the Commission has no authority to deny or restrict certificate holders from exercising the power of eminent domain, the Commission's new policy of presumptively staying its section 7 certificate orders is an unlawful workaround of a statutory prohibition and improperly limits a certificate holder's statutorily conferred eminent domain authority.[72]

35. INGAA and Enbridge further contend that the stay policy violates section 19(c) of the NGA, which states that the filing of a rehearing request ''shall not, unless *specifically ordered by the Commission,* operate as a stay of the Commission's order.'' [73] INGAA maintains that the Commission, by announcing in Order No. 871–B a general policy of presumptively staying certificate orders pending rehearing, acted in general, rather than with the specificity that NGA section 19(c) demands.[74] INGAA further asserts that the policy is unlawful because it will result in the Commission staying its orders before either a rehearing request has been filed or a stay has been sought, an outcome not contemplated by the NGA.[75] Finally, INGAA takes issue with the Commission's position that its authority to stay a certificate order is found in the APA, arguing that section 705 of that act authorizes the Commission to postpone the effective date of its actions only ''pending judicial review,'' and that this authority is inapplicable prior to the filing of a request for rehearing and while such request is pending before the Commission.[76]

36. As explained in Order No. 871–B, NGA section 16 gives the Commission an independent basis for granting stays of a certificate order.[77] Specifically, section 16 provides that ''[t]he Commission shall have the power to perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions

[62] *Id.* at 26.

[63] *See id.* at 26–27; Order No. 871–B, 175 FERC ¶ 61,098 at P 37.

[64] INGAA Rehearing at 27.

[65] *See* Order No. 871–B, 175 FERC ¶ 61,098 at PP 35–39.

[66] *Id.* at P 35 (citing *See Am. Hosp. Ass'n* v. *Bowen,* 834 F.2d 1037, 1047 (D.C. Cir. 1987)).

[67] *Id.* (explaining that nothing in the NGA or the Commission's regulations, other than the rule adopted in Order No. 871, addresses the timing of authorizations to commence construction or prevents the Commission from acting on rehearing prior to issuing an authorization to proceed with construction).

[68] *See, e.g., Batterton* v. *Marshall,* 648 F.2d 694, 707 (D.C. Cir. 1980) (''A useful articulation of the [rule of agency organization, procedure, or practice] exemption's critical feature is that it covers agency actions that do not themselves alter the rights or interests of parties, although it may alter the manner in which the parties present themselves or their viewpoints to the agency.'').

[69] Order No. 871, 171 FERC ¶ 61,201 at P 11.

[70] *See* Order No. 871–B, 175 FERC ¶ 61,098 at P 37.

[71] INGAA Rehearing at 29–31; Enbridge Rehearing at 19–21.

[72] *See* INGAA Rehearing at 29–30 (citing *Civil Aeronautics Bd.* v. *Delta Air Lines, Inc.,* 367 U.S. 316, 328 (1961); *Cont'l Air Lines, Inc.* v. *CAB,* 522 F.2d 107, 115 (D.C. Cir. 1974)); Enbridge Rehearing at 19–21.

[73] INGAA Rehearing at 31 (quoting 15 U.S.C. 717r(c)); *see* Enbridge Rehearing at 16–19.

[74] INGAA Rehearing at 31. INGAA notes that the word specific means ''[o]f, relating to, or designating a particular . . . thing'' and that if the Commission wants to grant a stay, it must do so based on the particular facts of a particular case. *Id.* at 32.

[75] *Id.*

[76] *Id.* at 33 (citing 5 U.S.C. 705).

[77] 15 U.S.C. 717*o; see Pub. Util. Dist. No. 1 of Okanogan Cty., Wash.,* 162 FERC ¶ 61,040, at P 13 (2018) (*Okanogan PUD*) (addressing analogous provision of the Federal Power Act (FPA)) (citing 16 U.S.C. 825h; *Kings River Conservation Dist.,* 30 FERC ¶ 61,151, at 61,320 (1985) (''The Commission's authority to issue a stay of a license order is derived primarily from Section 309 of the [FPA]''); *Keating* v. *FERC,* 569 F.3d 427, 429 (D.C. Cir. 2009) (noting that FERC has stayed the commencement of construction deadline pursuant to section 309 of the FPA)). The courts have held that the NGA and FPA should be interpreted consistently. *See Env'tl Action* v. *FERC,* 996 F.2d 401, 410 (D.C. Cir. 1993); *Tenn. Gas Pipeline Co.* v. *FERC,* 860 F.2d 446, 454 (D.C. Cir. 1988); *see also Ark. La. Gas Co.* v. *Hall,* 453 U.S. 571, 577 n.7 (1981).

of this [Act].'' [78] Section 16 also mandates that Commission orders ''shall be effective on the date and in the manner which the Commission shall prescribe.'' [79] Thus, the NGA provides the Commission with broad authority to take actions necessary to carry out the act, and we find that, given the significant consequences that eminent domain has for landowners, issuance of a stay of a certificate order under certain narrowly prescribed circumstances is well within this authority. Because NGA section 16 is broadly applicable, the Commission utilizes the standard set forth in APA section 705 to determine whether a stay is justified.[80] But the Commission's underlying authority derives from NGA section 16.

37. In any event, we disagree with INGAA's argument that APA section 705, which authorizes an agency to postpone the effective date of its actions ''pending judicial review,'' [81] means that a stay issued pursuant to this authority must be connected to ongoing judicial review proceedings and is thus inapplicable to any proceedings before the Commission that precede judicial review (*e.g.,* the time for filing and considering requests for rehearing).[82] INGAA construes the statute too narrowly. The clause ''pending judicial review'' in section 705 could reasonably be construed as ''in anticipation of'' in which case all that is required is that the Commission reasonably anticipate—because rehearing has been sought or a proposal has been strongly protested—that a party will seek judicial review.

38. Further, in Order No. 871–B, the Commission announced only a general policy with respect to stays.[83] Accordingly, although contained in a final rule, the Commission's discussion of that general policy did nothing more than explain how the Commission intends to approach a particular set of questions in the future without conclusively resolving those questions or otherwise fixing any rights or responsibilities.[84] Indeed, as explained in Order No. 871–B, the Commission intends to make a particularized application of the policy in individual certificate orders and parties to those individual proceedings will have the opportunity to challenge the Commission's determination on whether to issue a stay in those proceedings. Notably, the Commission has issued five certificate orders since adopting the policy reflected in Order No. 871–B, with none of those orders containing a stay along the lines contemplated in Order No. 871–B.[85]

39. Contrary to INGAA's and Enbridge's assertions, nothing in NGA section 19(c), which on its face contemplates that the Commission may stay its own orders, precludes the Commission from determining that a stay of an individual certificate order during the 30-day period for seeking rehearing. Section 19(c) provides that a request for rehearing does not automatically stay a Commission order.[86] That section does not speak to, or otherwise limit, the Commission's authority to issue a stay of its own accord. As described above, NGA section 16 provides the Commission with broad authority to issue a stay where warranted by the facts and circumstances in a particular proceeding.

2. Qualifying Landowner Rehearing Requests

40. Enbridge seeks clarification that, for the purpose of the policy, the term ''landowner'' means ''directly affected'' landowner, as defined by the Commission's regulations, or, in the alternative, rehearing.[87] This clarification, Enbridge maintains, would align with the Commission's justification for the policy as it would ensure that a stay is applied only when a ''protest or request for rehearing is submitted by the owner of property that would be subject to an eminent domain proceeding (*i.e.,* to directly affected landowners), and not owners of property that merely abuts the construction right-of-way or falls within a certain radius of compressor station construction or storage facilities.'' [88]

41. As a general matter, we agree with Enbridge's suggestion that the policy is intended to protect those whose property would be crossed or used by the proposed pipeline project as these are the landowners whose property rights could be acquired by the eminent domain authority that NGA section 7(h) confers upon certificate holders.[89] Should the issue of a landowner's specific property interests arise in a

[78] 15 U.S.C. 717*o*.

[79] *Id.*

[80] Under the APA, an agency may issue a stay of its order where the ''agency finds that justice so requires.'' 5 U.S.C. 705. In determining whether this standard has been met, we consider several factors, including: (1) Whether a stay is necessary to prevent irreparable injury; (2) whether issuing a stay may substantially harm other parties; and (3) whether a stay is in the public interest. *See, e.g., Millennium Pipeline Co., L.L.C.,* 141 FERC ¶ 61,022, at P 13 (2012); *Ruby Pipeline, L.L.C.,* 134 FERC ¶ 61,103, at P 17 (2011). *But see Okanogan PUD,* 162 FERC ¶ 61,040 at P 13, n.21 (explaining, in the hydroelectric licensing context, that ''[p]reviously, the Commission has applied different standards than the one set forth in section 705 of the APA.'') (citing *Monongahela Power Co.,* 7 FERC ¶ 61,054 (1979) (''we considered [the motions for stay] under the standards of *Virginia Jobbers Association* v. *FPC,* 259 F.2d 291 (D.C. Cir. 1958) and *Washington Metropolitan Area Transit Commission* v. *Holiday Tours, Inc.,* 559 F.2d 841 (D.C. Cir. 1977)''); *Nantahala Power & Light Co.,* 20 FERC ¶ 61,026 (1982) (''finding that a stay pending rehearing is in the 'public interest' ''); *Kings River Conservation Dist.,* 27 FERC ¶ 61,098 (1984) (''[i]t is appropriate and in the public interest to stay the license issued in Project No. 2890 until completion of judicial review.'')).

[81] 5 U.S.C. 705.

[82] *See* INGAA Rehearing at 33. Indeed, a request for rehearing does not simply precede, but is a mandatory prerequisite to, judicial review. 15 U.S.C. 717r(b).

[83] General statements of policy are not be subject to pre-enforcement judicial review. *Nat'l Min. Ass'n* v. *McCarthy,* 758 F.3d 243, 251 (D.C. Cir. 2014) (citing *Nat'l Park Hosp. Ass'n* v. *Dep't of Interior,* 538 U.S. 803, 809–11 (2003)).

[84] *See, e.g., INGAA* v. *FERC,* 285 F.3d 18, 59–61 (D.C. Cir. 2002) (finding Commission's discussion of seasonal rates within a final rule ''represents only a policy statement and therefore is neither binding on any party nor ripe for judicial review''); *Am. Gas Ass'n* v. *FERC,* 888 F.2d 136, 151–52 (D.C. Cir. 1989) (finding challenges to substantive aspects of Commission's cost recovery policy statement not ripe for review); *Pac. Gas & Elec. Co.* v. *FPC,* 506 F.2d 33, 35 (D.C. Cir. 1974) (finding Order No. 467, a policy proposal on delivery priorities by natural gas companies during curtailment periods, to be a general statement of policy that was not reviewable under NGA section 19(b) because it lacked ''sufficiently immediate and significant impact upon petitioners''). That is consistent with the Commission's long-standing approach of articulating its policies with respect to NGA section 7 certificate applications, while leaving all actual findings and determinations for future proceedings. *See, e.g., Certification of New Interstate Natural Gas Pipeline Facilities,* 88 FERC ¶ 61,227, *corrected,* 89 FERC ¶ 61,040 (1999), *clarified,* 90 FERC ¶ 61,128, *further clarified,* 92 FERC ¶ 61,094, at 61,375 (2000) (explaining that the purpose of the Certificate Policy Statement is ''to provide the natural gas industry with guidance by stating the analytical framework the Commission will use to evaluate proposals for certificating new construction'' and that ''generally objections to such a statement are not directly reviewable. Rather, such review must await implementation of the policy in a specific case.''). In line with that interpretation, the discussion in Order No. 871–B regarding how the Commission will approach those future cases was not accompanied by any revisions to the Commission's rules or regulations.

[85] *See Tuscarora Gas Transmission Co.,* 175 FERC ¶ 61,147 (2021); *N. Natural Gas Co.,* 175 FERC ¶ 61,146 (2021); *Enable Gas Transmission, LLC,* 175 FERC ¶ 61,183 (2021); *WBI Energy Transmission, Inc.,* 175 FERC ¶ 61,182 (2021); *N. Natural Gas Co.,* 175 FERC ¶ 61,238 (2021). There were no landowner protests in any of these cases.

[86] *See* 15 U.S.C. 717r(c) (''The filing of an application for rehearing . . . shall not, unless specifically ordered by the Commission, operate as a stay of the Commission's order.'').

[87] Enbridge Rehearing at 14–16 (citing 18 CFR 157.6(d)(2)(i) (2020)).

[88] *Id.* at 15 (citing 18 CFR 157.6(d)(2)(i)).

[89] *See* 15 U.S.C 717f(h) (authorizing certificate holders to acquire by eminent domain ''the necessary right-of-way to construct, operate, and maintain a pipe line or pipe lines for the transportation of natural gas, and the necessary land or other property, in addition to right-of-way, for the location of compressor stations, pressure apparatus, or other stations or equipment necessary to the proper operation of such pipe line or pipe lines''); *see also* 18 CFR 157.6(d)(2)(i) (defining directly affected landowners).

proceeding, the Commission will consider it.

3. Commitment To Refrain From Exercise of Eminent Domain

42. Enbridge seeks clarification that the Commission will promptly lift a stay following a certificate holder's commitment that it will not exercise its right of eminent domain ''for any reason other than to obtain the access necessary to complete surveys'' while a qualifying landowner rehearing request is pending,[90] or, in the alternative, rehearing.

43. In Order No. 871–B, the Commission explained that a developer may file a motion seeking ''to preclude, or lift, a stay based on a showing of significant hardship,'' and expressly stated ''that a commitment by the pipeline developer not to begin eminent domain proceedings until the Commission issues a final order on any landowner rehearing requests will weigh in favor of granting such a motion.'' [91] We reiterate that conclusion, but will not pre-judge the merits of any motion along the lines contemplated in Order No. 871–B. As with the other aspects of this policy, those determinations will be made in any future proceeding.

4. Claims of Burden Shifting

44. INGAA argues that the Commission unlawfully shifted to pipeline developers the burden of proof to show that a stay is not warranted and argues that such a change in policy can only be accomplished through notice and comment rulemaking.[92] INGAA contends that the Commission failed to provide justification for its departure from past practice and failed to explain why it is permissible to shift this burden.[93] Enbridge makes a similar argument, but takes it a step further arguing that the Commission failed to ''assess whether there were reliance interests, determine whether they were significant, and weigh any such interests against competing policy concerns.'' [94] INGAA requests further clarification regarding how the Commission will determine when a stay should be issued and how specifically a developer can overcome the presumption that a stay will be granted.[95]

45. In Order No. 871–B, the Commission acknowledged that the stay policy is a departure from past practice and explained its belief that ''this new policy better balances the relevant considerations—such as fairness, due process, and developer certainty—thereby justifying the change in policy.'' [96] We disagree with the petitioners that this policy improperly shifts the burden to pipeline developers. As we previously explained, the Commission will determine whether to impose a stay based on the circumstances presented in each particular certificate proceeding—the burden is not on the pipeline. Rather, the Commission is obligated to ensure that all of its decisions, including whether to impose a stay in individual certificate proceedings, are supported by the record and reasonably explained.[97] And parties to those individual proceedings will have the opportunity to provide input to and challenge the Commission's decision to issue a stay, or not, in those proceedings.

46. We further disagree with INGAA's assertion that public notice and comment was required prior to the Commission announcing the stay policy. General statements of policy, such as the one announced in Order No. 871–B, are exempted from the APA's notice and comment procedures.[98]

5. Consideration of Industry Concerns

47. INGAA contends that the Commission both failed to sufficiently appreciate the harm that will befall the natural gas industry and to explain what activities certificate holders can perform while a stay is in place.[99] INGAA points to the length of this proceeding to cast doubt on the Commission's statement that it has increased the speed with which it resolves rehearing requests.[100] It also seeks further clarity regarding the types of activities that certificate holders may undertake while a stay is in place.

48. The Commission fully considered industry concerns and ultimately concluded that the stay policy announced in Order No. 871–B struck an appropriate balance between the interests of pipeline developers and landowners.[101] The rehearing process in this rulemaking proceeding, involving generally applicable policy considerations, is not representative of the increased speed with which the Commission handles project-specific rehearing requests in the post-*Allegheny* era. In fact, the Commission continues to strive to act on landowner rehearing requests (the subset of rehearing requests that may result in a stay extending beyond the 30-day period for seeking rehearing) within 30 days. The petitioners do not cite an instance of a delay in the Commission's issuance of an order on rehearing of a certificate order. While a stay is intact, certificate holders can engage only in those development activities that they were free to undertake prior to receiving a certificate order, such as negotiating easement agreements with landowners and conducting environmental surveys on private property they have permission to access.

6. Landowner Ability To Seek Judicial Stay

49. Finally, INGAA asserts that the Commission failed to explain why the policy is necessary in light of an aggrieved party's ability to seek a stay from a reviewing court after a request for rehearing is deemed denied.[102]

50. As the Commission explained in Order No. 871–B, certificate holders can, and routinely do, initiate condemnation proceedings immediately upon receipt of a certificate order.[103] Absent a stay in a particular proceeding, certificate holders have the ability to initiate condemnation actions against landowners prior to the expiration of the 30-day period for seeking rehearing, and prior to the 30-day period for the Commission to act on such a request before it may be deemed denied. This leaves a gap of approximately 60 days preceding a deemed denial and during which time landowners could be susceptible to condemnation proceedings being initiated prior to a reviewing court obtaining concurrent jurisdiction following the filing of a petition for review.[104] As we explained at length in Order No. 871–B, this Commission finds the fundamental unfairness that could result from that outcome untenable. Further, the stay policy is an appropriate exercise of our authority, and there is no need to leave these matters solely to the courts.

C. Commission Determination

51. In response to INGAA's, Enbridge's, and Mountain Valley's requests for rehearing, Order No. 871–B is hereby modified and the result

[90] Enbridge Rehearing at 21–23.

[91] Order No. 871–B, 175 FERC ¶ 61,098 at P 51.

[92] *See* INGAA Rehearing at 33–35.

[93] *Id.* at 33–34.

[94] Enbridge Rehearing at 18–19.

[95] INGAA Rehearing at 34–35.

[96] Order No. 871–B, 175 FERC ¶ 61,098 at P 49, n.101.

[97] *See* 15 U.S.C. 717r(b); 5 U.S.C. 706.

[98] 5 U.S.C. 553(b)(A).

[99] *See* INGAA Rehearing at 35–39.

[100] *Id.* at 36.

[101] *See* Order No. 871–B, 175 FERC ¶ 61,098 at PP 48–51.

[102] INGAA Rehearing at 39.

[103] *See, e.g., Allegheny,* 964 F.3d at 6.

[104] *See, e.g., Envtl. Def. Fund* v. *FERC,* No. 20–1016, *et al.,* 2021 WL 2546672, at *8, *15 (D.C. Cir. June 22, 2021) (citing to relevant pipeline's use of eminent domain in support of court's decision to vacate certificate order).

sustained, as discussed in the body of this order.

III. Document Availability

52. 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).

53. 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 in the docket number field.

54. User assistance is available for eLibrary and the Commission's website during normal business hours from FERC 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.*

IV. Dates

55. The effective date of the document published on May 13, 2021 (86 FR 26,150), is confirmed: June 14, 2021.

By the Commission. Commissioner Chatterjee is not participating. Commissioner Danly is dissenting with a separate statement attached.

Issued: August 2, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Limiting Authorizations To Proceed With Construction Activities Pending Rehearing

DANLY, Commissioner, *dissenting:*

1. I dissent in full from today's order affirming the majority's modification and expansion of Order No. 871.[1] As I stated in my dissent in Order No. 871–B, I would repeal the rule as it is no longer required by law or prudence.[2] I write separately today to further explain how the Commission's new, unnecessary, and unjustifiable presumption to stay certificate orders conflicts with the plain text of the Natural Gas Act (NGA) and is beyond the Commission's authority.[3] I also write to explain how the majority's presumptive stay is not based on reasoned decision making and therefore runs afoul of the Administrative Procedure Act (APA).

I. The Presumptive Stay Is Beyond the Commission's Authority and Contrary to the Plain Text of the Natural Gas Act

2. In today's order, the majority states ''the Commission's underlying authority derives from NGA section 16.'' [4] Specifically, the majority relies on the provisions providing the Commission authority ''to perform any and all acts . . . necessary or appropriate to carry out the provisions of this [Act]'' and to determine the effective date of its orders.[5] Like many before it, the majority has turned to NGA section 16 when all else has failed, placing more weight upon this section than it can reasonably bear. NGA section 16 ''do[es] not confer independent authority to act.'' [6] It is ''of an implementary rather than substantive character'' and ''can only be implemented 'consistently with the provisions and purposes of the legislation.[7]' '' The majority, however, fails to confront this limitation on section 16's reach and employs this provision in a manner that contravenes the NGA in three respects.

3. *First,* the majority's policy denies pipelines holding certificates the ability to exercise eminent domain for up to 150 days—doing exactly what the majority explicitly concedes it cannot do: ''restrict the power of eminent domain in a section 7 certificate.'' [8] NGA section 7(h) authorizes ''*any holder of a certificate*'' to exercise eminent domain authority.[9] Other than the issuance of a certificate, Congress ordained no other condition be met in advance of a pipeline pursuing eminent domain. The Commission can only employ NGA section 16 in a manner consistent with the other provisions of the act. Here, the use of section 16 is in direct in conflict with the statute—and the majority does not see fit to argue otherwise.

4. *Second,* presumptively staying a pipeline's ability to pursue eminent domain is not appropriate under section 16 because such a delay is not a ''necessary or appropriate'' adjunct to the Commission's effectuation of its responsibilities under section 7 of the NGA. That section requires the Commission to issue certificates to applicants whose proposed natural gas facilities are found to be in the public convenience and necessity. The timing of a pipeline's use of eminent domain does not weigh into the Commission's determination of whether proposed pipeline facilities are in the public convenience and necessity. If it did, the majority would rely on the Commission's authority under NGA section 7(e) to ''attach to the issuance of the certificate . . . such reasonable terms and conditions as the public convenience and necessity may require.'' [10] The majority, however, does not.[11] Nor does the majority cite any other provision of the NGA for which the Commission's action would be ''necessary or appropriate'' under section 16.

5. *Third,* the only reasonable reading of NGA section 7 leads to the conclusion that Congress intended for certificates to be effective upon issuance and acceptance, and for the right to exercise eminent domain to attach thereupon. NGA section 7(e) provides, ''a certificate *shall be issued*'' so long as the applicant is ''able and *willing* properly to do the acts . . . .'' [12] Further, NGA section 7(h) authorizes ''*any holder* of a certificate of public convenience and necessity'' to acquire by eminent domain the land necessary for the construction, operation, and maintenance of its pipeline facilities.[13] Black's Law Dictionary defines ''holder'' as ''[a] person with legal possession of a document of title or an investment security,'' meaning that the title was issued and accepted by that person.[14] This view has been shared by the

[1] *See Limiting Authorizations to Proceed with Construction Activities Pending Rehearing,* 176 FERC ¶ 61,062 (2021) (Order No. 871–C).

[2] *See Limiting Authorizations to Proceed with Construction Activities Pending Rehearing,* 175 FERC ¶ 61,098 (2021) (Danly, Comm'r, dissenting at P 2) (Order No. 871–B).

[3] *See id.* (Danly, Comm'r, dissenting at PP 3, 6–14).

[4] Order No. 871–C, 176 FERC ¶ 61,062 at P 36.

[5] *Id.* (quoting 15 U.S.C. 717*o*).

[6] *New England Power Co.* v. *Fed. Power Comm'n,* 467 F.2d 425, 431 (D.C. Cir. 1972), *aff'd,* 415 U.S. 345 (1974).

[7] *Id.* at 430 (citation omitted).

[8] Order No. 871–B, 175 FERC ¶ 61,098 at P 45 (citation omitted). Indeed, Order No. 871–B quotes the *Berkley* v. *Mountain Valley Pipeline, LLC,* as stating, ''FERC does not have discretion *to withhold* eminent domain once it grants a Certificate.'' *Id.* P 45 n.86 (quoting *Berkley* v. *Mountain Valley Pipeline, LLC,* 896 F.3d 624, 628 (4th Cir. 2018)) (emphasis added).

[9] 15 U.S.C. 717f(h) (emphasis added).

[10] 15 U.S.C. 717f(e).

[11] *See* Order No. 871–B, 175 FERC ¶ 61,098 at P 45 (''In other words, the Commission lacks the authority to deny or restrict the power of eminent domain in a section 7 certificate.'') (citation omitted).

[12] 15 U.S.C. 717f(e) (emphasis added).

[13] *Id.* § 717f(h) (emphasis added).

[14] *Holder, Black's Law Dictionary* (11th ed. 2019).

courts [15] and the Commission.[16] This is not to say that the Commission can never make a certificate effective after its issuance or stay a certificate order. Both may be warranted in certain instances. In my view, however, it is contrary to the purpose of the NGA to adopt a policy that presumptively stays certificates for the avowed purpose of delaying a pipeline's Congressionally-authorized entitlement to exercise eminent domain.[17]

6. In addition to NGA section 16, the majority appears to place some reliance on APA section 705, which provides ''[w]hen an agency finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review.'' [18] I presume this is the case because the majority responds to arguments raised by the Interstate Natural Gas Association of America (INGAA) that the phrase ''pending judicial review'' in APA section 705 means an agency stay must be ''tied to litigation.'' [19] The majority asserts that a more reasonable interpretation of the phrase ''pending judicial review'' is ''in anticipation of [judicial review].'' [20] I've found no court that supports that position and multiple courts, in fact, disagree.[21]

II. Presumptive Stay Is Not Based on Reasoned Decision Making

7. To the extent the majority merely argues that it can apply the three factors of the equitable standard set forth in APA section 705 to determine whether a stay is warranted, I agree. However, the majority's application of the equitable standard is not based on reasoned decision making, and thus violates the APA.[22]

8. As I stated in my dissent to Order No. 871–B, the majority's assumption that the mere existence of a ''landowner protest'' automatically means a stay is required in the interest of justice is—at best—questionable.[23] This represents a broad category of litigant, whose mere participation in a proceeding would temporarily extinguish a certificate holder's Congressionally-established rights. Surely, the Commission should at least impose rational limits on the rule they are establishing. For example, will the Commission stay a certificate where there is a protest by a landowner with property interests that abut the proposed right-of-way but are not subject to condemnation? And the Commission's policy applies to where there is a ''landowner *protest.*'' Will the Commission apply the stay where a landowner protested but did not intervene and thus cannot seek rehearing or judicial review? What about in the case where the landowner joined a protest, but may not have active interests in the proceeding?

9. The majority also fails to consider the second factor ''whether issuing a stay may substantially harm other parties.'' Will the Commission stay a certificate where the proposed project is delivering natural gas to municipalities that need the gas within six months of certificate issuance? Will the Commission stay a certificate if the delay caused by its stay would cause an additional year's delay in construction because of seasonal restrictions? To what degree will the financial consequences for the project proponent be considered? What about the consequences to the pipeline's customers? It is not inconceivable that those projects whose applications have been pending for more than a year ultimately will be canceled as a result of delay.[24] How can the potential cancellation of a project that has been determined by the Commission to be in the public interest itself be in the public interest or, under the second factor, be found not to ''substantially harm other parties''?

III. Conclusion

10. The power of eminent domain is surely profound and formidable. I cannot fault my colleagues for the anxiety they have expressed regarding its wise and just exercise. However, the Commission, as a mere ''creature of statute,'' can only act pursuant to law by which Congress has delegated its authority.[25] Congress conferred the right to certificate holders to pursue eminent domain in federal district court or state court,[26] having recognized that states ''defeat[] the very objectives of the Natural Gas Act'' [27] by conditioning or withholding the exercise of eminent domain. Congress has made that determination. It has codified it into law. The Commission, as an executive agency, is empowered only to implement Congressional mandate, not to second-guess Congressional wisdom or attempt to do indirectly what it cannot directly.[28]

11. Despite this, I doubt that the Commission's arguments will be

[15] *See Maritimes & Ne. Pipeline, L.L.C.* v. *Decoulos,* 146 F. App'x 495, 498 (1st Cir. 2005) (''*Once a CPCN is issued by the FERC,* and the gas company is unable to acquire the needed land by contract or agreement with the owner, the only issue before the district court in the ensuing eminent domain proceeding is the amount to be paid to the property owner as just compensation for the taking.'') (emphasis added); *E. Tenn. Nat. Gas Co.* v. *Sage,* 361 F.3d 808, 818 (4th Cir. 2004) (''Once FERC *has issued a certificate,* the NGA empowers the certificate holder to exercise 'the right of eminent domain' over any lands needed for the project.'') (emphasis added); *Bohon* v. *FERC,* No. 20–6 (JEB), slip op. at 2 (D.D.C. May 6, 2020) (''FERC's *issuance of a certificate,* moreover, conveys the power of eminent domain to its holder.'') (emphasis added); *Paul H. Stitt & Loretta Stitt,* 39 F.P.C. 323, 324 (1968) (''While the condemnation powers granted to certificate holders by Section 7(h) of the Natural Gas Act operate prospectively from *the date of issuance* of a certificate . . . .'') (emphasis added).

[16] *See* 18 CFR 157.20(a) (2020) (''The certificate shall be void and without force or effect unless accepted in writing by applicant . . . .'').

[17] This is and separate apart from the argument that I raised in my earlier dissent that NGA section 19(c), while allowing for stays, requires a specific order by the Commission. Order No. 871–B, 175 FERC ¶ 61,098 (Danly, Comm'r, dissenting at PP 8–10; *see also* 15 U.S.C. 717r(c) (''The filing of an application for rehearing under subsection (a) shall not, unless specifically ordered by the Commission, operate as a stay of the Commission's order.''). Clearly, an automatically-applied presumption is not a specific order and thus violates the unambiguous terms of the statute.

[18] 5 U.S.C. 705.

[19] Order No. 871–C, 176 FERC ¶ 61, 61,062 at P 37, n.82 (citing INGAA Rehearing at 33).

[20] *Id.* P 37.

[21] *Nat. Res. Def. Council* v. *U.S. Dep't of Energy,* 362 F. Supp. 3d 126, 150 (S.D.N.Y. 2019) (''A stay is supposed to be grounded on 'the existence or consequences of the pending litigation.' ''); *Bauer* v. *DeVos,* 325 F. Supp. 3d 74, 106 (D.D.C. 2018) (''Most significantly, the relevant equitable considerations are not free-floating but, rather, must be tied to the underlying litigation. Section 705 expressly provides that an agency may 'postpone the effective date of [agency] action . . . *pending judicial review.*' ''') (emphasis in original); *Sierra Club* v. *Jackson,* 833 F. Supp. 2d 11, 34 (D.D.C. 2012) (''Where, as in this case, [an agency] seeks to justify a stay of its rules 'pending judicial review,' the agency must have articulated, at a minimum, a rational connection between its stay and the underlying litigation in the court of appeals.'').

[22] *Motor Vehicle Mfrs. Ass'n of U.S., Inc.* v. *State Farm Mut. Auto. Ins. Co.,* 463 U.S. 29, 30 (1983). *See also Elec. Consumers Res. Council* v. *FERC,* 747 F.2d 1511, 1513–14 (D.C. Cir. 1984) (''We defer to the agency's expertise . . . so long as its decision is supported by 'substantial evidence' in the record and reached by 'reasoned decision-making,' including an examination of the relevant data and a reasoned explanation supported by a stated connection between the facts found and the choice made.'') (citing *Burlington Truck Lines* v. *United States,* 371 U.S. 156, 168 (1962); *Memphis Light, Gas & Water Div.* v. *FPC,* 504 F.2d 225, 230 (D.C. Cir. 1974); 16 U.S.C. 825*l* (1982)).

[23] Order No. 871–B, 175 FERC ¶ 61,098 (Danly, Comm'r, dissenting at P 8).

[24] *See id.* (Danly, Comm'r, dissenting at P 14) (noting Dominion Energy Transmission, Inc. withdrew its application for a certificate for its Sweden Valley Project that it had filed seventeen months prior).

[25] *Atl. City Elec. Co.* v. *FERC,* 295 F.3d 1, 8 (D.C. Cir. 2002) (''As a federal agency, FERC is a 'creature of statute,' having 'no constitutional or common law existence or authority, but *only* those authorities conferred upon it by Congress.' ''') (quoting *Michigan* v. *EPA,* 268 F.3d 1075, 1081 (D.C. Cir. 2001)) (emphasis in original); *see Bowen* v. *Georgetown Univ. Hosp.,* 488 U.S. 204, 208 (1988) (''It is axiomatic that an administrative agency's power to promulgate legislative regulations is limited to the authority delegated by Congress.'').

[26] *See* 15 U.S.C. 717f(h).

[27] S. Rep. No. 80–429, at 3 (1947).

[28] *Richmond Power & Light* v. *FERC,* 574 F.2d 610, 620 (D.C. Cir. 1978) (''What the Commission is prohibited from doing directly it may not achieve by indirection.'').

presented to the courts. It will be challenging for those that are harmed by the issuance of a generally-applicable policy to show aggrievement before it is actually applied in a case. And by the time those harmed are able seek review, the damage of the stay will have been done and the stay will have been lifted. My pessimistic outlook is that despite this order's obvious infirmities, the Commission will avoid judicial scrutiny and thereby thwart the intent of Congress.

For these reasons, I respectfully dissent.

James P. Danly,
Commissioner.

[FR Doc. 2021–16812 Filed 8–5–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2021–0162]

Special Local Regulations; Marine Events Within the Fifth Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation; change of enforcement date.

SUMMARY: The Coast Guard will enforce the special local regulation for the 11th Annual Atlantic City Triathlon on August 7, 2021, from 6 a.m. through 9 a.m., to provide for the safety of life on navigable waterways during this event. Our regulation for marine events within the Fifth Coast Guard District identifies the regulated area for this event in Atlantic City, NJ. During the enforcement periods, the operator of any vessel in the regulated area must comply with directions from the Patrol Commander or any Official Patrol displaying a Coast Guard ensign.

DATES: The regulation in 33 CFR 100.501 for the special local regulation listed in item (a)(12) in the table to § 100.501 will be enforced from 6 a.m. through 9 a.m. on August 7, 2021.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email Petty Officer Jennifer Padilla, U.S. Coast Guard, Sector Delaware Bay, Waterways Management Division, telephone 215–271–4814, email *Jennifer.L.Padilla@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulation as described in section (a), row (12) of the table to 33 CFR 100.501 for the 11th Annual Atlantic City Triathlon from 6 a.m. through 9 a.m. on August 7, 2021. The published enforcement periods for this event included the 2nd or 3rd Sunday in August. We are announcing a change of enforcement date for this year's event with this notice of enforcement because August 7, 2021, is the first Saturday in August. This action is necessary to ensure safety of life on the navigable waters of the United States immediately prior to, during, and immediately after the swim portion of the triathlon. Our regulation for marine events within the Fifth Coast Guard District, table to § 100.501, section (a), row (12), specifies the location of the regulated area as all waters of the New Jersey ICW bounded by a line connecting the following points: Latitude 39°21′20″ N, longitude 074°27′18″ W, thence northeast to latitude 39°21′27.47″ N, longitude 074°27′10.31″ W, thence northeast to latitude 39°21′33″ N, longitude 074°26′57″ W, thence northwest to latitude 39°21′37″ N, longitude 074°27′03″ W, thence southwest to latitude 39°21′29.88″ N, longitude 074°27′14.31″ W., thence south to latitude 39°21′19″ N, longitude 074°27′22″ W, thence east to latitude 39°21′18.14″ N, longitude 074°27′19.25″ W, thence north to point of origin, near Atlantic City, NJ.

During the enforcement periods, as reflected in § 100.501(c), if you are the operator of a vessel in the regulated area you must comply with directions from the Patrol Commander or any Official Patrol displaying a Coast Guard ensign.

In addition to this notice of enforcement in the **Federal Register**, the Coast Guard will provide notification of the enforcement periods via broadcast notice to mariners.

Dated: July 29, 2021.

Jonathan D. Theel,

Captain, U.S. Coast Guard, Captain of the Port Delaware Bay.

[FR Doc. 2021–16808 Filed 8–5–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2021–0146]

RIN 1625–AA08

Special Local Regulation; Delaware Bay, Lower Township, NJ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a special local regulation for certain navigable waters of the Delaware Bay. This action is necessary to provide safety of life on these navigable waters near Lower Township, NJ, during a swimming competition on August 29, 2021. This regulation prohibits persons and vessels from entering, transiting, or remaining within the regulated area unless authorized by the Captain of the Port Delaware Bay or a designated representative.

DATES: This rule is effective from 6:30 a.m. through 9:30 a.m. on August 29, 2021.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2021–0146 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Jennifer Padilla, U.S. Coast Guard, Sector Delaware Bay, Waterways Management Division; telephone 215–271–4814, email *Jennifer.l.Padilla@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good

cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable and contrary to the public interest to do so. Notice to the Coast Guard did not provide sufficient time to allow for a reasonable comment period prior to the event. The rule must be in force by August 29, 2021. We are taking immediate action to ensure the safety of spectators and the general public from hazards associated with a large number of persons participating in a swimming competition.

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

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70041. The Captain of the Port Delaware Bay (COTP) has determined that potential hazards associated with the swimming competition will be a safety concern due to vessel traffic operating in proximity to a large number of swimmers. This rule is needed to protect personnel, vessels, and the public within the regulated area during the swimming competition.

IV. Discussion of the Rule

This rule establishes a special local regulation on all navigable waters of the Delaware Bay in Lower Township, NJ, bounded by a line drawn from: Latitude 39°0′57″ N, longitude 074°56′56″ W in Villas, NJ, thence west to latitude 39°00′59″ N, longitude 074°57′15″ W, thence south to latitude 38°58′08″ N, longitude 074°58′11″ W, thence east to latitude 38°58′04″ N, longitude 074°57′54″ W in North Cape May, NJ, thence north along the shoreline to the point of origin. The rule will be enforced from 6:30 a.m. to 9:30 a.m. on August 29, 2021. No person or vessel will be permitted to enter, transit through, anchor in, or remain within the regulated area without obtaining permission from the COTP Delaware Bay or a designated representative. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the COTP Delaware Bay or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the COTP Delaware Bay or a designated representative. The Coast Guard will provide public notice of the regulated area by Broadcast Notice to Mariners and by on-scene actual notice from designated representatives.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on size, time of day, and duration of the regulated area, which would impact a small designated area of the Delaware Bay for three and one half hours. The regulated area does not include any marinas, piers, or other areas used to launch vessels. The Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the status of the regulated area. This regulatory action determination is based on the following considerations: (1) Vessel traffic will be able to safely transit around this safety zone which would impact a small designated area of a Lower Township, NJ, for three and a half hours during the event; (2) persons and vessels will still be able to enter, transit through, anchor in, or remain within the regulated area if authorized by the COTP Delaware Bay or a designated representative; and (3) the Coast Guard will provide advance notification of the safety zone to the local maritime community by Broadcast Notice to Mariners, or by on-scene actual notice from designated representatives.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a special local regulation that will prohibit persons and vessels from entering, transiting through, anchoring in, or remaining within a limited area on the navigable water on a portion of the Delaware Bay in Lower Township, NJ, during a swimmimg competition lasting approximately three and one half hours. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 46 U.S.C. 70041; 33 CFR 1.05–

■ 2. Add § 100.T05–0146 to read as follows:

§ 100.T05–0146; Special Local Regulation; Delaware Bay, Lower Township, NJ.

(a) *Location.* The following location is a regulated area. All navigable waters of the Delaware Bay in Lower Township, NJ, bounded by a line drawn from: Latitude 39°0′57″ N, longitude 074°56′56″ W in Villas, NJ, thence west to latitude 39°00′59″ N, longitude 074°57′15″ W, thence south to latitude 38°58′08″ N, longitude 074°58′11″ W, thence east to latitude 38°58′04″ N, longitude 074°57′54″ W in North Cape May, NJ, thence north along the shoreline to the point of origin.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard petty officer, warrant or commissioned officer on board a Coast Guard vessel or on board a federal, state, or local law enforcement vessel assisting the Captain of the Port (COTP), Delaware Bay in the enforcement of the regulated area.

(c) *Regulations.* (1) The COTP Delaware Bay or a designated representative may forbid and control movement of all vessels and persons, including event participants, in the regulated area. When hailed or signaled by an official patrol, a vessel or person in the regulated area shall immediately comply with the directions given by the patrol. Failure to do so may result in the Coast Guard expelling the person or vessel from the area, issuing a citation for failure to comply, or both. The COTP Delaware Bay or a designated representative may terminate the event, or a participant's operations at any time the COTP Delaware Bay or designated representative believes it necessary to do so for the protection of life or property.

(2) To seek permission to enter or remain in the regulated area, contact the COTP or the COTP's representative via VHF–FM channel 16 or 215–271–4807. Those in the regulated area must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(3) This section applies to all vessels except those engaged in law enforcement, aids to navigation servicing, and emergency response operations.

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the regulated area by Federal, State, and local agencies.

(e) *Enforcement period.* This zone will be enforced from 6:30 a.m. through 9:30 a.m. on August 29, 2021.

Dated: August 3, 2021.

Jonathan D. Theel,

Captain, U.S. Coast Guard, Captain of the Port Delaware Bay.

[FR Doc. 2021–16813 Filed 8–5–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2021–0120]

RIN 1625–AA87

Security Zones; Sabine Pass Channel, Cameron, LA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a permanent security zone within a new mooring basin at the Sabine Pass LNG facility in Cameron, LA. This rule prohibits persons and vessels from entering the security zone unless authorized by the Captain of the Port, Port Arthur or a designated representative. Additionally, the Coast Guard is improving the language describing the area and correcting a geographical error.

DATES: This rule is effective September 7, 2021.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2021–0120 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Scott Whalen, Marine Safety Unit Port Arthur, U.S. Coast Guard; telephone 409–719–5080, email *scott.k.whalen@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port, Port Arthur
DHS Department of Homeland Security
FR Federal Register
LNG Liquified Natural Gas
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

On May 26, 2010 the Coast Guard published a Notice of Proposed Rulemaking (NPRM) prosposing to, among other things, establish a security zone for the Sabine Pass LNG mooring basin located in Cameron Parish, LA while LNG carriers are moored at the facility (75 FR 29695). On October 22, 2010 the Coast Guard issued an interim rule for the proposed security zone (75 FR 65235). On January 11, 2011 the Coast Guard published a final rule for the security zone (76 FR 1521).

Sabine Pass LNG is constructing a second mooring basin adjacent to the first and the COTP has determined that enhanced security measures are necessary and requires extending the existing security zone to include the new mooring basin. Therefore, the Coast Guard published a NPRM titled Security Zones; Sabine Pass Channel, Cameron, LA on June 14, 2021 (86 FR 31459). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this marine event. During the comment period that ended July 14, 2021, we received one comment pointing out a spelling error and advising of the need to include the horizontal datum reference in the rule.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port (COTP) has determined that enhanced security measures are necessary and is extending the existing security zone to include the new mooring basin.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received one comment on our NPRM published June 14, 2021 that requested we explicitly state the horizontal datum alongside the coordinates provided for each zone and correct a spelling error for ''shoreward''. The Coast Guard corrected the spelling error and added the horizontal datum used for geographic reference. The Coast Guard also changed the language used to describe the georgraphic coordinates of the existing security zone for clarity and corrected an error in one of the positions. There are no other substantial changes to the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a permanent security zone in a new mooring basin at Sabine Pass LNG located in Cameron, LA. The security zone regulations are the same as those in effect for the existing mooring basin, that is, it would exclude certain vessels from entering the basin whenever an LNG carrier is moored at the facility. No vessel or person is permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the limited size of the security zone and that the affected area does not hinder or delay regular vessel traffic. Certain vessels with business in the mooring basin will be permitted to enter the security zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves regulations establishing a security zone that would prohibit entry whenever an LNG carrier is moored at the facility. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Amend § 165.819 by revising paragraph (a)(1)(ii) to read as follows:

§ 165.819 Security Zone; Sabine Bank Channel, Sabine Pass Channel and Sabine-Neches Waterway, TX.

(a) * * *

(1) * * *

(ii) *Sabine Pass LNG, Cameron Parish, LA:* (A) All mooring basin waters shoreward of a line connecting the following points—beginning at the shoreline in position 29°44′34.7″ N, 093°52′29″ W; then to a point at 29°44′31.4″ N, 093°52′26.4″ W; then to a point at 29°44′25.2″ N, 093°52′14.6″ W; then to the shoreline at 29°44′24.4″ N, 093°52′11.4″ W (WGS84).

(B) All mooring basin waters shoreward of a line connecting the following points—beginning at the shoreline in position 29°44′23.4″ N, 093°52′10.3″ W; then to a point at 29°44′22.3″ N, 093°52′9.8″ W; then to a point at 29°44′18″ N, 093°52′3.6″ W; then to the shoreline at 29°44′17.4″ N, 093°52′2.3″ W (WGS84).

Dated: July 30, 2021.

Molly A. Wike,

Captain, U.S. Coast Guard, Captain of the Port, Marine Safety Unit Port Arthur.

[FR Doc. 2021–16615 Filed 8–5–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2021–0610]

Safety Zone; Recurring Events in Captain of the Port Duluth—Bridgefest Regatta Fireworks

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a safety zone for the Bridgefest Regatta Fireworks in Houghton, MI from 9:15 p.m. through 9:45 p.m. on September 4, 2021. This action is necessary to protect participants and spectators during the Bridgefest Regatta Fireworks. During the enforcement period, entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Duluth or their designated on-scene representative.

DATES: The regulations in 33 CFR 165.943(b) will be enforced from 9:15 p.m. through 9:45 p.m. on September 04, 2021.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email LTJG Joseph R. McGinnis, telephone 218–725–3818, email *DuluthWWM@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone in 33 CFR 165.943(a)(1) for the Bridgefest Regatta Fireworks on all waters of the Keweenaw Waterway bounded by the arc of a circle with a 100-yard radius from the fireworks launch site with its center in approximate position 47°07′28″ N, 088°35′02″ W from 09:15 p.m. through 09:45 p.m.on September 04, 2021. This action is necessary to protect participants and spectators during the Bridgefest Regatta Fireworks.

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Duluth or their designated on-scene representative. The Captain of the Port's designated on-scene representative may be contacted via VHF Channel 16.

This document is issued under authority of 33 CFR 165.943 and 5 U.S.C. 552 (a). In addition to this publication in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of the enforcement of this safety zone via Broadcast Notice to Mariners. The Captain of the Port Duluth or their on-scene representative may be contacted via VHF Channel 16.

Dated: July 29, 2021

F.M. Smith,

Commander, U.S. Coast Guard, Captain of the Port Duluth.

[FR Doc. 2021–16617 Filed 8–5–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 38 and 39

RIN 2900–AQ28

Government-Furnished Headstones, Markers, and Medallions; Unmarked Graves

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) amends its regulations

regarding the provision of Government-furnished headstones, markers, and medallions to eligible individuals. These revisions clarify eligibility for headstones, markers, or medallions, establish replacement criteria for such headstones, markers, and medallions consistent with VA policy, define the term ''unmarked grave'' consistent with VA policy, and generally reorganize and simplify current regulatory language for ease of understanding.

DATES: The final rule is effective September 7, 2021.

FOR FURTHER INFORMATION CONTACT: Artis L. Parker, Executive Director, Office of Field Programs, National Cemetery Administration (NCA), Department of Veterans Affairs, 4850 Lemay Ferry Road, Suite 205, St. Louis, MO 63129. Telephone: 314–416–6304 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: In a document published on February 6, 2019 (84 FR 2093), VA proposed revising its regulations governing the provision of Government headstones, markers, and medallions to eligible individuals. The public comment period ended on April 8, 2019. VA received 66 comments from interested individuals, which we address in categories below.

Introductory Matters

In the proposed rule, VA specifically requested public comments on proposed 38 CFR 38.630(b)(3)(i)(E)(*1*), which would allow VA to replace existing Government-furnished headstones and markers to correct factual information provided to VA as part of the initial application process. As VA was not part of the application process until 1973, we noted in the preamble to this proposed rule that this provision would not apply to Government-furnished headstones or markers provided prior to 1973. VA received no comments about this provision. Therefore, VA makes no changes to this provision.

VA also received no comments on the proposed reorganization of a large portion of current Part 38 regulations. The new regulatory framework is reflected in the following chart:

Current regulation	Location of applicable provisions in the final regulation
§ 38.600(a)(1)	§ 38.630(c)(1).
§ 38.600(a)(2)	§ 38.631(c)(1).
§ 38.600(b)	§ 38.600(a)(1)–(a)(9).
§ 38.630(a) and (b)	§ 38.630(b)(2) and § 38.631(b)(2).
§ 38.630(c)	§ 38.631(a) and (b)(2)(i)–(ii).
§ 38.630(c)(1)	§ 38.631(a).
§ 38.630(c)(1)(i)–(iii)	§ 38.631(a)(1)(i)–(iii).
§ 38.630(c)(2)	§ 38.631(c)(2).
§ 38.630(c)(3)(i)–(ii)	§ 38.361(a)(1)(i)–(ii).
§ 38.631(a)	§ 38.630(a)(2)(i) and (b)(1)(iii)(B).
§ 38.631(b)(1)	§ 38.630(a)(2)(ii)(A).
§ 38.361(b)(2)	§ 38.630(a)(2)(i).
§ 38.631(b)(3)	§ 38.630(a)(2)(i)(A)–(F).
§ 38.631(c) and (d)	§ 38.630(b)(4)(i). § 38.631(b)(4).
§ 38.631(e)	§ 38.630(b)(1)(iii)(C).
§ 38.631(f)	§ 38.630(b)(2)(ii).
§ 38.632(a)	§ 38.630(b)(1). § 38.631(b)(1). § 38.632(a).
§ 38.632(b)	§ 38.632(b).
§ 38.632(c)	§ 38.630(b)(1). § 38.631(b)(1).
§ 38.632(d)	§ 38.632(c).
§ 38.632(e)	§ 38.632(d).
§ 38.632(f)	§ 38.632(e).
§ 38.632(g)	§ 38.632(f).
§ 38.632(h)	§ 38.632(g).

Similarly, VA received no comments on proposed § 38.620(j), which proposed to add burial eligibility criteria for a group of individuals to reflect statutory changes that were made by Public Law 115–141. That Public Law amended 38 U.S.C. 2402(a) to establish eligibility for certain individuals naturalized pursuant to the Hmong Veterans' Naturalization Act of 2000 (Pub. L. 106–207)—those who served on behalf of the United States during the Vietnam War and who were residing in the United States at the time of the individual's death, which must have occurred on or after March 23, 2018, the effective date of the law. However, upon review, the pertinent public laws do not render spouses and surviving spouses of these Hmong fighters eligible for burial or memorialization. To align our previous proposal to public law, this final rule does not include the proposed inclusion of the phrase ''or spouses of such individuals'' in § 38.630(a)(1)(ii)(F) and (a)(2)(i)(F). Because this change merely brings the regulation in conformance with the statutory authority, it is unnecessary to solicit public comment on the change.

On December 31, 2018, before the proposed rule was published in the **Federal Register**, the President signed Public Law 115–407, which revised 38 U.S.C. 2306 and 2402(a)(5). Section 201 of the public law authorized VA to extend certain burial benefits to eligible spouses and dependents buried in a Tribal Veterans' cemetery. Section 202 of the public law authorized VA to extend certain burial benefits and national cemetery interment to eligible spouses and dependents of active duty Servicemembers serving under conditions other than dishonorable, as shown by a statement from a general court-martial convening authority, at the time of the spouse's or dependent's death that occurs prior to October 1, 2024.

To reflect these new statutory authorities, this final rule amends VA's regulation on burial eligibility, § 38.620, by adding paragraph (k) to authorize VA to inter the spouse, minor child, and unmarried adult child of a member of

the Armed Forces serving on active duty under conditions other than dishonorable, as shown by a statement from a general court-martial convening authority, at the time of the spouse's or child's death if it occurs before October 1, 2024. The definitions of minor child and unmarried adult child provided in § 38.620(e)(2) and (3) will apply to this paragraph. The statutory changes are also reflected in amendments to § 38.630(a)(1)(iv) for burial headstones and markers and § 38.631(a)(1) for memorial headstones and markers, which extend eligibility to spouses and dependent children covered by Public Law 115–407.

General Comments

Regarding the comments received, only two specifically noted support for the rulemaking. One commenter expressed general support for the proposed rule that recognizes the sacrifice of the men and women who served. A second commenter expressed specific support for the provisions regarding durability of headstones and requested that VA update Form 40–1330 to reflect these changes. We discuss the need for changes to Form 40–1330 below, in the section regarding the Paperwork Reduction Act. We thank these commenters for their support and input.

Although other commenters generally expressed negative opinions about the rulemaking, including suggesting that VA should abandon the effort, many of them did not specify ways in which VA should change any particular proposed provision or suggest an overall change to the rule, short of withdrawing it. We thank all the commenters who took time to submit comments on the proposed rule; however, without more information regarding the changes certain commenters would like to see or the provisions with which they take exception, we cannot respond except to say that VA believes the rule is necessary and provides needed guidance to the public regarding its headstone and marker program.

Two commenters submitted information relating to specific unmarked graves and questioned the application of the rule to these circumstances. One of the commenters provided photographs of existing markings as examples of worn and broken block grave markers. Comments regarding specific claims are beyond the scope of this rulemaking. Because the circumstances regarding each claim for benefits are unique, and VA assesses claims on a case-by-case basis, we cannot speculate on the potential merits of the information provided regarding specific claims or potential claims.

Comments That the Rule Is Attempting To Alter or Is Inconsistent With Statutory Authority

The first category of comments received generally asserted that VA was changing, or at least was being inconsistent with, the statutory authority for the headstone and marker program, as provided by Congress in 38 U.S.C. 2306. Several of these comments asserted that VA must provide headstones and markers for ''all soldiers' graves'' or ''all veterans' graves'' or just ''all graves.'' One commenter suggested that VA must provide a headstone to mark ''any'' grave for ''any'' veteran of ''any'' war. Another suggested that VA adopt a ''One-Vet-One-Stone'' approach and provide a headstone regardless of whether the remains are unmarked or marked. We appreciate the input from these commenters; however, we clarify that our authority is circumscribed by section 2306. That statute prescribes eligibility for a Government headstone or marker depending on the type of individual and type of cemetery at issue. VA assures these commenters, and the public, that VA is not changing or departing from any of the eligibility categories set forth in current 38 U.S.C. 2306; as several commenters pointed out, VA has no authority to change a statutory provision. VA's responsibility is to provide benefits as authorized by Congress and, where Congress has left some ambiguity, to implement reasonable regulations consistent with the statute. VA's regulation includes all the categories of individuals who are eligible for headstones, markers, or medallions as established by Congress, including specific criteria for placement where applicable (for example, some individuals may be eligible for a headstone only when buried in a national cemetery).

Several commenters suggested withdrawal of the proposal because it was inconsistent with the normal use of the term ''marked.'' We disagree. Section 2306 authorizes VA to furnish headstones or markers for ''unmarked graves''; the common definition of ''marked'' is ''having an identifying mark''; and the common definition of ''unmarked'' is ''not having an identifying mark or distinctive notation.'' *See* ''Marked'' and ''Unmarked,'' *Merriam-Webster.com Dictionary, https://www.merriam-webster.com/dictionary* (last visited June 24, 2020). It would contravene these common definitions to consider graves with private, durable headstones containing a legible, identifying notation (even if that notation is simply a name—or even a number that corresponds to a name) as ''unmarked.''

Several additional commenters stated that the proposed definition of ''unmarked grave'' is not a reasonable construction of the statutory term and is inconsistent with Congress's intent to ''furnish headstones or markers for the graves of all'' veterans. S. Rep. No. 80–1453, at 2 (1948). The Senate Report cited in these comments was addressing the bill that would become Public Law 80–871 (1948), 62 Stat. 1215. This public law authorized Government headstones or markers for the ''unmarked graves'' of Union and Confederate soldiers, the ''unmarked graves'' of members of the Armed Forces who died in service or whose last service terminated honorably, and ''all unmarked graves'' in post and national cemeteries. 62 Stat. 1216.

Thus, while the Senate Report spoke in terms of headstones or markers for ''all'' veterans, S. Rep. 80–1453, at 2, the bill being recommended—and the Act which Congress passed—consistently restricted the furnishing of Government headstones or makers to ''unmarked graves.'' *See id.* at 1. Overall, the goal was not to ensure any specific content on the mark—just that all graves be marked. And neither the Senate Report nor the Public Law prescribed or suggested a definition of ''unmarked.'' As such, the definition of ''unmarked'' provided in this rule is consistent with the 1948 Congress's intent, and we make no changes based on these comments.

One commenter stated that veterans of all races and sexes who served in the military have a right to be remembered and honored with a headstone. Because section 2306 does not address race or sex in eligibility criteria, neither does VA's regulation. VA is committed to providing all of the many burial benefits, including headstones, markers, and medallions, to all persons eligible to receive them, without regard to a person's race, sex, or any other characteristics that are not enumerated in law.

Another commenter asserted that the proposal reflected an intent to deny headstones to veterans who served prior to World War I and who are interred in cemeteries that keep records of burials. This comment seems to conflate two provisions of the proposed regulation, one regarding a statutorily mandated eligibility date and one addressing when information about a decedent is ''ascertainable'' from the headstone or marker. We discuss the term ''ascertainable'' below. As to World War I, we note that this war was not

referenced in the proposed rulemaking, but the regulation does contain three references to April 6, 1917, the date on which the United States entered World War I. One of these references, in proposed § 38.630(c)(1)(vi), defines ''Applicant'' to include any individual if the veteran's service ended prior to April 6, 1917—so that provision does not exclude veterans who served prior to World War I. The other two references, in proposed § 38.630(a)(2)(ii) and (iii), correspond to statutory references to that date in 38 U.S.C. 2306(d)(4) and (5). We make no changes based on this comment.

We also received a comment that our proposed regulation did not focus on defining headstones, markers, or medallions, but rather on determining ''whether a veteran deserves any of those'' benefits. The commenter asserted that this allowed VA to establish a ''criteria for worthiness.'' As indicated above, Congress decides which categories of individuals should receive a headstone or marker. Congress also established, mostly in 38 U.S.C. 101, the definitions that shape these categories, by defining, for example, when service in the military constitutes ''active duty'' and who may be considered a ''veteran'' for purposes of VA benefits. VA's responsibility is to determine whether a decedent meets the requisite criteria before providing a headstone or marker. We do not consider this determination to be an assessment of anyone's ''worth''; it is merely a factual determination whether the decedent meets the criteria.

As noted above, VA received one comment suggesting a one-veteran-one-headstone rule, regardless of placement in a national or private cemetery, and irrespective of whether the remains are marked, unmarked, or on a collective monument. We thank the commenter for giving serious consideration to the issue of marking graves and suggesting an alternative. However, as previously explained, VA's regulation must remain within the authorities provided by Congress, which currently restrict who is eligible to receive a Government headstone or marker based on the nature of service, the type of cemetery at issue, and whether the grave is ''unmarked.'' VA makes no changes based on this comment.

Comments That the Rule Is Not Consistent With VA Practice or Will Prevent Provision of Headstones and Markers

Several commenters suggested that the content of the proposed rule was ''changing'' or not consistent with VA's current or past practice in providing headstones and markers for unmarked graves. Many of the comments urged VA to remove the rulemaking from the docket because the commenters believe it is unnecessary and would have far-ranging negative effects that would curtail an ordinary citizen's ability to honor and preserve the graves of veterans of all eras. Some commenters predicted dire results, stating that the regulation would result in VA no longer providing ''individual'' headstones—or any headstones at all—in the future, even if a grave is newly discovered. Several commenters specifically suggested that VA's rule would result in VA never providing a headstone for the grave of anyone who served in the Civil War, whether for the Union or the Confederacy. One commenter noted that several of VA's national cemeteries contain graves of enemy prisoners of war for which VA has provided headstones and stated that VA should show the same respect for ''our own American veterans.''

While these commenters hypothesized possible effects of the proposed rulemaking, most did not specify the provisions of the proposed rule that would lead to these dire results. As indicated above, without a clear indication of what provision a commenter finds problematic, VA cannot respond as to why VA believes otherwise. We clarify for these commenters, however, that VA will indeed continue to provide headstones and markers for eligible veterans and others as required by section 2306. As to the particular categories that were mentioned, we note that the statute requires VA to provide headstones for ''individual[s] buried in a national cemetery,'' which would include enemy prisoners of war buried in national cemeteries, as well as ''[s]oldiers of the Union and Confederate Armies,'' who are eligible for headstones or makers for their unmarked graves within or outside VA national cemeteries. Both categories of individuals are reflected in the regulation.

To the extent the commenters' apprehension is related to the proposed definition of ''unmarked grave,'' the preamble to the proposed rulemaking addressed this issue. Although the definition had never before been included in VA regulations, the content of the definition is consistent with VA's longstanding policy and guidance in VA Department of Memorial Affairs Headstone and Marker Manual M40–3, which itself is consistent with Department of the Army regulation (32 CFR 536.57(b)(3) (1961)) and policy predating VA's assumption of responsibility for managing the national cemeteries, and the headstone and marker program, which occurred in 1973. We assure these commenters that the content of the rule is consistent with our current and past practice, despite the possibility that there may have been individual instances of inconsistent application in the past. Publication of the rule will assist in preventing such inconsistencies in the future. We believe that publication of the rule will establish consistency in VA's provision of headstone, marker, and medallion benefits within the scope of its statutory authority.

Finally, to the extent the commenters' concern is that VA will no longer furnish headstones or markers so long as the decedent interred in the grave can be ascertained through research or a cemetery office ledger, that is not the case. If there is no durable headstone or marker at or by the grave, that grave is ''unmarked'' under this rule, § 38.630(c)(6), and VA would therefore furnish a headstone or marker if eligibility criteria are met. Moreover, if a headstone or marker is damaged beyond repair, lacks a legible inscription that can lead to identification of the decedent, or has been stolen or vandalized, that grave is ''unmarked'' under this rule, *id.,* and VA would therefore furnish a headstone or marker if eligibility criteria are met. In sum, a cemetery's maintenance of a ledger does not preclude consideration of a grave as ''unmarked.'' That said, where the inscription on a durable headstone or marker, in conjunction with a cemetery ledger or other reasonably accessible source, serves to identify the decedent, the grave is considered ''marked'' under the proposed rule and this final rule.

Comments on Content of Inscriptions

Two commenters suggested that graves should be considered ''unmarked'' if a headstone or marker does not contain a ''proper inscription,'' including name, rank, and other service information. Others asserted that a number on a headstone, corresponding to a book or list, was not sufficient to mark a grave or honor a veteran. Another stated that the definition of ''marked'' should be the same regardless of the type of cemetery at issue.

At the outset, it must be noted that VA cannot change a private choice in a private cemetery to place only a name or number on a headstone. While one commenter stated that no ''one should ever have to settle for just being a number,'' some private purchasers chose and private cemeteries permit such a practice, and VA cannot prohibit it. The critical question, for purposes of

VA's statutory authority to furnish headstones or markers, is whether such a grave is ''unmarked.'' And in our proposal, we posited a definition of ''unmarked'' that can be consistently applied, regardless of the type of cemetery at issue.

As discussed in the preamble to the proposed rule, VA considered including as ''unmarked'' privately purchased headstones that do not meet the minimum inscription criteria that Congress set for an ''appropriate marker'' in VA national cemeteries at 38 U.S.C. 2404(c). Those minimum criteria are the name of the decedent, the number of the grave, and other information that VA shall prescribe, *id.,* which currently is branch of service and years of birth and death, *see* VA Form 40–1330 (Inscription Information). However, we continue to reject that alternative, because there is no indication that Congress intended its view of what is ''appropriate'' for markers in national cemeteries as the barometer for what is marked or ''unmarked'' in other cemeteries. In other words, Congress's use of the term ''appropriate marker'' in section 2404(c) indicates that some graves having a ''marker'' that is not ''appropriate'' for a national cemetery are nevertheless marked. In any event, it is incongruous to use section 2404(c)'s definition of ''appropriate marker'' under the national cemetery administration program as a definition for ''unmarked graves'' in the headstone and marker program of section 2306. The predecessor to section 2404(c), for example, required that national cemetery headstones contain the State of the decedent, 24 U.S.C. 279 (1970); but that does not mean that Congress considered a headstone not chronicling a State in a private cemetery as ''unmarked.'' And VA believes that if Congress were later to determine that the use of nicknames on headstones is not ''appropriate'' for national cemeteries, that would not mean that a headstone with a nickname in a private cemetery is ''unmarked. Although Congress mandated certain information be on headstones in national cemeteries, there is no indication that it intended section 2404(c) to be a definition of ''marked.'' Accordingly, the rule here focuses the ''unmarked'' inquiry not on what is ''appropriate'' for national cemeteries, but on whether there is a durable headstone or marker with a legible inscription that, in conjunction with a cemetery ledger or other reasonably accessible source, serves to identify the decedent. We make no changes based on these comments.

One commenter suggested that VA determine, on a ''case by case'' basis, whether a grave was marked based on the content of the inscription of an existing headstone or marker. The commenter provided hypothetical examples of the application of this ''test.'' We appreciate the considerable thought put into the comment and note that VA does undertake some of the analysis suggested when determining whether a Government-furnished headstone or marker should be replaced based on newly discovered information. This is reflected in the rule at § 38.630(b)(3)(E) for burial headstones or markers and § 38.631(b)(3)(E) for memorial headstones or markers. We thank the commenter, but because, as explained above, the content of the inscription is not determinative of whether a grave is considered unmarked, we make no changes based on this comment.

Another commenter interpreted the proposal to mean that, if a headstone were unreadable, but identification could be made through research, VA would not provide a headstone or marker. This is not the case. Under § 38.630(c)(6)(ii)(C), where the identifying elements of an inscription on the headstone or marker are no longer legible, the grave is ''unmarked.'' The commenter then raised an issue that seems to pertain to whether information is ''ascertainable'' by citing a lack of services available at some cemeteries, which may make timely identification difficult. While we are sympathetic to this concern, we note again that VA's mandate is to furnish headstones or markers for the unmarked graves of veterans. We cannot extend our authority to address the lack of customer service provided by private entities by providing a headstone or marker where one already exists. Nevertheless, the definition of ''ascertainable'' addresses this issue by requiring the decedent's name to be ''reasonably accessible,'' which may involve a case-by-case consideration of the availability of the private cemetery's ledger or other sources.

On a similar note, one commenter argued that a grave is not ''marked'' if a visitor has to review a cemetery ledger to learn of the decedent's name. But Congress has authorized VA to furnish headstones or markers for ''unmarked graves,'' not marked graves lacking certain information. Again, while we are sympathetic to the burden on visitors when a headstone or marker itself conveys little information about a decedent, that does not mean that the grave is ''unmarked.''

Comments Regarding Confederate Headstones and Oakwood Cemetery

Many comments VA received, including several noted previously, were concerned about the application of this rule to the provision of headstones and markers for individuals who served in the Confederate armed forces during the Civil War, and particularly those who are buried in Oakwood Cemetery in Richmond, Virginia. We understand that readers of any rulemaking document will understand its contents through their own experiences and circumstances. But this rule was drafted to apply to the myriad circumstances, both historic and contemporary, that VA navigates in deciding claims for headstones and markers. The rule provides VA with the flexibility to provide headstones or markers in numerous situations, without dictating how private individuals must mark or should have marked a grave.

Some of these commenters expressed a belief that the rulemaking reflected a political bias against those who served in the Confederate armed forces and is an attempt to limit provision of headstones to mark graves of Confederate soldiers. We affirmatively state that the regulation was not created to advance any political agenda or to deny any group of individuals the benefit to which they are entitled. Consistent with section 2306(a), this rule treats Confederate soldiers the same as Union soldiers and most others eligible for burial in a national cemetery. The regulation will provide VA with a consistent method for determining eligibility for the headstone, marker, and medallion benefits within the scope of its statutory authority. As acknowledged above, to the extent VA's past implementation may have been inconsistent at times, VA intends with this regulation to create a clear and effective method by which the headstone, marker, and medallion program will be managed.

Commenters also asserted that VA's proposal is inconsistent with Public Law 80–871 (1948), because the Senate characterized the bill that would become this Public Law as authorizing Government headstones or markers for ''the graves of all persons who served honorably in the armed forces of the United States, including the Union and Confederate Armies.'' S. Rep. 80–1453, at 2. As stated above, 38 U.S.C. 2306(a)(3) provides eligibility for headstones or markers for individuals who served in the Union and Confederate Armies, and this rule similarly includes them as eligible at § 38.630(a)(1)(iii). We reiterate,

however, that, while that part of the Senate report cited by the commenters referred only to ''graves,'' without the ''unmarked'' qualifier, other parts of the report—and the public law itself—limited this furnishing to graves (of those who served in the Union and Confederate Armies and all others) that were ''unmarked.'' This remains the language of the law (in section 2306) today. As noted above, Congress did not provide, in Public Law 80–871 or any other law since, a definition of the term ''unmarked.''

At least one commenter asserted that, under the 1948 law, Congress intended that VA provide headstones which display the veteran's name and other pertinent information. To the contrary, that topic was not addressed in Public Law 80–871. And, as noted above, Congress has never declared that the content on a headstone or marker is the barometer for assessing whether a grave is ''unmarked.'' Indeed, Congress has strongly suggested that the provision of headstones or markers for already-marked private graves requires specific statutory authority: Congress added paragraph (d) to section 2306, *see* Public Law 107–103, 502 (2001), with the understanding that ''VA is restricted by statute from providing a headstone or marker for an already marked grave'' absent Congressional allowance. S. Rep. 107–86, at 23 (2001). Overall, as discussed above, while section 2404 requires that certain information be inscribed on headstones or markers in order to be an ''appropriate marker'' for graves in national cemeteries, this requirement is not related to VA's authority to furnish headstones or markers on unmarked graves outside national cemeteries.

Several commenters specifically referenced the effect the regulation may have on VA's provision of headstones for those interred in Oakwood Cemetery in Richmond, Virginia. One commenter cited to a specific headstone request for placement at Oakwood Cemetery and another commenter cited to legal challenges to VA's previous denials of claims for headstones for graves in Oakwood's Confederate section. Other comments stated support for providing headstones at Oakwood. As previously indicated, we cannot address specific claims within this rulemaking. We also clarify that the effect of this rulemaking is not to address specific gravesites or cemeteries, such as Confederates interred in Oakwood Cemetery. To the extent that the litigation regarding headstones at Oakwood Cemetery informed this regulation, it reinforced the importance of VA publishing a regulation with consistent standards and inviting public comment, to ensure the public is aware of, and able to provide input on, VA's interpretation of its statutory authority. The content of the regulation was not drafted with any intent of addressing specific previous or potential future claims at Oakwood or any other cemetery; as noted above, the regulation was drafted to provide a clear and effective method by which the headstone, marker, and medallion program will be managed in accordance with VA's interpretation of the authority provided by Congress.

One commenter asserted that VA-furnished headstones for Confederates at Oakwood Cemetery are incorrect or duplicative and questioned the accuracy of burial lists for graves at Oakwood. VA appreciates the commenter's concerns; however, these comments are case-specific scenarios or issues that should be raised in the claim adjudication context, and not as part of a rulemaking.

Some of the commenters discussing Oakwood Cemetery referenced a ''statement submitted to [the Office of Management and Budget (OMB)] in 2017 by James B. Laidler.'' We attempted to obtain the full text of Mr. Laidler's 2017 comment that presumably would have been submitted to OMB regarding proposed changes to VA Form 40–1330, Claim for Standard Government Headstone or Marker. We conducted an internal search of files, trying to locate the full content of Mr. Laidler's 2017 comment, but we have no record of having received such comment. Because the commenters indicated it was submitted to OMB, we reviewed the online portal at *www.regulations.gov* but did not find any comment submitted by Mr. Laidler. Finally, we also asked OMB if they could provide the comment to us; however, OMB staff informed us that they also had no record of Mr. Laidler's submission.

Without the benefit of reviewing Mr. Laidler's actual comment in full, it is difficult to evaluate the relevance of his input to this regulation specifically. However, we can address the arguments conveyed by the commenters, which allegedly originated from this 2017 submission. The commenters asserted that VA's proposal would rely on a ''block-and-ledger'' system to determine whether a grave is ''unmarked'' and that, because all cemeteries use such a system, this would essentially result in VA never providing a Government headstone for any graves. To the extent the commenters are referring to a grave location system that marks sections and rows of graves within a large cemetery, this is indeed a system used in many, if not all, cemeteries, including VA's national cemeteries. However, VA did not propose that a grave is ''marked'' so long as the cemetery has a system for locating graves. Under the proposed rule and final rule, a grave lacking a durable headstone or marker is ''unmarked''; a grave with a damaged, stolen, or vandalized headstone or marker is ''unmarked''; and a grave without a legible inscription on a headstone or marker is ''unmarked.'' As explained in the preamble to the proposed rule, this definition is based on VA's long-standing policy, which, in turn, is based on the policy that the Department of the Army had used prior to the transfer of the national cemeteries and the headstone and marker program to VA in 1973. VA makes no change to the regulation based on these comments, including, to the extent it was capable of consideration, Mr. Laidler's 2017 comment.

Clarification and Technical Edits

One commenter requested clarification as to whether a headstone or marker has to be individualized for the grave to be considered marked, *i.e.,* whether a headstone or marker for ''a block of graves or a row of many graves'' suffices. Similarly, another stated that a grave should be considered ''unmarked'' if ''no individual marker is present at the soldier's actual burial site.'' To clarify VA's position on the matter, if there is a marker for a block or row of graves that serves to identify the decedent (and is durable, not damaged beyond repair, etc.), VA considers the grave to be marked. As noted above, VA has no authority to control how private cemeteries historically chose to mark graves, and the choice to mark multiple graves with one block in proximity to those graves does not render them ''unmarked.'' To the extent the proposed regulatory text was unclear on the matter, we are replacing ''at the grave'' in proposed § 38.630(c)(6) with ''at or by the grave'' in final § 38.630(c)(6).

Beyond the changes noted above, VA also makes a few technical edits in this final rule, including the correction of cross-references, addition of medallions to the replacement provisions in § 38.630(b)(3)(ii), and updating statutory citations in § 38.630(c)(4) to reflect renumbering in titles 10 and 14 of the United States Code.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic,

environmental, public health, and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this rule is a significant regulatory action under Executive Order 12866.

The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at *www.regulations.gov.*

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rulemaking does not change VA's policy regarding small businesses, does not have an economic impact to individual businesses, and there are no increased or decreased costs to small business entities. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (at 44 U.S.C. 3507) requires that VA consider the impact of paperwork and other information collection burdens imposed on the public. Under 44 U.S.C. 3507(a), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number. *See also* 5 CFR 1320.8(b)(3)(vi).

This final rule will impose the following revised information collection requirement that was previously approved by OMB. Of the 66 public comments received for the proposed rule, VA received no comments on proposed § 38.630(b)(1)(iii)(A)–(C) that revised two existing certification statements on VA Form 40–1330, titled ''Claim for Standard Government Headstone or Marker,'' related to placement of a headstone or marker in a private or local cemetery and related to following the receiving cemetery's guidelines and procedures. VA incorporated one change to the form based on a comment to add the text ''permanent and durable'' to describe graves that are currently marked with a privately purchased headstone or marker. This change merely implements the language in § 38.630(c)(5) that defines a privately purchased, durable headstone or marker as ''lasting'' and not anticipated to unduly degrade under exposure to the environment in which it is placed. The collection of information is necessary for VA to sufficiently determine that a Government-furnished headstone or marker can be placed in a private or a local government cemetery in close proximity to the grave and in accordance with cemetery guidelines. VA will use this information to ensure proper issuance of the requested headstone or marker. The proposed revisions to the certifications further do not affect eligibility for a headstone, marker, or medallion, and would not increase or decrease the number of applicants using VA Form 40–1330. Therefore, these proposed revisions would not result in any increase or decrease in respondents, respondent burden hours, or respondent burden costs. As required by the Paperwork Reduction Act of 1995 (at 44 U.S.C. 3507(d)), VA will submit information collection 2900–0222 to OMB for its review and approval on the revised collection.

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 rule as not a major rule, as defined by 5 U.S.C. 804(2).

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.201 National Cemeteries; 64.202 Procurement of Headstones and Markers and/or Presidential Memorial Certificates; and, 64.203 Veterans Cemetery Grants Program.

List of Subjects

38 CFR Part 38

Administrative practice and procedure, Cemeteries, Claims, Crime, Veterans.

38 CFR Part 39

Cemeteries, Grant programs—veterans, Veterans.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on June 23, 2021, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Luvenia Potts,

Regulations Development Coordinator, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

For the reasons set forth in the preamble, the Department of Veterans Affairs amends 38 CFR parts 38 and 39 as follows:

PART 38—NATIONAL CEMETERIES OF THE DEPARTMENT OF VETERANS AFFAIRS

■ 1. The authority citation for part 38 continues to read as follows:

Authority: 38 U.S.C 107, 501, 512, 2306, 2402, 2403, 2404, 2407, 2408, 2411, 7105.

■ 2. Revise § 38.600 to read as follows:

§ 38.600 Definitions.

(a) The following definitions apply to this part:

Appropriate State official means a State attorney general or other official with statewide responsibility for law enforcement or penal functions.

Clear and convincing evidence means that degree of proof which produces in the mind of the fact-finder a firm belief regarding the question at issue.

Convicted means a finding of guilt by a judgment or verdict or based on a plea of guilty, by a Federal or State criminal court.

Federal capital crime means an offense under Federal law for which a sentence of imprisonment for life or the death penalty may be imposed.

Interment means the burial of casketed remains or the placement or scattering of cremated remains.

Life imprisonment means a sentence of a Federal or State criminal court directing confinement in a penal institution for life.

Memorialization means any action taken to honor the memory of a deceased individual.

Personal representative means a family member or other individual who has identified himself or herself to the National Cemetery Administration as the person responsible for making decisions concerning the interment of

the remains of or memorialization of a deceased individual.

State capital crime means, under State law, the willful, deliberate, or premeditated unlawful killing of another human being for which a sentence of imprisonment for life or the death penalty may be imposed.

(b) Other terms not defined in paragraphs (a)(1) through (9) of this section may be defined within and be applicable to other sections throughout this part.

(Authority: 38 U.S.C. 2404, 2411)

■ 3. Amend § 38.620 by adding paragraphs (j) and (k) to read as follows:

§ 38.620 Persons eligible for burial.

* * * * *

(j) Any individual who:

(1) Was naturalized pursuant to section 2(1) of the Hmong Veterans' Naturalization Act of 2000 (Pub. L. 106–207, 114 Stat. 316; 8 U.S.C. 1423 note); and

(2) At the time of the individual's death resided in the United States; and

(3) Died on or after March 23, 2018.

(k) The spouse, minor child, and unmarried adult child of a member of the Armed Forces serving on active duty under conditions other than dishonorable, as shown by a statement from a general court-martial convening authority, at the time of the spouse's or child's death if such death occurs before October 1, 2024. Paragraphs (e)(2) and (3) of this section provide the applicable definitions for ''minor child'' and ''unmarried adult child.''

■ 4. Revise § 38.630 to read as follows:

§ 38.630 Burial headstones and markers; medallions.

(a) *Eligibility*—(1) *Unmarked graves.* VA will furnish, when requested under paragraph (b)(1)(i) or (ii) of this section, a burial headstone or marker for the unmarked grave of the following individuals:

(i) Any individual buried in a national cemetery or in a military post cemetery. When more than one individual is buried in a single gravesite in a national cemetery, VA will, if feasible, include inscription information for all such individuals on a single headstone or marker, rather than furnishing a separate headstone or marker for each buried individual.

(ii) The following individuals eligible for burial in a national cemetery but who are buried elsewhere, where such graves may be located in any type of non-national cemetery (*e.g.,* state, tribal, private, or local government such as town or city cemetery):

(A) Veterans as described in § 38.620(a).

(B) Members of a Reserve component of the Armed Forces, or members of the Army National Guard or the Air National Guard, whose deaths occurred under the conditions described in § 38.620(b).

(C) Members of the Reserve Officers' Training Corps of the Army, Navy, or Air Force, whose deaths occurred under the conditions described in § 38.620(c).

(D) Individuals who separated from military service and were entitled to retired pay under chapter 1223 of title 10 (10 U.S.C. 12731 *et seq.*), as described in and subject to § 38.620(g).

(E) Individuals who served in the organized military forces of the Government of the Commonwealth of the Philippines, or who served in the New Philippine Scouts, as described in and subject to § 38.620(h).

(F) Individuals who were naturalized pursuant to sec. 2(1) of the Hmong Veterans' Naturalization Act of 2000, as described in and subject to § 38.620(j).

(iii) Soldiers of the Union and Confederate Armies of the Civil War, whose graves may be located in any type of non-national cemetery (*e.g.,* state, tribal, private, or local government cemetery).

(iv) Spouses, surviving spouses, and dependent children, as described in and subject to § 38.620(e) or § 38.620(k), whose graves are located in a veterans' cemetery owned by a State, or a veterans' cemetery owned by a Tribal Organization or on land owned by or held in trust for a Tribal Organization.

(2) *Marked graves.* (i) Subject to paragraphs (a)(2)(ii) and (iii) of this section, VA will furnish, when requested under paragraph (b)(1)(ii) of this section, a burial headstone or marker for the graves of the following individuals who are buried in a non-national cemetery (*e.g.,* state, tribal, private, or local government cemetery), notwithstanding that such graves are already marked by a privately purchased headstone or marker.

(A) Veterans as described in § 38.620(a).

(B) Members of a Reserve component of the Armed Forces, or members of the Army National Guard or the Air National Guard, whose deaths occurred under the conditions described in § 38.620(b).

(C) Members of the Reserve Officers' Training Corps of the Army, Navy, or Air Force whose deaths occurred under the conditions described in § 38.620(c).

(D) Individuals who separated from military service and were entitled to retired pay under chapter 1223 of title 10 (10 U.S.C. 12731 *et seq.*), as described in and subject to § 38.620(g).

(E) Individuals who served in the organized military forces of the Government of the Commonwealth of the Philippines, or who served in the New Philippine Scouts, as described in and subject to § 38.620(h).

(F) Individuals who were naturalized pursuant to sec. 2(1) of the Hmong Veterans' Naturalization Act of 2000, as described in and subject to § 38.620(j).

(ii) An individual described in paragraph (a)(2)(i) of this section is eligible for a headstone or marker provided under this paragraph (a)(2) if:

(A) The individual died on or after November 1, 1990; or

(B) They were a Medal of Honor recipient and served in the Armed Forces on or after April 6, 1917.

(iii) In lieu of a headstone or marker provided under this paragraph (a)(2), veterans described in paragraph (a)(2)(i)(A) of this section are eligible for a medallion to be affixed to their privately purchased headstone or marker if they served in the Armed Forces on or after April 6, 1917.

(b) *General*—(1) *Application.* (i) When burial occurs in a cemetery that uses the National Cemetery Administration (NCA) electronic ordering system (*e.g.,* national cemetery, State veterans' cemetery, or military post cemetery), the headstone or marker provided under paragraph (a)(1) or (2) of this section will be ordered by the applicable cemetery as part of the process of arranging burial.

(ii) When burial occurs in a cemetery that does not use NCA's electronic ordering system (*e.g.,* private or local government cemetery), an applicant, as defined in paragraph (c)(1) of this section, may either:

(A) Request a burial headstone or marker provided under paragraph (a)(1) or (2) of this section by completing and submitting VA Form 40–1330, Claim for Standard Government Headstone or Marker; or

(B) Request a medallion provided under paragraph (a)(2)(iii) of this section to be affixed to a privately purchased headstone or marker, by completing and submitting VA Form 40–1330M, Claim for Government Medallion for Placement in a Private Cemetery.

(iii) VA Forms 40–1330 and 40–1330M include application and submission instructions as well as additional information related to emblems of belief, and are accessible through the following links: *https://www.va.gov/vaforms/va/pdf/VA40-1330.pdf,* and *https://www.va.gov/vaforms/va/pdf/VA40-1330M.pdf.*

(A) An applicant for a burial headstone or marker for an unmarked grave provided under paragraph (a)(1) of

this section, for placement in a private cemetery or a local government cemetery, must certify on VA Form 40–1330 that such headstone or marker will be placed on or at the grave for which it is requested.

(B) An applicant for a burial headstone or marker for a marked grave provided under paragraph (a)(2) of this section, for placement in a private cemetery or a local government cemetery, must certify on VA Form 40–1330 that such headstone or marker will be placed on the grave for which it is requested, or if such placement is not possible or practicable, as close as possible to the grave within the grounds of the cemetery in which the grave is located.

(C) A representative of a private cemetery or local government cemetery that accepts delivery of a burial headstone or marker provided under paragraph (a)(1) or (2) of this section must certify on VA Form 40–1330 that placement of the headstone or marker adheres to the policies or guidelines of the cemetery in which the grave is located.

(2) *Styles, types, and inscriptions.* The styles and types of burial headstones and markers provided under paragraphs (a)(1) and (2) of this section, as well as the inscriptions thereon to include an emblem of belief, will be provided in accordance with VA policy as well as in a manner consistent with 38 U.S.C. 2306(c) and 2404(c).

(i) The styles and types of burial headstones and markers made available for selection, as well as the inscriptions thereon, may be limited in accordance with certain requirements, including but not limited to aesthetic or administrative requirements of the cemetery in which the headstone or marker will be placed.

(ii) The same styles and types of headstones and markers made available for selection by requestors of headstones and markers provided for unmarked graves under paragraph (a)(1) of this section shall be made available for requestors of headstones or markers for marked graves provided under paragraph (a)(2) of this section.

(iii) Upon request under paragraph (b)(1)(i) or (ii) of this section, a headstone, marker, or medallion provided under paragraph (a)(1) or (2) of this section shall signify the deceased's status as a Medal of Honor recipient as applicable.

(iv) If an emblem of belief is requested that is not offered in VA's inventory of images for emblems of belief, additional requirements apply under § 38.632.

(3) *Replacement.* (i) Upon request, VA will replace a Government-furnished burial headstone, marker, or medallion, if the previously furnished headstone, marker, or medallion:

(A) Is damaged beyond repair; or

(B) Has deteriorated to the extent it no longer serves to identify the buried decedent (*e.g.,* identifying elements of an inscription are not legible, such as a decedent's name or a grave number for an unknown decedent), or, in the case of a medallion, no longer serves to identify the buried decedent as a veteran or as a Medal of Honor recipient if applicable; or

(C) Has been stolen or vandalized; or

(D) Is the incorrect style or type for the veteran's era of service; or

(E) Requires changing or adding inscription information for the following reasons:

(*1*) To correct errors in factual information (such as name or date of birth or death) provided to VA as part of the initial application process; or

(*2*) To indicate information related to the deceased's military service that is provided to VA after the initial application process (such as the deceased's posthumous receipt of military awards); or

(*3*) To identify on a single headstone or marker multiple decedents who are each eligible for a headstone or marker and who are buried in the same gravesite in a cemetery, to include identification of a spouse or dependent in accordance with 38 U.S.C. 2306(g)(1); or

(*4*) To indicate the deceased's status as a Medal of Honor recipient if applicable, for a headstone or marker provided for a marked grave under paragraph (a)(2) of this section, in accordance with 38 U.S.C. 2306(d)(5)(B).

(*5*) For any reason not listed in paragraphs (b)(3)(i)(E)(*1*) through (*4*) of this section, if the request to change or add inscription information is received from the decedent's next of kin as indicated in NCA's records systems, within six months of the initial headstone or marker being provided.

(ii) To the extent practicable, replacement burial headstones, markers, and medallions will be of the same style and type (to include inscription information) as those headstones, markers, or medallions being replaced, except that style, type, or inscription information may differ for replacements if one of the criteria in paragraph (b)(3)(i)(D) or (E) is the reason for replacement.

(iii) Requests to replace Government-furnished burial headstones, markers, or medallions are made as follows:

(A) Through NCA's electronic ordering systems, when the headstone, marker, or medallion to be replaced is located in a cemetery that uses NCA electronic ordering systems; or

(B) By completing and submitting VA Form 40–1330 or VA Form 40–1330M, when the headstone, marker, or medallion to be replaced is located in a cemetery that does not use NCA's electronic ordering systems.

(4) *Limitations.* (i) VA will not pay costs associated with installing a burial headstone or marker provided under paragraph (a)(1) or (2) of this section for placement in a non-national cemetery, but VA will deliver such headstone or marker directly to the non-national cemetery where the grave is located or to a receiving agent for delivery to the cemetery.

(ii) VA will not pay costs associated with affixing a medallion provided under paragraph (a)(2) of this section to a privately purchased headstone or marker in a non-national cemetery, but VA will deliver such medallion directly to the applicant.

(5) *Ownership, alteration, and disposition.* (i) All Government-furnished headstones, markers, and medallions remain the property of the United States Government in perpetuity and should not be defaced or altered in any way. Knowingly converting Government property to private use (such as using whole or partial headstones or markers in structures or landscaping or offering such items for sale) is a violation of Federal law under 18 U.S.C. 641.

(ii) Under 38 CFR 1.218(b)(5), the destruction, mutilation, defacement, injury, or removal of any monument, gravestone, or other structure within the limits of any national cemetery is prohibited, with an associated fine of $500. Under 18 U.S.C. 1361, willful depredation of any property of the United States (*i.e.,* a headstone or marker in a non-national cemetery) shall be punishable by a fine or imprisonment under title 18 of the United States Code.

(iii) When a Government-furnished burial headstone, marker, or medallion is removed from any cemetery, it should be properly disposed. Unless a headstone or marker that has been removed from a cemetery would be maintained by NCA for historic purposes, or in cases of disinterment would be relocated to a different gravesite, such headstones or markers made of stone must be physically broken into small enough pieces to ensure no portion of the inscription is legible and to ensure no part is available for any private, personal, or commercial use, and those made of bronze must be returned to VA for recycling.

(c) *Definitions*—(1) *Applicant.* An applicant for a burial headstone or marker for an eligible deceased individual, or an applicant for a medallion to be affixed to a privately purchased headstone or marker, may be:

(i) A decedent's family member, which includes the decedent's spouse or individual who was in a legal union as defined in 38 CFR 3.1702(b)(1)(ii) with the decedent; a child, parent, or sibling of the decedent, whether biological, adopted, or step relation; and any lineal or collateral descendant of the decedent;

(ii) A personal representative, as defined in § 38.600(a)(8);

(iii) A representative of a congressionally chartered Veterans Service Organization;

(iv) An individual employed by the relevant state or local government whose official responsibilities include serving veterans and families of veterans, such as a state or county veterans service officer;

(v) Any individual who is responsible, under the laws of the relevant state or locality, for the disposition of the unclaimed remains of the decedent or for other matters relating to the interment or memorialization of the decedent; or

(vi) Any individual, if the dates of service of the veteran to be memorialized, or on whose service the eligibility of another individual for memorialization is based, ended prior to April 6, 1917.

(2) *Ascertainable.* Ascertainable means inscribed on the headstone or marker or discoverable from some inscription on the headstone or marker that corresponds to information that is reasonably accessible by the public (*e.g.,* a corresponding burial ledger at the cemetery, or publicly available burial information accessible on the internet).

(3) *Local government.* Local government means the administrative body of a geographic area that is not a state, such as a county, city, or town.

(4) *Medal of Honor recipient.* Medal of Honor recipient means an individual who is awarded the Medal of Honor under sec. 7271, 8291, or 9271 of title 10 or sec. 2732 of title 14 of the United States Code, or corresponding predecessor provisions.

(5) *Privately purchased and durable headstone or marker.* Privately purchased and durable headstone or marker means a headstone or marker that was not purchased or provided by the Government, and that is made of a material (such as but not limited to stone) that is lasting and not anticipated to unduly degrade under exposure to the environment in which it is placed.

(6) *Unmarked grave.* Unmarked grave means a grave in a cemetery where:

(i) A Government-furnished headstone or marker has not been erected or installed at or by the grave, or the condition of a Government-furnished headstone or marker erected or installed at or by the grave warrants replacement under paragraph (b)(3) of this section; and

(ii) A privately purchased and durable headstone or marker, from which the buried individual's name (if known) is ascertainable:

(A) Has not been erected or installed at or by the grave, or

(B) Is damaged beyond repair; or

(C) Has deteriorated to the extent it no longer serves to identify the buried decedent (*e.g.,* identifying elements of an inscription are not legible); or

(D) Has been stolen or vandalized.

(Authority: 38 U.S.C. 2306, 2402, 2404, sec. 203(b), Pub. L. 110–157, 121 Stat. 1831)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0222.)

■ 5. Revise § 38.361 to read as follows:

§ 38.631 Memorial headstones and markers.

(a) *Eligibility.* (1) VA will furnish, when requested under paragraph (b)(1) of this section, a memorial headstone or marker to commemorate the following individuals whose remains are unavailable:

(i) A veteran (which includes an individual who dies in the active military, naval, or air service), where the headstone or marker may be provided for a national cemetery, a State, local, or private cemetery, a veterans' cemetery owned by a State, or a veterans' cemetery owned by a tribal organization or on land owned by or held in trust for a tribal organization.

(ii) An individual who dies on or after November 11, 1998, who is the spouse or surviving spouse of a veteran (which includes a surviving spouse who had a subsequent remarriage), or the spouse of a member of the Armed Forces serving on active duty under conditions other than dishonorable, as shown by a statement from a general court-martial convening authority, at the time of the spouse's death if such death occurs before October 1, 2024—where the headstone or marker may be provided for a national cemetery, a veterans' cemetery owned by a State, or a veterans' cemetery of a Tribal Organization or on land owned by or held in trust for a Tribal Organization;

(iii) An individual who dies on or after November 11, 1998, who is an eligible dependent child of a veteran, or the eligible dependent child of a member of the Armed Forces serving on active duty under conditions other than dishonorable, as shown by a statement from a general court-martial convening authority, at the time of the child's death if such death occurs before October 1, 2024—where the headstone or marker may be provided for a national cemetery, a veterans' cemetery owned by a State, or a veterans' cemetery of a Tribal Organization or on land owned by or held in trust for a Tribal Organization—if that dependent child is:

(A) Under the age of 21 years; or

(B) Under the age of 23 years if pursuing a course of instruction at an approved educational institution; or

(C) Unmarried and became permanently physically or mentally disabled and incapable of self-support before reaching the age of 21 years, or before reaching the age of 23 years if pursuing a course of instruction at an approved educational institution.

(2) When VA has furnished a burial headstone or marker under § 38.630(a)(1), VA will, if feasible, add a memorial inscription to that headstone or marker (or provide a replacement headstones or marker to newly include a memorial inscription) rather than furnishing a separate memorial headstone or marker for the surviving spouse or eligible dependent child of such individual, in accordance with 38 U.S.C. 2306(g)(1).

(3) When VA has furnished a memorial headstone or marker under paragraph (a)(1) of this section for purposes of commemorating a veteran or an individual who died in the active military, naval, or air service, VA will, if feasible, add a memorial inscription to that headstone or marker (or provide a replacement headstones or marker to newly include a memorial inscription) rather than furnishing a separate memorial headstone or marker for the surviving spouse or eligible dependent child of such individual, in accordance with 38 U.S.C. 2306(g)(2).

(b) *General*—(1) *Application.* (i) An applicant, as defined in paragraph (c)(1) of this section, may request a memorial headstone or marker by completing and submitting VA Form 40–1330, Claim for Standard Government Headstone or Marker. VA Form 40–1330 includes application and submission instructions and is accessible through the following link: *https://www.va.gov/vaforms/va/pdf/VA40-1330.pdf.*

(ii) A representative of a private cemetery or local government cemetery that accepts delivery of a memorial headstone or marker must certify on VA Form 40–1330 that placement of the

headstone or marker adheres to the policies or guidelines of the cemetery in which the grave is located.

(2) *Styles, types, and inscriptions.* The styles and types of memorial headstones and markers provided under this section, as well as the inscriptions thereon to include emblems of belief, will be provided in accordance with VA policy as well as in a manner consistent with 38 U.S.C. 2306(c).

(i) The styles and types of memorial headstones and markers made available for selection, as well as the inscriptions thereon, may be limited in accordance with certain requirements, including but not limited to aesthetic or administrative requirements of a cemetery.

(ii) All inscriptions for memorial headstones and markers must be preceded by the phrase ''In Memory Of''.

(iii) If an emblem of belief is requested that is not offered in VA's inventory of images for emblems of belief, additional requirements apply under § 38.632.

(3) *Replacement.* (i) Upon request, VA will replace a Government-furnished memorial headstone or marker, if the previously furnished headstone or marker:

(A) Is damaged beyond repair; or

(B) Has deteriorated to the extent it no longer serves to identify the decedent (*e.g.,* identifying elements of an inscription are not legible, such as a decedent's name); or

(C) Has been stolen or vandalized; or

(D) Is the incorrect style or type for the veteran's era of service; or

(E) Requires changing or adding inscription information for the following reasons:

(*1*) The inscription is not preceded by the phrase ''In Memory Of''; or

(*2*) To correct errors in factual information (such as name or date of birth or death) provided to VA as part of the initial application process; or

(*3*) To indicate information related to the deceased's military service that is provided to VA after the initial application process (such as the deceased's posthumous receipt of military awards); or

(*4*) To identify a spouse or dependent in accordance with 38 U.S.C. 2306(g)(2); or

(*5*) For any reason not listed in paragraphs (b)(3)(i)(E)(*1*) through (*4*) of this section, if the request to add or change inscription information is received from the decedent's next of kin as indicated in NCA's records systems, within six months of the headstone or marker initially being provided.

(ii) To the extent practicable, replacement memorial headstones and markers will be of the same style and type (to include inscription information) as those being replaced, except that style, type, or inscription content may differ for replacement headstones and markers if one of the criteria under paragraphs (b)(3)(i)(D) and (E) of this section is the reason for replacement.

(iii) Requests to replace Government-furnished memorial headstones and markers are made as follows:

(A) Through NCA's electronic ordering systems, when the headstone or marker to be replaced is located in a cemetery that uses NCA electronic ordering systems; or

(B) By completing and submitting VA Form 40–1330, when the headstone or marker to be replaced is located in a cemetery that does not use NCA's electronic ordering systems.

(4) *Limitations.* VA will not pay the cost of installing a memorial headstone or marker provided under this section for placement in any cemetery that is not a national cemetery but will deliver the headstone or marker directly to such cemetery or to a receiving agent for delivery to the cemetery.

(5) *Ownership, alteration, and disposition.* (i) All Government-furnished memorial headstones and markers remain the property of the United States Government in perpetuity and should not be defaced or altered in any way. Knowingly converting Government property to private use (such as using whole or partial headstones or markers in structures or landscaping or offering such items for sale) is a violation of Federal law under 18 U.S.C. 641.

(ii) Under 38 CFR 1.218(b)(5), the destruction, mutilation, defacement, injury, or removal of any monument, gravestone, or other structure within the limits of any national cemetery is prohibited, with an associated fine of $500. Under 18 U.S.C. 1361, willful depredation of any property of the United States (*i.e.,* a headstone or marker in a non-national cemetery) shall be punishable by a fine or imprisonment under title 18 of the United States Code.

(iii) When a Government-furnished memorial headstone or marker is removed from any cemetery (due to it warranting replacement under paragraph (b)(3) of this section), it should be properly disposed. Unless a memorial headstone or marker that has been removed from a cemetery would be maintained by NCA for historic purposes, such headstones and markers made of stone must be physically broken into small enough pieces to ensure no portion of the inscription is legible and to ensure no part is available for any private, personal, or commercial use, and those made of bronze must be returned to VA for recycling.

(c) *Definitions*—(1) *Applicant.* An applicant for a memorial headstone or marker, to commemorate an eligible individual under paragraph (a)(1) of this section, must be a member of the decedent's family, which includes the decedent's spouse or individual who was in a legal union as defined in 38 CFR 3.1702(b)(1)(ii) with the decedent; a child, parent, or sibling of the decedent, whether biological, adopted, or step relation; and any lineal or collateral descendant of the decedent.

(2) *Unavailable remains.* An individual's remains are considered unavailable if they:

(i) Have not been recovered or identified;

(ii) Were buried at sea, whether by the individual's own choice or otherwise;

(iii) Were donated to science; or

(iv) Were cremated and the ashes scattered without interment of any portion of the ashes.

(Authority: 38 U.S.C. 2306, 2402, 2404)

■ 6. Amend § 38.632 by:

■ a. Revising the section heading and paragraph (a);

■ b. Removing paragraph (c);

■ c. Redesignating paragraphs (d) through (h) as paragraphs (c) through (g), respectively;

■ d. Revising newly redesignated paragraphs (c)(1) and (2);

■ e. Revising newly redesignated paragraphs (f)(2) and (5) and (g)(1) and (2);

■ f. Redesignating newly redesignated paragraphs (g)(3) and (4) as paragraphs (g)(4) and (5), respectively; and

■ g. Adding new paragraph (g)(3).

The revisions and addition read as follows:

§ 38.632 Emblems of belief.

(a) *General.* This section contains procedures for requesting the inscription of new emblems of belief on Government-furnished headstones and markers.

* * * * *

(c) * * *

If the burial or memorialization of an eligible individual is in a:	The applicant must:
(1) Federally-administered cemetery or a State veterans cemetery that uses the NCA electronic ordering system.	(i) Submit a written request to the director of the cemetery where burial is requested indicating that a new emblem of belief is desired for inscription on a Government-furnished headstone or marker; and (ii) Provide the information specified in paragraph (d) of this section to the NCA Director of Memorial Programs Service.
(2) Private cemetery (deceased eligible veterans only), Federally-administered cemetery, or a State veterans cemetery that does not use the NCA electronic ordering system.	(i) Submit a completed VA Form 40–1330 to the NCA Director of Memorial Programs Service, indicating in the REMARKS section of the form that a new emblem of belief is desired; and (ii) Provide the information specified in paragraph (d) of this section to the NCA Director of Memorial Programs Service.

* * * * *

(f) * * *

(2) The applicant has submitted a certification concerning the emblem that meets the requirements of paragraph (d)(1) of this section.

(i) In the absence of evidence to the contrary, VA will accept as genuine an applicant's statement regarding the sincerity of the religious or functionally equivalent belief system of a deceased eligible individual. If a factual dispute arises concerning whether the requested emblem represents the sincerely held religious or functionally equivalent belief of the decedent, the Director will evaluate whether the decedent gave specific instructions regarding the appropriate emblem during his or her life and the Under Secretary will resolve the dispute on that basis.

(ii) In the absence of such instructions, the Under Secretary will resolve the dispute in accordance with the instructions of the decedent's surviving spouse. If the decedent is not survived by a spouse, the Under Secretary will resolve the dispute in accordance with the agreement and written consent of the decedent's living next-of-kin. For purposes of resolving such disputes under this section, next-of-kin means the living person(s) first listed as follows:

(A) The decedent's children 18 years of age or older, or if the decedent does not have children, then

(B) The decedent's parents, or if the decedent has no surviving parents, then

(C) The decedent's siblings.

* * * * *

(5) The emblem meets the technical requirements for inscription specified in paragraph (d)(2) of this section.

(g) *Decision by the Under Secretary for Memorial Affairs.* (1) A decision will be made on all complete applications. A request to inscribe a new emblem on a Government-furnished headstone or marker shall be granted if the Under Secretary for Memorial Affairs finds that the request meets each of the applicable criteria in paragraph (f) of this section. In making that determination, if there is an approximate balance between the positive and negative evidence concerning any fact material to making that determination, the Under Secretary shall give the benefit of the doubt to the applicant. The Under Secretary shall consider the Director of NCA's Office of Field Programs' recommendation and may consider information from any source.

(2) If the Under Secretary for Memorial Affairs determines that allowing the inscription of a particular proposed emblem would adversely affect the dignity and solemnity of the cemetery environment or that the emblem does not meet the technical requirements for inscription, the Under Secretary shall notify the applicant in writing and offer to the applicant the option of either:

(i) Omitting the part of the emblem that is problematic while retaining the remainder of the emblem, if this is feasible, or

(ii) Choosing a different emblem to represent the religious or functionally equivalent belief that does not have such an adverse impact.

(3) Applicants will have 60 days from the date of the notice to cure any adverse impact or technical defect identified by the Under Secretary. Only if neither option is acceptable to the applicant, the applicant's requested alternative is also unacceptable, or the applicant does not respond within the 60-day period, will the Under Secretary ultimately deny the application.

* * * * *

§ 38.633 [Amended]

■ 7. Amend § 38.633 by removing the last sentence in paragraph (a)(2).

PART 39—AID FOR THE ESTABLISHMENT, EXPANSION, AND IMPROVEMENT, OR OPERATION AND MAINTENANCE, OF VETERANS CEMETERIES

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

Authority: 38 U.S.C 101, 501, 2408, 2411, 3765.

Subpart A—General Provisions

§ 39.10 [Amended]

■ 10. Amend § 39.10 by removing ''38 CFR 38.600(b)'' wherever it appears in paragraphs (b)(1) through (3) and adding ''38 CFR 38.600(a)'' in its place.

[FR Doc. 2021–16660 Filed 8–5–21; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R3–ES–2018–0036; FF09E22000 FXES11130900000 212]

RIN 1018–BC80

Endangered and Threatened Wildlife and Plants; Removing Trifolium Stoloniferum (Running Buffalo Clover) From the Federal List of Endangered and Threatened Plants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are removing *Trifolium stoloniferum* (running buffalo clover) from the Federal List of Endangered and Threatened Plants on the basis of recovery. This determination is based on a thorough review of the best available scientific and commercial data, including comments received, which indicate that the threats to running buffalo clover have been eliminated or reduced to the point that the species no longer meets the definition of an endangered species or a threatened species under the Endangered Species Act of 1973, as amended (Act).

DATES: This rule is effective September 7, 2021.

ADDRESSES: This final rule, the post-delisting monitoring (PDM) plan, supporting documents, and the public comments received on the proposed rule are available on the internet at

http://www.regulations.gov under Docket No. FWS–R3–ES–2018–0036.

FOR FURTHER INFORMATION CONTACT: Patrice Ashfield, Field Supervisor, U.S. Fish and Wildlife Service, Ohio Ecological Services Field Office, 4625 Morse Road, Suite 104, Columbus, OH 43230; telephone 614–416–8993. 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 be removed from the Federal List of Endangered and Threatened Plants (List) if it is determined that the species has recovered and no longer meets the definition of an endangered or threatened species. Removing a species from the List can be completed only by issuing a rule.

What this document does. This rule removes the running buffalo clover (*Trifolium stoloniferum*) from the List in title 50 of the Code of Federal Regulations (50 CFR 17.12(h)) based on its recovery.

The basis for our action. Under the Act, we determine that a species is an endangered species or a threatened species based on 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 must consider the same factors when removing a species from the List (*i.e.,* ''delisting'' a species). We may delist a species if we find, after conducting a status review based on the best scientific and commercial data available, that: (1) The species is extinct; (2) the species does not meet the definition of an endangered species or a threatened species (*e.g.,* because it has recovered); or (3) the listed entity does not meet the statutory definition of a species (50 CFR 424.11(e)). We have determined that the running buffalo clover is not in danger of extinction now nor likely to become so in the foreseeable future based on a comprehensive review of its status and listing factors. Accordingly, we have determined that the species may be delisted based on recovery as a result of: (1) An increase in the number of known populations; (2) resiliency to existing and potential threats; (3) the implementation of management agreements to maintain suitable habitat for the species; and (4) protection on public lands.

Peer review and public comment. We evaluated the species' needs, current conditions, and future conditions to prepare our August 27, 2019, proposed rule (84 FR 44832). We sought and evaluated comments from independent specialists to ensure that our determination is based on scientifically sound data, assumptions, and analyses. We also invited these peer reviewers to comment on the draft PDM plan. We considered all comments and information we received during the public comment period on the proposed delisting rule and the draft PDM plan when developing this final rule.

Previous Federal Actions

We published a final rule listing running buffalo clover as an endangered species under the Act on June 5, 1987 (52 FR 21478). The Running Buffalo Clover Recovery Plan (Service 1989) was approved on June 8, 1989, and revised in 2007 (72 FR 35253, June 27, 2007).

Running buffalo clover was included in a cursory 5-year review of all species listed before January 1, 1991 (56 FR 56882, November 6, 1991). The 5-year review did not result in a recommendation to change the species' listing status. We completed comprehensive 5-year reviews of the status of running buffalo clover in 2008, 2011, and 2017 (Service 2008, 2011, 2017). These reviews recommended reclassification from endangered to threatened status, based on achievement of the recovery criteria at that time.

On August 27, 2019, we proposed to delist the running buffalo clover due to recovery (84 FR 44832). In that document, we requested information and comments from the public and peer reviewers regarding the proposed rule and the draft PDM plan for running buffalo clover.

Summary of Changes From the Proposed Rule

In preparing this final rule, we reviewed and fully considered all comments we received during the comment period from the peer reviewers, States, and public on the proposed rule to delist running buffalo clover (84 FR 44832, August 27, 2019). As a result, we incorporated new information into *Distribution, Habitat,* and *Biology* under Background in this final rule. We also updated the number of populations with management agreements that meet delisting criterion 3 and reassessed the species' status in light of that modification.

Background

The following discussion contains updates to the information that was presented in the proposed rule to remove running buffalo clover from the List. A thorough discussion of the species' description, habitat, and life history is also found in the proposed rule.

Taxonomy and Species Description

Running buffalo clover is a member of the Fabaceae (pea) family. This short-lived perennial forms long runners (stolons) from its base and produces erect flowering stems, 10–30 centimeters (cm) (4–12 inches (in)) tall. The flower heads are round and large, 9–12 millimeters (mm) (0.3–0.5 in). Flowers are white, tinged with purple.

Distribution

The known historical distribution of running buffalo clover includes Arkansas, Illinois, Indiana, Kansas, Kentucky, Missouri, Ohio, and West Virginia (Brooks 1983, pp. 346, 349). There were very few reports rangewide between 1910 and 1983. Prior to 1983, the most recent collection had been made in 1940, in Webster County, West Virginia (Brooks 1983, p. 349). The species was thought extinct until it was rediscovered in 1983, in West Virginia (Bartgis 1985, p. 426). At the time of listing in 1987, only one population was known to exist, but soon afterward, several additional populations were found in Indiana, Ohio, Kentucky, and West Virginia. Populations were rediscovered in the wild in Missouri in 1994 (Hickey 1994, p. 1). A single population was discovered in Pennsylvania in 2017 (Grund 2017) with additional populations discovered since then.

One hundred seventy-five extant populations of running buffalo clover are known from three ecoregions, as described by Bailey (1998): Hot Continental, Hot Continental Mountainous, and Prairie. These include 15 occurrences in Ohio and Pennsylvania that have either been discovered or of which we have been notified since publication of the proposed delisting rule. For recovery purposes, the populations are divided into three regions based on proximity to each other and overall habitat similarities. These regions are Appalachian (West Virginia, southeastern Ohio, and Pennsylvania), Bluegrass (southwestern Ohio, central Kentucky, and Indiana), and Ozark (Missouri). The majority of populations occur within the Appalachian and Bluegrass regions.

Habitat

Running buffalo clover typically occurs in mesic (moist) habitats with partial to filtered sunlight and a prolonged pattern of moderate, periodic disturbance, such as grazing, mowing, trampling, selective logging, or flood-scouring. Populations have been reported from a variety of habitats, including mesic woodlands, savannahs, floodplains, stream banks, sandbars (especially where old trails cross or parallel intermittent streams), grazed woodlots, mowed paths (*e.g.,* in cemeteries, parks, and lawns), old logging roads, jeep trails, all-terrain vehicle trails, skid trails, mowed wildlife openings within mature forest, and steep ravines. Running buffalo clover occurs in a wide range of soil types, with calcium often the dominant base in the soil (Hattenbach 1996, p. 53). Running buffalo clover is often found in regions with limestone or other calcareous bedrock underlying the site, although limestone soil is not a requisite determining factor for the locations of populations of this species. For example, new populations of running buffalo clover have been discovered in West Virginia in areas with soil derived from new geological units (WVDNR 2019, *in litt.*).

Sites that have not been disturbed within the last 20 years are unlikely to support running buffalo clover (Burkhart 2013, p. 158) because the species relies on periodic disturbances to set back succession and open the tree canopy to create and maintain the partial to filtered sunlight it requires. These disturbances can be natural (for example, tree falls and flood scouring) or anthropogenic (such as grazing, mowing, trampling, low-intensity disturbance from counting and monitoring, or selective logging) in origin. Although tree harvest disturbances that reduce canopy cover may cause a temporary decline in running buffalo clover, populations usually increase 2 years later (Madarish and Schuler 2002, p. 127) and reach their highest density 14 years after disturbance (Burkhart 2013, p. 159). However, a complete loss of forest canopy can be detrimental to running buffalo clover by allowing in too much sunlight and altering the microclimate.

Biology

Substantial variability in the growth and development of running buffalo clover has been documented, but the plant structure usually includes rooted crowns (rosettes that are rooted into the ground) and stolons (above-ground creeping stems) that connect several rooted or unrooted crowns, which eventually separate to leave ''daughter'' plants. Because of this stoloniferous growth form, individual plants can be difficult to distinguish. The Running Buffalo Clover Recovery Plan defines an individual plant as a rooted crown (Service 2007, p. 1). Rooted crowns may occur alone or be connected to other rooted crowns by runners.

Flowering typically occurs between mid-May and June. However, plants at higher elevations in the mountains of West Virginia may bloom as late as mid-July (WVDNR 2019, *in litt.*). Flowers are visited by a variety of bee species (*Apis* spp. and *Bombus* spp.) and are cross-pollinated under field conditions (Taylor *et al.* 1994, p. 1,099). Running buffalo clover is also self-compatible (capable of pollinating itself); however, it requires a pollinator to transfer the pollen from the anthers to the stigma (Franklin 1998, p. 29). Although it may set fewer seeds by self-pollination than by outcrossing, the selfed seed set may be adequate to maintain the species in the wild (Taylor *et al.* 1994, p. 1,097). Selfed seeds have been shown to germinate well and develop into vigorous plants (Franklin 1998, p. 39).

Seeds typically germinate during early spring (mid-March to early April) when temperatures are between 15 and 20 degrees Celsius (°C) (59–68 degrees Fahrenheit (°F)) during the day and 5 to 10 °C (41–50 °F) at night. Spring temperature fluctuations appear to be a major dormancy breaker in natural populations of running buffalo clover (Baskin 2004).

Scarification may aid in seed germination and seed dispersal. Scarification of seeds by the digestive system of herbivores, historically believed to be bison, deer, elk, or small herbivores such as rabbits or groundhogs, was likely an important process in natural populations (Thurman 1988, p. 4; Cusick 1989, pp. 475–476). Although deer are viable vectors for running buffalo clover seeds, the survival and germination rates of ingested seeds are low (Ford *et al.* 2003, pp. 426–427). Dispersal and establishment of new populations of running buffalo clover by white-tailed deer herbivory may not be significant (Ford *et al.* 2003, pp. 426–427). It appears that scarification accelerates the germination process, whereas natural germination may occur over time if the right temperature fluctuations occur (Service 2007, p. 9).

Genetics

Running buffalo clover has relatively low levels of diversity and low levels of gene flow between populations, even between those separated by short distances (Hickey and Vincent 1992, p. 15). Much of the genetic diversity observed in running buffalo clover occurs across different populations, and small populations of running buffalo clover contribute as much to the total species' genetic diversity as large populations (Crawford *et al.* 1998, p. 88).

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 this section [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 the species is robust enough to delist. In other cases, recovery opportunities may be discovered that were not known when the recovery plan was finalized. These opportunities may be used instead of methods identified in the recovery plan. Likewise, information on the species may be learned that was not known at the time the recovery plan was finalized. The new information may change the extent to which existing criteria are appropriate for recognizing

recovery of the species. Recovery of a species is a dynamic process requiring adaptive management that may, or may not, follow all of the guidance provided in a recovery plan.

The revised recovery plan for running buffalo clover (Service 2007, p. 24) states that the ultimate goal of the recovery program is to delist running buffalo clover. The plan provides three criteria for reclassifying running buffalo clover from endangered to threatened status (*i.e.,* to ''downlist'' the species) and three criteria for delisting running buffalo clover. All of the downlisting criteria have been met since 2008 (Service 2008, pp. 3–4; Service 2011, pp. 3–4; Service 2017, pp. 3–5). The following discussion provides an assessment of the delisting criteria as they relate to evaluating the status of this species.

Criterion 1 for Delisting

Criterion 1 states that 34 populations, in total, are distributed as follows: 2 A-ranked, 6 B-ranked, 6 C-ranked, and 20 D-ranked populations across at least 2 of the 3 regions in which running buffalo clover occurs (Appalachian, Bluegrass, and Ozark). The number of populations in each rank is based on what would be required to achieve a 95 percent probability of persistence within the next 20 years; this number was doubled to ensure biological redundancy across the range of the species. Rankings refer to the element occurrence (E.O.) ranking categories.

E.O. rankings, which integrate population size and habitat integrity, are explained in detail in the recovery plan (Service 2007, pp. 2–3). In summary, A-ranked populations are those with 1,000 or more naturally occurring rooted crowns; B-ranked populations have between 100 and 999 naturally occurring rooted crowns; C-ranked populations have between 30 and 99 naturally occurring rooted crowns; and D-ranked populations have between 1 and 29 naturally occurring rooted crowns.

Populations are currently distributed as follows: 18 A-ranked, 47 B-ranked, 40 C-ranked, and 70 D-ranked, and they occur in all three regions across the range of the species. Thus, we conclude that this criterion has been substantially exceeded.

Criterion 2 for Delisting

Criterion 2 states that for each A-ranked and B-ranked population described in criterion 1, population viability analysis (PVA) indicates 95 percent probability of persistence within the next 20 years, or for any population that does not meet the 95 percent persistence standard, the population meets the definition of viable. For delisting purposes, viability is defined as: Seed production is occurring; the population is stable or increasing, based on at least 10 years of censusing; and appropriate management techniques are in place.

Seven A-ranked and 14 B-ranked populations are considered viable, based on a PVA or 10 years of data. Thus, we conclude that this criterion has been exceeded.

Criterion 3 for Delisting

Delisting criterion 3 states that the land on which each of the 34 populations described in delisting criterion 1 occurs is owned by a government agency or private conservation organization that identifies maintenance of the species as one of the primary conservation objectives for the site, or the population is protected by a conservation agreement that commits the private landowner to habitat management for the species.

This criterion was intended to ensure that habitat-based threats for the species are addressed. At the time of listing, the Service determined that without regular management, suitable habitat for this species would be quickly lost through the process of forest succession. The revised recovery plan identified the most critical biological constraint and need for the recovery of running buffalo clover as its dependence on disturbance to maintain filtered sunlight (Service 2007, p. 22). This requirement informed the recovery strategy of active management to remove competing vegetation and selectively remove trees to prevent overshading. Key to this recovery strategy was the protection and ecological management of various-sized populations throughout the species' geographic range. Small populations (C- and D-ranked populations) were included because they contribute as much as large populations to the overall level of the species' genetic diversity, which is important for survival of the species as a whole.

Currently, 22 populations meet this criterion, as follows: 2 A-ranked, 10 B-ranked, 6 C-ranked, and 4 D-ranked. There are 4 more B-ranked populations than required. Although these additional higher ranked populations can count for lower ranked populations, this criterion has still not been fully met. However, 66 additional populations occur on publicly owned lands, such as national forests, State lands, and local parks, thereby minimizing threats from habitat loss and degradation.

The forest management plans for both the Monongahela and Wayne national forests include direction and guidelines to avoid and minimize impacts of forestry practices on running buffalo clover. These forestry management practices, as conditioned through running buffalo clover measures included in their respective forest plans, are compatible with running buffalo clover conservation. The forest plans include forest-wide standards and guidelines; compliance with standards is mandatory.

The Wayne National Forest plan's standards for running buffalo clover require measures to protect populations during prescribed fire activities, avoid mechanical construction of firelines in known occupied habitat, and protect populations during road and trail construction, and a forest-wide guideline restricts application of herbicides within 25 feet of known running buffalo clover populations (U.S. Forest Service 2006, p. 2–22). In addition, the Wayne National Forest signed a Memorandum of Understanding with the Service and the Ohio Department of Natural Resources in 2021 to ensure the protection and management of running buffalo clover by maintaining the appropriate level of disturbance, controlling invasive species, and ensuring the appropriate level of sunlight where running buffalo clover is found on the national forest.

The Monongahela National Forest plan includes standards to avoid conducting prescribed burns, constructing fuel breaks, and implementing activities, such as construction of new roads or ditching for pipelines, in running buffalo clover areas. Guidelines include implementing habitat management measures to maintain and restore running buffalo clover populations, timing maintenance mowing to benefit running buffalo clover, avoiding use of potentially invasive species for seeding/mulching, and monitoring the effects of grazing on running buffalo clover (U.S. Forest Service 2011, pp. II–27–II–28). Thus, although this criterion is not met in the manner specifically identified in the recovery plan, we conclude that the intent of the criterion to ensure that sufficient populations were protected from threats into the future has been met.

Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species is an ''endangered species'' or a ''threatened species.'' The Act defines an

endangered species as a species that is ''in danger of extinction throughout all or a significant portion of its range,'' and a threatened species as a species that is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The Act requires that we determine whether any species is an ''endangered species'' or a ''threatened species'' because of any of the following factors:

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

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

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

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

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

We must consider these same five factors in delisting a species. According to 50 CFR 424.11(e), we shall delist a species if the best scientific and commercial data available indicate that: (1) The species is extinct; (2) the species does not meet the definition of an endangered species or a threatened species; or (3) the listed entity does not meet the statutory definition of a species.

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

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

The Act does not define the term ''foreseeable future,'' which appears in the statutory definition of ''threatened species.'' Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis. The term foreseeable future extends only so far into the future as 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.

Summary of Biological Status and Threats

In this section, we review the biological condition of the species and its resources, and the influences to assess the species' overall viability and the risks to that viability.

Habitat Destruction and Succession

The revised recovery plan for running buffalo clover (Service 2007, p. 14) identified the major threats to this species throughout its range as habitat destruction, habitat succession, and invasive plant competition (Factor A). Land development and the consequential loss of habitat can also be a threat to running buffalo clover. Natural succession from open to dense canopy in forests within the range of running buffalo clover occurs over a 30- to 40-year time span, depending on the dominant species and aspect of the site. Because the species relies on periodic disturbances to set back succession and/or open the tree canopy to create and maintain the partial to filtered sunlight it requires, activities that interfere with natural disturbance processes can negatively affect populations of running buffalo clover. Conversely, activities that periodically set back natural succession can benefit the species.

Current logging practices may benefit running buffalo clover. At the Fernow Experimental Forest in north-central West Virginia, running buffalo clover is most often associated with skid roads in uneven-aged silvicultural areas (Madarish and Schuler 2002, p. 121). Populations may initially decrease after logging, but then rebound to higher than pre-disturbance levels (Madarish and Schuler 2002, p. 127).

Depending on the circumstances, it appears that both overgrazing and no grazing at all can be threats to running buffalo clover. In Kentucky, overgrazing poses threats to running buffalo clover, but removal of cattle from clover populations has resulted in overshading and competition from other vegetation (White *et al.* 1999, p. 10). Periodic grazing at the Bluegrass Army Depot has provided the moderate disturbance needed to maintain running buffalo clover (Fields and White 1996, p. 14).

Nonnative species, such as bluegrass (*Poa pratensis*) and white clover (*Trifolium repens*), compete with running buffalo clover for available resources (Jacobs and Bartgis 1987, p. 441). Other nonnative species that affect running buffalo clover include Japanese stiltgrass, garlic mustard (*Alliaria petiolata*), Japanese honeysuckle (*Lonicera japonica*), Amur honeysuckle (*Lonicera maackii*), and multiflora rose (*Rosa multiflora*). Threats by invasive competition can be mediated by treating the invasive plants by hand removal, herbicide application, and/or mowing. Although nonnative species are widespread across the range of running buffalo clover, not all running buffalo clover sites are affected by invasive species. For example, 14 of the 31 sites (45 percent) in Ohio have one or more nonnative species present at varying densities, and 8 of those sites are managed for invasive species control.

The habitat needs of running buffalo clover on Federal, State, and locally owned lands are often included in plans or agreements for those lands (Factor D). The Monongahela National Forest Land and Resource Management Plan (U.S. Forest Service 2011, pp. II–27–II–28) and Wayne National Forest Revised Land and Resource Management Plan (U.S. Forest Service 2006, pp. 2–22, D–16) both include habitat management and protection measures for running buffalo clover, as does the Wayne National Forest's recently signed memorandum of understanding. The Bluegrass Army Depot in Kentucky protects and manages running buffalo clover under an Endangered Species Management Plan (Floyd 2006, pp. 30–37), included as part of their Integrated Natural Resource Management Plan, and all running buffalo clover populations at the Army Depot are covered by these management actions (Littlefield 2017). A memorandum of understanding between the Ohio Historical Society, Ohio Division of Natural Areas and Preserves, and the U.S. Fish and Wildlife Service provides for running buffalo clover habitat protection and management. These plans and agreements also provide for education and outreach efforts and surveying and monitoring for running buffalo clover. Some of these agreements automatically renew at the end of their 5-year period while others have the option to renew. The agreement with the Ohio Historical Society does not have an expiration date. We expect that these plans and agreements will remain in place and habitat management will continue after delisting running buffalo clover.

In total, 22 populations are under some form of management that incorporates specific needs of running buffalo clover, and 66 additional populations occur on publicly owned lands where regulatory mechanisms now exist that prevent loss from development (Factor D). Although the species benefits from active management, it does not appear to rely on management actions as demonstrated by the 59 populations that have been found over the last 10 years at sites where natural processes and/or various human activities are maintaining some suitable habitat for running buffalo clover. For these reasons, threats from habitat destruction, habitat succession, and invasive species have been reduced or are being adequately managed such that they are not affecting the species' viability.

Collection

When the species was listed in 1987, overutilization for scientific or educational purposes (Factor B) was identified as a threat, given that only one population consisting of four individuals was known at the time (52 FR 21478, June 5, 1987). Today, with 175 populations known, collection for scientific or educational purposes is very limited and distributed among many populations and is no longer considered a threat (Service 2017, p. 17).

Running buffalo clover is listed as endangered or threatened under State laws in Missouri, Indiana, Ohio, and Kentucky (Factor D). The laws in Ohio and Missouri prohibit commercial taking of listed plants. We are aware of only one unpermitted collection in 2015 when a population in West Virginia appeared to have been dug up and the main plant group removed (Douglas 2015). The purpose of the collection is unknown. Despite this one event, running buffalo clover is not known to be used for any commercial or recreational purposes, and we have no information that commercial or recreational collection will occur in the future.

Disease

At the time of listing in 1987, disease (Factor C) was also predicted to threaten running buffalo clover (52 FR 21478, June 5, 1987). Jacobs and Bartgis (1987, p. 441) suggested that the decline of this species may have partially centered on a pathogen introduced from the exotic white clover; however, no specific disease has been identified over the intervening years (Service 2008, p. 10). A number of viral and fungal diseases, including cucumber mosaic virus and the comovirus, are reported to have attacked the species in greenhouses at the Missouri Botanical Garden (Sehgal and Payne 1995, p. 320), but no evidence has been gathered showing these viruses' impact on the decline of running buffalo clover in the wild (Service 2008, p. 10).

Parasitism

Parasitism by root-knot nematodes (*Meloidogyne* spp.) is common in clovers and often limits productivity in cultivated clovers used as forage crops (Quesenberry *et al.* 1997, p. 270) (Factor C). Investigations have been conducted on the effects of root-knot nematodes on native North American clovers, including running buffalo clover. After inoculation of the parasite, running buffalo clover displayed high resistance to three of the four nematode species analyzed, and only an intermediate response to the fourth species of nematode (Quesenberry *et al.* 1997, p. 270). Thus, the threat from this parasite is not considered significant.

Herbivory

Herbivory by a variety of species has been reported for running buffalo clover (Factor C). In Missouri, running buffalo clover plants are repeatedly grazed by rabbits, rodents, and slugs (Pickering 1989, p. 3). Similar observations have been made in Kentucky (Davis 1987, p. 11). The Fayette County, West Virginia, population was eaten to the ground by a groundhog, but more than a dozen rooted crowns were observed at the population the following year. White-tailed deer can also consume large amounts of running buffalo clover (Miller *et al.* 1992, pp. 68–69). Although a population may be entirely consumed during a growing season, plants may return again the next year. The best available information indicates that herbivory is not a threat to the species.

Small Population Size

Running buffalo clover populations often display widely fluctuating population size (USFWS 2020, unpublished data). The cause for changes in population size may be due to disturbance, weather patterns, management strategy, natural succession, or other unknown factors. Small populations are at an increased risk of extirpation due to these stochastic events, which could impact all individuals in a small population (Factor E). The cyclic nature of running buffalo clover and the high probability of small populations disappearing one year and returning a subsequent year, may lead to difficulty in protecting small populations. However, the number (110) and distribution of C- and D-ranked populations now known across the species' range indicate that small population size is not a threat to the running buffalo clover.

Inadequate Seed Dispersal

The loss of large herbivores, such as bison and white-tailed deer, after European settlement may have resulted in no effective means of dispersal remaining for running buffalo clover (Cusick 1989, p. 477) (Factor E). Deer have now returned to pre-settlement numbers, but dispersal and establishment of new populations of running buffalo clover by white-tailed deer may not be significant (Ford *et al.* 2003, p. 427). With 175 occurrences of running buffalo clover now known, inadequate seed dispersal does not appear to be having population-level effects.

Poor Seed Quality

Although researchers have speculated that inbreeding depression may have contributed to the decline of running buffalo clover (Hickey *et al.* 1991, p. 315; Taylor *et al.* 1994, p. 1,099) (Factor E), selfed seeds have been shown to germinate well and develop into vigorous plants (Franklin 1998, p. 39). However, temporal variations in seed quality have been reported. Seed quality may be correlated with rainfall; quality decreases in years with unusually high rainfall (Franklin 1998, p. 38). With 175 occurrences of running buffalo clover now known, the impacts of poor seed quality do not appear to affect entire populations, nor do these impacts persist for any extended period of time.

Effects of Climate Change

Under future emission scenarios, including Representative Concentration Pathway (RCP) 4.5 and RCP 8.5, the effects of climate change in the foreseeable future are expected to result in rising average temperatures throughout the range of running buffalo clover, along with more frequent heat waves and increased periods of drought (Intergovernmental Panel on Climate Change (IPPC) 2014, p. 10), which may affect growth of running buffalo clover. For example, a prolonged drought in Missouri in 2012 may have impacted a running buffalo clover population for the next 2 years as plants were not observed again until 2015 (McKenzie and Newbold 2015, p. 20).

High-precipitation events are also expected to increase in number, volume, and frequency in mid-latitude areas (IPCC 2014, p. 11). Several running buffalo clover populations are located within areas prone to flooding. Infrequent high-flow events create moderate disturbance, which may be beneficial for this species. But increasing the magnitude or frequency of high-flow events may increase storm flows and intensify disturbance from flood events, which may create excessive disturbance and alter the habitat suitability for running buffalo clover. In addition, increased annual precipitation may lead to decreased seed quality.

According to IPCC, ''most plant species cannot naturally shift their geographical ranges sufficiently fast to keep up with current and high projected rates of climate change on most landscapes'' (IPCC 2014, p. 13). Shifts in the range of running buffalo clover as an adaptation to climate changes are unlikely, due to the limited dispersal of seeds, restriction to specific habitat types, and the lack of connection between most populations.

The effects of climate change may also result in a longer growing season and shorter dormant season, which may change flowering periods. For example, blossoms of running buffalo clover have been turning brown at the beginning of June (Becus 2016); and in 2016 and 2017, running buffalo clover plants in Ohio began blooming in April, which is the earliest this species had been observed blooming (Becus 2017). For some plant species, a change in flowering period may create an asynchrony between prime bloom time and when specific pollinators are available, resulting in a reduction in pollination and subsequent seed set. However, because running buffalo clover can be pollinated by a diversity of bee species, significant asynchrony with pollinators is not expected to occur.

Climate change presents a largely unknown influence on the species, with potential for negative and beneficial impacts. Populations of running buffalo clover occur within various ecoregions within the species' range and are capable of recovering from stochastic events, such as droughts and heavy precipitation and high stream flows. Running buffalo clover is not dependent on particular species of pollinators and appears adaptable to potential changes to pollinator communities. This indicates that populations will continue to be viable in the foreseeable future in the face of climate change.

Synergistic Effects

Many of the stressors discussed in this analysis could work in concert with each other and result in a cumulative adverse effect to running buffalo clover (*e.g.,* one stressor may make the species more vulnerable to the effects of other threats). However, most of the potential stressors we identified either have not occurred to the extent originally anticipated at the time of listing (collection, disease), are no longer a threat in light of the many populations discovered since the time of listing, or are adequately managed as described in this proposal to delist the species (habitat destruction and succession, invasive species). In addition, for the reasons discussed in this final rule, we do not anticipate stressors to increase on publicly owned lands or lands that are managed for the species.

Synergistic interactions are possible between the effects of climate change and effects of other threats, such as nonnative plant invasion. However, it is difficult to project how the effects of climate change will affect interaction or competition between species. Uncertainty about how different plant species will respond under a changing climate makes projecting possible synergistic effects of climate change on running buffalo clover too speculative. However, the increases documented in the number of populations since the species was listed do not indicate that cumulative effects of various activities and stressors are affecting the viability of the species at this time or into the future. Post-delisting monitoring will monitor the status of running buffalo clover and its habitat to detect any changes in status that may result from removing the species from the List of Endangered and Threatened Plants (50 CFR 17.12(h)).

Summary of Comments and Recommendations

In our proposed rule published on August 27, 2019 (84 FR 44832), we requested that all interested parties submit written comments on the proposal by October 28, 2019. We also requested public comments on the draft PDM plan. We contacted appropriate Federal and State agencies and other interested parties and invited them to comment on the proposal. In accordance with our peer review policy published on July 1, 1994 (59 FR 34270) and our August 22, 2016, Director's Memorandum ''Peer Review Process,'' we solicited expert opinion from five knowledgeable individuals with scientific expertise that included familiarity with the running buffalo clover and its habitat, biological needs, and threats.

During the comment period, we received 24 comments on the proposal to delist running buffalo clover and the draft PDM plan: 2 from peer reviewers, 4 from States, 2 from Federal agencies, and 16 from the public. All comments are posted at *http://www.regulations.gov* under Docket No. FWS–R3–ES–2018–0036. Some public commenters support the delisting of running buffalo clover; some did not state whether or not they support the delisting; and others do not support delisting, although a subset of these, including one State and one peer reviewer, would support downlisting to threatened status. We did not receive any requests for a public hearing.

We reviewed all comments we received from peer reviewers, States, Federal agencies, and the public for substantive issues and new information regarding running buffalo clover. Substantive information provided during the comment period is addressed below and, where appropriate, is incorporated directly into this final rule and the PDM plan.

State Comments

Section 4(b)(5)(A)(ii) of the Act states that the Secretary must give actual notice of a proposed regulation under section 4(a) to the State agency in each State in which the species is believed to occur, and invite the comments of such agency. Section 4(i) of the Act directs that the Secretary will submit to the State agency a written justification for his or her failure to adopt regulations consistent with the agency's comments or petition. We solicited comments from all States within the species' range and received comments from four States.

(1) Comment: The Office of Kentucky Nature Preserves commented that running buffalo clover is trending towards recovery and meets almost all the criteria specified in the recovery plan. They stated that only one cooperative agreement currently protects running buffalo clover in Kentucky and expressed concern that additional cooperative management agreements are needed in Kentucky in order to fully meet delisting criterion 3. The Office of Kentucky Nature Preserves indicated that Kentucky plans to continue to implement additional management agreements and enroll more private lands with the registered natural area program.

Response: Although there is currently only one cooperative agreement protecting running buffalo clover in Kentucky, this agreement protects multiple running buffalo clover populations that occur at the site. We acknowledge that delisting criterion 3 has not been fully met in the manner specifically identified in the recovery plan. However, we conclude that the intent of the criterion to ensure that sufficient populations were protected from threats into the future has been met. Also, the discovery of new populations at unmanaged sites indicates that the species does not wholly rely on management to maintain populations, as we believed when the recovery criterion was drafted. Additional management agreements will contribute to the ongoing success of this species, and we appreciate Kentucky's commitment to continuing to work on and increase conservation of running buffalo clover.

(2) Comment: Missouri Department of Conservation (MDC) concurred with the proposal to delist running buffalo clover, but expressed concern that removing the protections of the Act may result in further decline of this species in Missouri. MDC stated that running buffalo clover will continue to be a State endangered species in Missouri until the State's populations are recovered.

Response: We appreciate Missouri's commitment to continuing conservation efforts for the running buffalo clover. State protections will continue to enhance populations of the species. In addition, management agreements will continue to maintain suitable habitat and address stressors at 22 running buffalo clover sites after the species is delisted. Therefore, we do not expect an overall decline in the status of running buffalo clover in the future.

(3) Comment: MDC indicated that populations in Missouri are not considered secure and that management is necessary to maintain populations and remove invasive species. MDC indicated that Missouri would continue management for running buffalo clover and would assess the prioritization of ongoing management efforts and protected status of Missouri's populations.

Response: We agree that a lack of management or natural disturbance regime can lead to continued natural succession, a loss of suitable habitat, and a decline in running buffalo clover populations and that management efforts are necessary at some sites to address stressors and maintain suitable habitat. We appreciate the MDC's commitment to managing the populations of running buffalo clover in Missouri.

(4) Comment: Ohio Division of Natural Areas and Preserves stated that more management agreements are needed before criterion 3 for delisting is met and that downlisting to threatened is more appropriate at this time.

Response: Information obtained since the proposed listing rule was published on August 27, 2019, indicates there are currently 175 extant populations as follows: 18 A-ranked, 47 B-ranked, 40 C-ranked, and 70 D-ranked populations. Seven of the A-ranked and 14 of the B-ranked populations are considered viable, based on a PVA or 10 years of data. Based on this information, we conclude that sufficient number and distribution of viable populations occur across the species' range and delisting criteria 1 and 2 have been exceeded. We acknowledge that delisting criterion 3 has not been fully met in the manner specifically identified in the recovery plan. However, recovery of a species is a dynamic process, and we are not required to follow all of the guidance or meet all of the criteria provided in a recovery plan in order to conclude that a species no longer meets the definition of endangered or threatened.

The 22 populations currently under management agreements in conjunction with the 66 other populations on publicly owned lands are sufficient to eliminate or adequately reduce threats to the species now and into the foreseeable future. Additionally, the discovery of new populations at unmanaged sites indicates that the species does not wholly rely on management to maintain populations as we believed when the recovery criterion was developed. We conclude that threats to running buffalo clover have been reduced or are being adequately managed now and into the foreseeable future and that the intent of the criterion to ensure that sufficient populations were protected from threats into the future has been met. Therefore, running buffalo clover does not meet the definition of a threatened species.

(5) Comment: The Ohio Division of Natural Areas and Preserves stated the long-term viability of running buffalo clover in Ohio is uncertain, based on threats from invasive species, management needs, and number of populations in the poor category. They indicated that there are draft agreements with partners to protect an additional 11 running buffalo clover populations and that these agreements are helping to make progress in long-term viability of running buffalo clover in Ohio.

Response: We agree that a lack of management or natural disturbance regime can lead to a decline in running buffalo clover populations and that site-specific management plans are necessary to address stressors and maintain suitable habitat at some sites. However, the discovery of new populations at unmanaged sites indicates that the species does not wholly rely on management to maintain populations. Twenty-two running buffalo clover sites are currently under management agreements. Additional management agreements will contribute to the ongoing success of this species, and we appreciate Ohio's commitment to continuing to work on and increase protections for the running buffalo clover populations within the State.

(6) Comment: West Virginia Division of Natural Resources (WVDNR) agreed that running buffalo clover populations are sufficiently distributed to provide for resiliency, redundancy, and representation. WVDNR stated that they provisionally agree with running buffalo clover delisting, provided that written management plans specific to the species are developed for public lands, and agencies managing for running buffalo clover commit to these plans through at least the delisting monitoring period. They noted that there is a draft running buffalo clover site-specific management plan for the Monongahela National Forest, which will substantively reduce threats to

populations on this national forest once finalized.

Response: We acknowledge that some populations that occur on public land are not protected by running buffalo clover-specific management plans. However, some, including those on Monongahela National Forest, are provided protection from the standards and guidelines in the resource management plans. Twenty-two additional running buffalo clover sites, nearly all of which occur on publicly owned lands, are currently protected by management agreements that provide specific measures to maintain habitat for the species. We expect that these will remain in place and habitat management will continue after delisting running buffalo clover. We support finalizing a site-specific management plan for running buffalo clover on the Monongahela National Forest to further enhance conservation of the species. Management agreements as currently written require frequent coordination with the Service. We have revised the PDM plan to include a reporting element on management actions during the PDM period for those sites with management plans or agreements in place.

(7) Comment: WVDNR reported that eight new element occurrences with a total of 13,000 to 15,000 rooted crowns were discovered after 2016, all on private land, but that those new occurrences are not protected because the State has no endangered species law and therefore should not count towards the number of occurrences cited within delisting criterion 1.

Response: Delisting criterion 1 is based solely on the condition of the populations without regard to protected status. However, because we have no information on the condition of each of those elemental occurrences, we did not include them in our calculations in this final rule regarding the number of populations that fulfill delisting criterion 1. These additional elemental occurrences support the trend of discovering new populations and recovery of this species.

(8) Comment: WVDNR did not agree with our conclusion that criterion 3 has been met for downlisting or delisting, stating that general natural resource management plans are not suitable for meeting the criterion.

Response: In the proposed listing rule, we had considered 9 populations that occur on the Monongahela National Forest as contributing to meeting this criterion because running buffalo clover is included in the forest management plan for the Monongahela. Although the forest plan provides direction and guidelines to avoid and minimize impacts of forestry practices on running buffalo clover, we now understand that a draft agreement has been developed between the U.S. Forest Service and WVDNR to provide additional conservation for the species. While a management plan that provides for additional conservation of running buffalo clover would benefit the species on the Monongahela National Forest, the current forest management practices, as conditioned through running buffalo clover measures included in the forest plan, are adequate to conserve the running buffalo clover on the Monongahela.

We now consider 22 populations as protected by management agreements; therefore, the 17 management agreements under criterion 3 for downlisting have been exceeded. We acknowledge that the 34 management agreements specified by delisting criterion 3 have not been met although additional agreements are in draft form. Recovery of a species is a dynamic process, and we are not required to meet all of the criteria provided in a recovery plan in order to conclude that a species no longer meets the definition of endangered or threatened. Delisting criterion 3 from the recovery plan was intended to ensure that habitat-based threats for the species are addressed. However, the discovery of new populations at unmanaged sites indicates that the species does not wholly rely on management to maintain populations as we believed when the recovery criterion was drafted. Although criterion 3 has not been met as specified in the recovery plan, we believe that its intention has been met between the 22 sites managed for the conservation of the species and the 66 additional locations on Federal and State lands. Because nearly all of the 22 managed populations occur on publicly owned lands, we expect management will continue in the foreseeable future. While we agree that additional management agreements would further enhance conservation for running buffalo clover, the 22 populations currently under management in conjunction with the 66 other populations on publicly owned lands are sufficient to indicate the species is not in danger of extinction now or likely to become so in the foreseeable future. We have revised the PDM plan to include a measure to track new management agreements finalized during the PDM period as well as to determine if all existing management agreements are being followed.

(9) Comment: WVDNR stated that the number of running buffalo clover occurrences in West Virginia is increasing but many extant occurrences are at risk.

Response: We agree that some extant occurrences, in particular D-ranked populations (containing fewer than 29 plants), are at risk; and in some years, no plants may be present during monitoring periods. However, 89 percent of running buffalo clover populations that were extant in West Virginia in 2007 are still present today. Overall, 63 running buffalo clover populations occur in West Virginia, of which 46 (70.8 percent) are A-, B-, or C-ranked populations, which are at lower risk of extirpation.

(10) Comment: WVDNR observed that project-driven surveys have resulted in the discovery of new running buffalo clover occurrences and noted that implementation of these projects may result in the expansion of the distribution of running buffalo clover as well as the spread of nonnative invasive species. The State expressed concern that the threat of nonnative invasive species may exceed the benefit of discovery of any new running buffalo clover occurrences.

Response: We acknowledge the ongoing presence of nonnative invasive species at some running buffalo clover sites. However, at this time, the best available data do not support a conclusion that the spread of nonnative invasive species will exceed the benefit of new running buffalo clover discoveries at these sites. Further, we have determined that the 22 running buffalo clover populations with management agreements, which do not include these newly discovered sites, in conjunction with the 66 occurrences on publicly owned lands are sufficient to eliminate or adequately reduce threats to the species now and into the foreseeable future.

(11) Comment: WVDNR noted that management plans for running buffalo clover should address (1) controlling succession so canopy closure does not exceed 80 percent, (2) controlling nonnative invasive species, and (3) preventing damage to populations from road management or usage and other actions that could remove a population or its habitat.

Response: We agree with these recommendations for management actions in general. Management plans are developed to address site-specific threats and ensure that actions are taken to maintain suitable habitat, including appropriate light levels. These management plans often include measures to control nonnative invasive species and prevent damage from multiple activities.

Federal Agency Comments

(12) Comment: The Monongahela National Forest in West Virginia provided information about soils on which running buffalo clover may occur. They suggested looking at running buffalo clover sites near road systems to determine if these populations could have been brought in from limestone quarries where a potential seed bed could have been established but may not be ideal for sustainability of the population. They also commented that temporary habitat for running buffalo clover can be created by periodic liming of forest soils but would not be sustainable.

Response: We agree with the comment that periodic liming of soils is not a sustainable activity and believe that there is enough habitat with suitable disturbance that liming is not needed. While seed is known to have been brought into sites through delivery of topsoil, we are unaware of any instances where seed has been transported from a quarry. We have incorporated additional information about soils into the Background section.

(13) Comment: The Wayne National Forest in Ohio commented that running buffalo clover will continue to receive protection for a minimum of 5 years after delisting as a species of conservation concern for the forest.

Response: We appreciate the Wayne National Forest's commitment to continuing to conserve running buffalo clover after the species is delisted. Continuing to manage running buffalo clover as a species of conservation concern on the Wayne National Forest will contribute to the ongoing success of this species.

Peer Review and Public Comments

(14) Comment: Two peer reviewers and several public commenters opined that the species should be downlisted to threatened rather than delisted.

Response: Current information indicates there are currently 175 extant running buffalo clover populations as follows: 18 A-ranked, 47 B-ranked, 40 C-ranked, and 70 D-ranked populations. Seven of the A-ranked and 14 of the B-ranked populations are considered viable, based on a PVA or 10 years of data. Based on this information, we conclude that sufficient number and distribution of viable populations occur across the species' range and delisting criteria 1 and 2 have been exceeded. We acknowledge that delisting criterion 3 has not been fully met in the manner specifically identified in the recovery plan. However, recovery of a species is a dynamic process, and we are not required to follow all of the guidance or meet all of the criteria provided in a recovery plan in order to conclude that a species no longer meets the definition of endangered or threatened. The 22 populations currently under management agreements in conjunction with the 66 other populations on publicly owned lands are sufficient to indicate the species is not in danger of extinction now or likely to be in the foreseeable future. Additionally, the discovery of new populations at unmanaged sites indicates that the species does not wholly rely on management to maintain populations as we believed when the recovery criterion was drafted. We conclude that threats to running buffalo clover have been reduced or are being adequately managed now and into the foreseeable future and that the intent of the criterion to ensure that sufficient populations were protected from threats into the future has been met. Therefore, running buffalo clover does not meet the definition of a threatened species.

(15) Comment: One peer reviewer indicated that running buffalo clover is not fully understood, nor are the historic habitat conditions in which it lived. Therefore, additional research is needed before delisting the species.

Response: Recent discoveries of new running buffalo clover sites have expanded our understanding of habitat preferences for the species. In making listing decisions under the Act, we rely on the best available scientific and commercial data, including these recent discoveries, which have led us to conclude that running buffalo clover does not meet the definition of an endangered or threatened species.

(16) Comment: One peer viewer noted that from 2001 to 2005 the number of running buffalo clover patches and rooted crowns at Blue Grass Army Depot (Depot) increased, mostly due to finding new patches. From 2005 to 2018, the number of patches and rooted crowns declined, likely due to the permanent loss of patches, indicating a long-term decline. Three public commenters also noted that the overall trend of running buffalo clover at the Depot has been declining since 2001, and one commenter indicated the cause of the decline is unknown.

Response: Although the number of patches at the Depot has decreased since 2005, the number of rooted crowns recorded in 2018 (3,939) is greater than that recorded in 2001 (1,160) but lower than the maximum observed in 2006 (9,574). Populations of this species fluctuate greatly and can decline for multiple years before rebounding. The populations that are now considered extirpated from the Depot were small, D-ranked populations. While the loss of patches could indicate an overall decline, the loss of small populations is not unexpected. Other landowners do not monitor by patch; therefore, it is difficult to compare this information to trends at other locations. However, we acknowledge that some protected populations have declined with no obvious cause. Notwithstanding these limited declines, we conclude that a sufficient number of populations across the range of the species will continue to be viable over the foreseeable future such that the species no longer meets the Act's definitions of an endangered species or a threatened species.

(17) Comment: One peer reviewer noted that running buffalo clover populations can appear, seem to prosper, and then disappear, including an A-ranked population, and many C- and D-ranked populations have disappeared.

Response: Running buffalo clover populations fluctuate over the years due to natural succession, variance in temperature and precipitation, and lack of disturbance. Due to their small size, D-ranked populations are most likely to disappear although larger populations have declined for unknown reasons. The PVA, conducted when the recovery plan was written, indicated that 17 populations were needed to maintain this species. This number was doubled to 34 populations needed to delist running buffalo clover. Currently, 175 populations are extant throughout the range of this species. This includes 18 populations that have at least 1,000 rooted crowns (A-ranked). An additional 47 running buffalo clover populations have between 100 and 999 rooted crowns (B-ranked). These higher ranked populations have a greater probability of remaining stable or increasing.

(18) Comment: One peer reviewer and two commenters opined that more management agreements are needed before delisting running buffalo clover, and four commenters expressed concern whether current management is sufficient to maintain recovery.

Response: Comparing the ranking of extant populations in 2007 to the ranking of those populations that continued to be extant in 2016, 17 percent of populations were increasing, and 59 percent were stable. These populations represent 76 percent of the populations present in 2007. In addition, we are now aware of 175 extant populations compared to 102 in 2007. Thus, we conclude that the trend for this species is stable or increasing.

Twenty-two running buffalo clover populations are currently under agreements that provide for ongoing management to maintain suitable habitat for running buffalo clover and adequately address or eliminate threats to those populations. While we acknowledge that delisting criterion 3 has not been fully met in the manner specifically identified in the recovery plan, we conclude that the intent of the criterion to ensure that sufficient populations are protected from threats into the foreseeable future has been met. Additionally, the discovery of new populations at unmanaged sites indicates that the species does not wholly rely on management to maintain populations as we believed when the recovery criterion was drafted. Based on this information, we conclude that running buffalo clover has recovered and no longer meets the definition of an endangered or threatened species.

(19) Comment: Two peer reviewers and a commenter identified nonnative invasive species as an ongoing threat to running buffalo clover that requires management, and these commenters specifically identified Japanese stiltgrass as causing declines of running buffalo clover.

Response: As discussed in the proposed listing rule and this final rule, nonnative invasive species, including Japanese stiltgrass, are present at several running buffalo clover sites. The management agreements in place for running buffalo clover include management actions to address nonnative invasive species, including Japanese stiltgrass. In addition, the PDM plan provides for monitoring for the presence of nonnative invasive species at running buffalo clover sites. Monitoring includes recording the level of severity of nonnative invasive species to prioritize sites for future monitoring.

(20) Comment: One peer reviewer and three commenters expressed concern that running buffalo clover would no longer receive management or monitoring and that funding for efforts to maintain proper habitat conditions would not be available after delisting.

Response: The populations that are under management agreements will continue to receive management to address site-specific threats and habitat needs, and we do not expect delisting will alter the ability of partner agencies to continue funding and implementing management agreements for running buffalo clover. Several States have indicated that they will continue to protect and manage running buffalo clover populations under existing State regulations. If unforeseen threats arise that are determined to endanger or threaten the long-term viability of running buffalo clover such that it meets the definition of a threatened or endangered species, we can use our authorities under section 4 the Act, including the emergency listing authorities at section 4(b)(7), to relist the species as appropriate.

(21) Comment: One peer reviewer and several commenters expressed concern that many populations of running buffalo clover are not stable or secure and that the species' recovery is a result of more surveys.

Response: Many populations of running buffalo clover have been discovered since 2007, with 175 extant populations known now compared to 102 in 2007. Seventy-six percent of the populations extant in 2007 were increasing or stable in 2016, indicating those populations are not in decline. With 22 populations now under management agreements and another 66 populations occurring on publicly owned lands, threats to the species have been reduced or are being adequately managed such that they are not affecting the species' viability. Based on this information, we conclude that running buffalo clover has recovered and no longer meets the definition of an endangered or threatened species.

(22) Comment: One commenter stated that the methods for assessing viability prescribed in the Recovery Plan do not address the stress caused by invasion of exotic species or other emerging or impending factors that might impair the viability of the species.

Response: The PVA is just one factor used to consider the current trend of the species and whether it is declining, stable, or increasing. The PVA provides a guide in determining the minimum number of needed populations, as well as the size and physical distribution of those populations, and is only one part of the recovery criteria. In addition, recovery criterion 3 addresses habitat-based threats, such as nonnative invasive species. The 22 populations that have management agreements will be protected from the threat of succession by implementation of various management or disturbance actions to reset succession. The management agreements also include actions to address the threats of nonnative invasive species.

(23) Comment: One commenter stated that populations in West Virginia are extensive and cover a wide range of habitat conditions, indicating that running buffalo clover may not be as limited in habitat requirements.

Response: Running buffalo clover populations in West Virginia are larger in quantity and area and occur in a wider range of habitat types than populations in other States. We note that all habitats are subject to succession, requiring periodic natural disturbance or targeted management to continue to maintain viable running buffalo clover populations.

(24) Comment: One commenter stated that running buffalo clover was once widespread and abundant but most of the historically known sites are now extirpated and the species survives in a fraction of its former range.

Response: Running buffalo clover was not known historically as widespread and abundant. Fewer than 30 sites were known in 8 States, including 2 specimens from Arkansas and 1 from Kansas (Brooks 1983). Although most of these historically known sites are extirpated, 175 extant running buffalo clover sites are now known across most of its historical range in 6 States.

(25) Comment: One commenter stated that, although more than 150 occurrences are now known, the vast majority of those are very small and not ranked as good occurrences.

Response: Delisting criterion 1 states that 34 populations, in total, are distributed as follows: 2 A-ranked, 6 B-ranked, 6 C-ranked, and 20 D-ranked populations across at least 2 of the 3 regions in which running buffalo clover occurs (Appalachian, Bluegrass, and Ozark). The number of populations in each rank is based on what would be required to achieve a 95 percent probability of the persistence within the next 20 years.

Populations are currently distributed as follows: 18 A-ranked, 47 B-ranked, 40 C-ranked, and 70 D-ranked. Although approximately two-thirds of running buffalo clover populations are ranked as C or D (99 or few rooted crowns or 33 or fewer crowns, respectively), delisting criterion 1 has been substantially exceeded. We conclude that a sufficient number of populations across the range of the species will continue to be viable over the foreseeable future; thus, we determine that the species no longer meets the Act's definitions of an endangered species or a threatened species.

(26) Comment: One commenter expressed concern that small patches have a high probability of becoming extirpated and will not naturally recover without active restoration and management.

Response: Smaller populations may have a greater probability of becoming extirpated, but that does not indicate that all small populations will eventually become extirpated. Some small populations have continued to persist for years.

As a disturbance-adapted species, running buffalo clover benefits from both management as well as natural disturbance activities, such as flooding, grazing by herbivores, trail use by animals, and small forest openings due to disease or insect impacts. Ten C- and D-ranked populations are under management agreements.

(27) Comment: One commenter stated that monitoring and collection has shown an expansion of populations in multiple States.

Response: New populations have been found in multiple States since the time of the original listing, as a result of multiple statewide and many project-specific surveys. For example, an increase in project-specific surveys in Pennsylvania in recent years resulted in most of the new running buffalo clover populations identified there. The newly discovered populations in Pennsylvania are south of a population in West Virginia that we have been aware of since the 2007 Recovery Plan Revision. In addition, running buffalo clover sites occur in West Virginia southeast of these Pennsylvania populations. Therefore, these populations most likely have been in existence, and their discovery is not the result of an expansion in the range of this species but rather an increase in the number of project-specific surveys. That said, this new information about these additional sites changes our understanding of the degree to which this species faces threats to its continued existence. The species is not as rare or restricted as was thought at the time of listing, and this is a contributing piece of our overall determination that the species is no longer in danger of extinction, now or in the foreseeable future.

(28) Comment: One commenter, citing Leugers (2016), stated that running buffalo clover in Ohio still experiences declines in remaining areas and is in need of more robust management plans.

Response: Leugers (2016) included no information from the 2008 or 2011 5-year reviews and did not use the most recent scientific information available. Since the 2007 Recovery Plan, we have learned much about running buffalo clover. Populations in Ohio include two that are A-ranked and nine that are B-ranked. Seven sites in Ohio are protected with management agreements for ten running buffalo clover populations.

(29) Comment: One commenter stated that additional information is still needed on the best management regimes to maintain flowering populations.

Response: Although recent discoveries of new running buffalo clover sites have expanded our understanding of the habitat types where the species can occur, running buffalo clover still requires partial to filtered sunlight and a prolonged pattern of moderate, periodic disturbance to maintain those conditions. A variety of management tools, such as grazing, mowing, trampling, or selective logging, have proven effective at maintaining suitable habitat and sustaining running buffalo clover populations. Natural succession results in increased canopy closure and a decrease in flowering. Maintaining appropriate habitat should result in continued flowering although the level of flowering may also be impacted by rainfall and various local weather conditions.

(30) Comment: One commenter indicated that running buffalo clover will continue to be threatened by ATV (all-terrain vehicle) use and fossil fuel development and infrastructure on the Wayne National Forest.

Response: Although ATV use was a problem at one site on the Wayne National Forest in the past, ATV use has not been documented as a threat to this running buffalo clover population since 2009. Running buffalo clover will continue to be managed on the Wayne National Forest as a species of conservation concern.

(31) Comment: One commenter indicated that running buffalo clover is damaged by grazing on Federal lands.

Response: We are not aware of any instances where grazing on Federal lands is impacting the running buffalo clover at the population level. Light to moderate grazing can provide the disturbance that running buffalo clover requires. The Depot in Kentucky grazes domesticated animals for management purposes, but no other federally owned properties use grazing by domesticated animals as a management tool. Running buffalo clover does not occur on any federally owned property that permits large-scale grazing.

(32) Comment: One commenter stated that there has been no measurable increase or spread of running buffalo clover (*e.g.,* to Pennsylvania).

Response: New populations of running buffalo clover are discovered nearly every year. That said, these populations have most likely been in existence for some time, and new populations found in Pennsylvania are not likely to be the result of an expansion in the range of this species. However, the increase overall in the number of populations known to be in existence changes our understanding of the degree to which the species is in danger of extinction, now or in the future. The original listing of the species was based on the lack of extant populations that had been identified at that time in spite of surveys conducted throughout its known range. Since then, multiple statewide and many project-specific surveys have been conducted and have discovered additional populations of which we were not formerly aware. Currently, 175 extant populations are known.

(33) Comment: One commenter indicated that several element occurrence (E.O.) ranks are erroneous.

Response: We have used the best scientific and commercial data available in the proposed rule and this final rule. The commenter did not provide any supporting documentation or information for specific EOs.

(34) Comment: One commenter indicated that seeds of running buffalo clover maintained in appropriate storage for over 25 years can still be viable after scarification. The commenter stated that recovery work should include vouchering seed from each running buffalo clover population to a seed bank with clear origin and sample size details.

Response: Running buffalo clover seed in the seedbank may be viable for a long time as other rare legumes can be viable in cold storage for decades (Albrecht 2017). An extremely small amount of running buffalo clover seed can germinate after being in soil and exposed to outdoor temperatures for over 10 years (Baskin 2021). In addition, populations have been absent for up to 4 consecutive years before plants were observed again (USFWS 2021, unpublished data). The long-term limit of seed viability in the natural environment has not been determined as Baskin's research ended after 11 years. Collection of seed for vouchering purposes may be useful for its conservation and management and should have limited impacts to source populations. Because the best available scientific and commercial data indicate that running buffalo clover has recovered and is no longer an endangered or threatened species, we are finalizing the delisting of the species.

(35) Comment: One commenter noted that running buffalo clover grows readily in controlled settings. Another public commenter stated that the survival of transplanted plants in the wild is very low and not a successful recovery option.

Response: Running buffalo clover grows well in a greenhouse environment; however, planting from seed or transplanting in the wild has had very limited success. Collection of seed or other vegetative material should be used only as a last resort to maintain

genetic material before a population is permanently lost.

Peer Review and Public Comments on the Post-Delisting Monitoring Plan

(36) Comment: WVDNR stated that the 5-year monitoring period will not detect changes in status of running buffalo clover in time to allow for remedial actions if populations decline and suggested that monitoring the occurrences in the Monongahela National Forest management plan annually for 5 years would reflect running buffalo clover population trend and response to management actions.

Response: We recognize that there can be significant year-to-year variation in populations that may cause long-term population trends not to become apparent for more than 5 years. However, by evaluating the level of canopy coverage and the threat of nonnative invasive species as prescribed in the PDM plan, these threats can be addressed before impacts to running buffalo clover occur. Monitoring is conducted to determine the rangewide status of running buffalo clover (declining, stable, or increasing) and its threats. It is not intended to evaluate individual management actions.

We have modified the PDM plan to target the running buffalo clover populations with management plans or agreements and the viable A- and B-ranked populations plus an additional 20 populations rangewide for monitoring. Because approximately 50 percent of all running buffalo clover populations are on private land, we recommend that half of the populations identified for post-delisting monitoring rangewide also occur on private land. Therefore, these 57 populations that are monitored should be representative of the rangewide ownership (private versus public) and as well as the rangewide diversity of population size (A-, B-, C-, and D-ranked populations).

(37) Comment: WVDNR indicated that the PDM plan should include visiting a select group of running buffalo clover occurrences, with the majority on public land, which would provide data on those populations' responses to management for control of succession and nonnative invasive species and protection from habitat destruction.

Response: The goal of the monitoring plan is to observe the trends of a representative sample of individual occurrences to determine whether the species continues to be recovered and not to evaluate management activities. Because most populations are not monitored, the selection of a group of occurrences should reflect the proportion of sites that are managed as well as a diversity of population sizes. There should be a representative number of A-, B-, C-, and D-ranked populations monitored. We have incorporated this concept into the PDM plan, where appropriate.

(38) Comment: WVDNR commented that the monitoring protocol and field monitoring form in the draft PDM plan are not adequate and are inconsistent with the monitoring protocol in the 2007 Running Buffalo Clover Recovery Plan. They recommended using the existing census methodology to provide more consistency and better detect population trends and declines.

Response: We acknowledge that the protocol in the PDM plan differs from that in use since 2007. While the existing methodology would provide more consistency in comparing individual populations pre- and post-delisting, we note that there are substantially more running buffalo clover populations now than in 2007. The protocol in the PDM plan addresses the challenges of limited time and resources to monitor a much larger number of populations. In addition, the proposed protocol reflects the greater stability of large A-ranked populations and prioritizes monitoring of smaller ranked populations as these would be more likely not to survive a stochastic event without a significant reduction in size.

Currently, the number of A-, B-, C-, and D-ranked populations are counted and evaluated. If a population drops to a lower rank (*e.g.,* from an A-rank to a B-rank), we consider that change to constitute a decline. Because there is annual variability, we do not evaluate the specific individuals of each occurrence. By calculating the change in the number of A-, B-, C-, and D-ranked populations at the end of the 5-year post-delisting monitoring period, we will be consistent with how the species was evaluated in each of the last 5-year reviews. Therefore, we conclude that the data to be collected will be adequate to determine population rankings and rangewide population trends for post-delisting monitoring purposes. However, we see benefit to the more intensive monitoring suggested by WVDNR by those who are committed to managing the species post-delisting and support any efforts to do so.

(39) Comment: WVDNR recommended an expansion of data gathering about nonnative invasive species across running buffalo clover's range.

Response: The purpose of the nonnative invasive species query in the PDM plan is to determine whether nonnative invasive species present a threat at running buffalo clover occurrences and if that threat is being addressed. We understand that additional information on nonnative invasive species would be useful. However, due to limited time and resources, this is beyond the scope of the PDM plan.

(40) Comment: WVDNR stated that use of 95 percent canopy closure is insufficient as a trigger for selective harvest and suggests that the trigger should not be greater than 80 percent canopy cover.

Response: Because running buffalo clover grows in the ground layer, it can be affected by shading from the understory as well as the canopy. The 95 percent canopy cover is used as a trigger for selective harvest because we expect selective harvesting would significantly reduce canopy cover. Other forms of management can be considered before a site reaches 95 percent canopy cover as these other forms of management are not expected to reduce the canopy cover as dramatically. We have updated the PDM plan to clarify.

(41) Comment: One peer reviewer stated that the monitoring plan does not ensure an adequate level of management.

Response: The PDM plan is intended to determine whether a significant number of running buffalo clover occurrences are in decline or are stable or increasing and will focus primarily on those sites that meet all aspects of recovery. Monitoring will help evaluate whether management is needed, but the PDM plan does not require management. The monitoring data form will ask if appropriate management is occurring.

(42) Comment: One peer reviewer recommended changing the definition of ''response triggers'' to require monitoring more sites for a longer period of time.

Response: Due to the limitation of time and resources, additional monitoring is not feasible for most sites. While we encourage more frequent monitoring at sites that have that capability, the level of monitoring prescribed in the PDM plan is sufficient to assess the population trend of running buffalo clover for the purposes of post-delisting monitoring, which is to determine the rangewide status of running buffalo clover (declining, stable, or increasing) and its threats to evaluate whether the species continues to be recovered.

Determination of Running Buffalo Clover Status

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50

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

Status Throughout All of Its Range

After evaluating threats to the species and assessing the cumulative effect of the threats under the section 4(a)(1) factors, we found that significant threats identified at the time of listing (52 FR 21478, June 5, 1987) have been eliminated or reduced. The main threat at many sites is habitat destruction, habitat succession, and competition with nonnative invasive species (Factor A). Management to benefit running buffalo clover has been implemented since the time of listing and has shown to be effective. Twenty-two populations are under some form of management that addresses the needs of running buffalo clover. Because all of the managed populations occur on publicly owned lands, we expect management will continue in the foreseeable future. Delisting criterion 3 from the recovery plan was intended to ensure that habitat-based threats for the species are addressed. Although this criterion has not been met as specified in the recovery plan, we believe that its intention has been met between the 22 sites managed specifically for the conservation of the species plus the 66 additional locations on Federal and State lands.

Additionally, the discovery of new populations at unmanaged sites indicates that the species does not wholly rely on management to maintain populations as we believed when the recovery criterion was drafted. The 22 populations currently under management agreements in conjunction with the 66 other populations on publicly owned lands are sufficient to eliminate or adequately reduce threats to the species now and into the foreseeable future. During our analysis, we found that other factors believed to be threats at the time of listing—including overutilization for commercial, recreational, scientific, or educational purposes (Factor B), disease and predation (Factor C), and inbreeding depression and poor seed quality and dispersal (Factor E)—are no longer considered threats, and we do not expect any of these conditions to substantially change into the foreseeable future. Since listing, we have become aware of the potential for the effects of climate change (Factor E) to affect all biota, including running buffalo clover, but the magnitude and frequency of this potential threat are generally unknown at this time. While available information in the most recent 5-year review indicates that running buffalo clover may be responding to a change in temperatures or precipitation patterns, the lack of a declining trend in running buffalo clover populations suggests the effects of ongoing climate change are not a threat to the species within the foreseeable future. Thus, after assessing the best available information, we determine that running buffalo clover is not in danger of extinction now or likely to become so in the foreseeable future throughout all of its range.

Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. Having determined that running buffalo clover is not in danger of extinction or likely to become so in the foreseeable future throughout all of its range, we now consider whether it may be in danger of extinction or likely to become so in the foreseeable future in a significant portion of its range—that is, whether there is any portion of the species' range for which it is true that both (1) the portion is significant; and (2) the species is in danger of extinction now or likely to become so in the foreseeable future 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.

In undertaking this analysis for running buffalo clover, we chose to address the status question first—we considered information pertaining to the geographic distribution of both the species and the threats that the species faces to identify any portions of the range where the species is endangered or threatened.

For running buffalo clover, we considered whether the threats are geographically concentrated in any portion of the species' range at a biologically meaningful scale. We examined the following threats: Habitat destruction, habitat succession, and competition with nonnative invasive species, including cumulative effects. Threats from habitat destruction have been identified at running buffalo clover sites across its range. Habitat succession is a natural process that occurs in multiple habitat types across the species' range. Nonnative invasive species are widespread across the range of running buffalo clover. We found no concentration of threats in any portion of the running buffalo clover's range at a biologically meaningful scale. Therefore, no portion of the species' range can provide a basis for determining that the species is in danger of extinction now or likely to become so in the foreseeable future in a significant portion of its range, and we find the species is not in danger of extinction now or likely to become so in the foreseeable future in any significant portion of its range. This 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 running buffalo clover does not meet the definition of an endangered species or a threatened species in accordance with sections 3(6) and 3(20) of the Act. Therefore, we are removing running buffalo clover from the List of Endangered and Threatened Plants.

Effects of This Rule

This rule revises 50 CFR 17.12(h) to remove the running buffalo clover from the Federal List of Endangered and Threatened Plants. Because critical habitat has not been designated for this species, this rule does not affect 50 CFR 17.96. On the effective date of this rule (see **DATES**, above), the prohibitions and conservation measures provided by the Act, particularly through sections 7 and 9, no longer apply to this species, and Federal agencies are no longer required

to consult with the Service under section 7 of the Act in the event that activities they authorize, fund, or carry out may affect the running buffalo clover.

Post-Delisting Monitoring

Section 4(g)(1) of the Act requires us, in cooperation with the States, to implement a system to monitor effectively, for not less than 5 years, all species that have been recovered and delisted. The purpose of this post-delisting monitoring is to verify that a species remains secure from risk of extinction after it has been removed from the protections of the Act. The monitoring is designed to detect the failure of any delisted species to sustain itself without the protective measures provided by the Act. If, at any time during the monitoring period, data indicate that protective status under the Act should be reinstated, we can initiate listing procedures, including, if appropriate, emergency listing under section 4(b)(7) of the Act. Section 4(g) of the Act explicitly requires us to cooperate with the States in development and implementation of post-delisting monitoring programs, but we remain responsible for compliance with section 4(g) of the Act and, therefore, must remain actively engaged in all phases of post-delisting monitoring. We also seek active participation of other entities that are expected to assume responsibilities for the species' conservation post-delisting.

We prepared a PDM plan for running buffalo clover in cooperation with the States. The PDM plan is designed to verify that running buffalo clover remains secure from the risk of extinction after delisting by detecting changes in its status and habitat throughout its known range. The final PDM plan discusses the current status of the taxon and describes the methods to be used for monitoring after the taxon is removed from the Federal List of Endangered and Threatened Plants. The PDM plan: (1) Summarizes the roles of the PDM cooperators; (2) summarizes the status of running buffalo clover at the time of delisting; (3) discusses monitoring methods and sampling regimes; (4) describes frequency and duration of monitoring; (5) defines triggers for potential monitoring outcomes; (6) outlines reporting requirements and procedures; and (7) proposes a schedule for implementing the PDM plan and conclusions of the PDM effort.

The PDM plan guides monitoring of running buffalo clover following similar methods to those used prior to delisting. Monitoring will consist of: Counting (or estimating for A-ranked populations) the number of rooted crowns and flowering stems, recording recruitment of seedlings, photographing running buffalo clover occurrences, mapping the location of individual patches within the occurrences, and identifying potential threats, as may be appropriate. PDM will begin in the first growing season following the effective date of this rule (see **DATES**, above) and will extend, at a minimum, through the fifth growing season following delisting. Monitoring through this time period will allow us to address potential negative effects to running buffalo clover, such as nonnative invasive species and canopy closure.

The PDM plan identifies measurable management thresholds and responses for detecting and reacting to significant changes in the running buffalo clover's habitat, distribution, and persistence. If monitoring detects declines equaling or exceeding these thresholds, the Service, in combination with other PDM participants, will investigate causes of these declines, including considerations of habitat changes, nonnative invasive species, stochastic events, or any other significant evidence. Such investigation will determine if running buffalo clover warrants expanded monitoring, additional habitat management, or relisting as an endangered or a threatened species under the Act. If such monitoring data or an otherwise updated assessment of threats indicate that relisting running buffalo clover is warranted, emergency procedures to relist the species may be followed, if necessary, in accordance with section 4(b)(7) of the Act.

The final PDM plan is available on *http://www.regulations.gov* under Docket No. FWS–R3–ES–2018–0036 and on the Service's Great Lakes Region website at *https://www.fws.gov/midwest/endangered/plants/rbcl/index.html.*

Required Determinations

National Environmental Policy Act

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), need not be prepared in connection with regulations pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We are not aware of running buffalo clover occurring on any Tribal lands, and we did not receive any comments from Tribes on the proposed delisting rule.

References Cited

A complete list of all references cited in this rule is available at *http://www.regulations.gov* at Docket No. FWS–R3–ES–2018–0036, or upon request from the Ohio Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this rule are staff members of the Service's Ohio Ecological Services Field Office and Great Lakes Regional Office, Bloomington, Minnesota.

Signing Authority

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 August 3, 2021, for publication.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

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.

§ 17.12 [Amended]

■ 2. Amend § 17.12 in paragraph (h) by removing the entry for ''*Trifolium stoloniferum*'' under FLOWERING PLANTS from the List of Endangered and Threatened Plants.

Madonna Baucum,

Regulations and Policy Chief, Division of Policy, Economics, Risk Management, and Analytics, Joint Administrative Operations, U.S. Fish and Wildlife Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 200124–0029; RTID 0648–XB279]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; 2021 Red Snapper Private Angling Component Closure in Federal Waters Off Texas

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces a closure for the 2021 fishing season for the red snapper private angling component in the exclusive economic zone (EEZ) off Texas in the Gulf of Mexico (Gulf) through this temporary rule. The red snapper recreational private angling component in the Gulf EEZ off Texas closes on August 5, 2021 until 12:01 a.m., local time, on January 1, 2022. This closure is necessary to prevent the private angling component from exceeding the Texas regional management area annual catch limit (ACL) and to prevent overfishing of the Gulf red snapper resource.

DATES: This closure is effective on August 5, 2021, until 12:01 a.m., local time, on January 1, 2022.

FOR FURTHER INFORMATION CONTACT: Daniel Luers, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *daniel.luers@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Gulf reef fish fishery, which includes red snapper, is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

The final rule implementing Amendment 40 to the FMP established two components within the recreational sector fishing for Gulf red snapper: the private angling component, and the Federal for-hire component (80 FR 22422, April 22, 2015). Amendment 40 also allocated the red snapper recreational ACL (recreational quota) between the components and established separate seasonal closures for the two components. On February 6, 2020, NMFS implemented Amendments 50 A–F to the FMP, which delegated authority to the Gulf states (Louisiana, Mississippi, Alabama, Florida, and Texas) to establish specific management measures for the harvest of red snapper in Federal waters of the Gulf by the private angling component of the recreational sector (85 FR 6819, February 6, 2020). These amendments allocate a portion of the private angling ACL to each state, and each state is required to constrain landings to its allocation.

As described at 50 CFR 622.23(c), a Gulf state with an active delegation may request that NMFS close all, or an area of, Federal waters off that state to the harvest and possession of red snapper by private anglers. The state is required to request the closure by letter to NMFS, providing dates and geographic coordinates for the closure. If the request is within the scope of the analysis in Amendment 50A, NMFS publishes a notice in the **Federal Register** implementing the closure for the fishing year. Based on the analysis in Amendment 50A, Texas may request a closure of all Federal waters off the state to allow a year-round fishing season in state waters. As described at 50 CFR 622.2, ''off Texas'' is defined as the waters in the Gulf west of a rhumb line from 29°32.1′ N Lat., 93°47.7′ W long. to 26°11.4′ N Lat., 92°53′ W long., which line is an extension of the boundary between Louisiana and Texas.

On December 7, 2020, NMFS received a request from the Texas Parks and Wildlife Department (TPWD) to close the EEZ off Texas to the red snapper private angling component for the first part of the 2021 fishing year. Texas requested that the closure be effective from January 1, 2021, until June 1, 2021. NMFS determined that the TPWD request was within the scope of analysis contained within Amendment 50A, and subsequently published a temporary rule in the **Federal Register** implementing that closure request (85 FR 78792; December 7, 2020). In that rule, NMFS noted that TPWD would monitor private recreational landings, and if necessary, request that NMFS again close the EEZ in 2021 to ensure the Texas regional management area ACL is not exceeded.

On July 28, 2021, NMFS received a new request from the TPWD to close the EEZ off Texas to the red snapper private angling component for the remainder of the 2021 fishing year. Texas requested that the closure be effective on August 5, 2021, through the end of the fishing year. NMFS has determined that this request is within the scope of analysis contained within Amendment 50A, which analyzed the potential impacts of a closure of all Federal waters off Texas when a portion of the Texas quota has been landed. As explained in Amendment 50A, Texas intends to maintain a year-round fishing season in state waters during which the remaining part of Texas' ACL could be caught.

Therefore, the red snapper recreational private angling component in the Gulf EEZ off Texas will close on August 5, 2021, until 12:01 a.m., local time, on January 1, 2022. This closure applies to all private-anglers (those on board vessels that have not been issued a valid charter vessel/headboat permit for Gulf reef fish) regardless of which state they are from or where they intend to land.

On and after the effective dates of the closure in the EEZ off Texas, the harvest and possession red snapper in the EEZ off Texas by the private angling component is prohibited and the bag and possession limits for the red snapper private angling component in the closed area is zero.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR 622.23(c), which was issued pursuant to section 304(b) of the Magnuson-Stevens Act, and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment are unnecessary and contrary to the public interest.

Such procedures are unnecessary because the rule implementing the area closure authority and the state-specific private angling ACLs has already been subject to notice and comment, and all that remains is to notify the public of the closure. Such procedures are contrary to the public interest because a failure to implement the closure immediately would be inconsistent with Texas's state management plan and may result in less access to red snapper in state waters.

For the aforementioned reasons, there is good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 3, 2021.

Jennifer M. Wallace,

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

[FR Doc. 2021–16857 Filed 8–3–21; 4:15 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 180117042–8884–02; RTID 0648–XB282]

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

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

ACTION: Temporary rule; closure of the General category June through August fishery for 2021.

SUMMARY: NMFS closes the General category fishery for large medium and giant (*i.e.,* measuring 73 inches (185 cm) curved fork length or greater) Atlantic bluefin tuna (BFT) for the June through August subquota time-period.

DATES: Effective 11:30 p.m., local time, August 4, 2021, through August 31, 2021.

FOR FURTHER INFORMATION CONTACT: Larry Redd, Jr., *larry.redd@noaa.gov,* 301–427–8503, Nicholas Velseboer, *nicholas.velseboer@noaa.gov,* 978–675–2168, or Lauren Latchford, *lauren.latchford@noaa.gov,* 301–427–8503.

SUPPLEMENTARY INFORMATION: Atlantic HMS fisheries, including BFT fisheries, are managed under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*). The 2006 Consolidated Atlantic HMS Fishery Management Plan (FMP) and its amendments are implemented by regulations at 50 CFR part 635. Section 635.27 divides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) and as implemented by the United States among the various domestic fishing categories, per the allocations established in the 2006 Consolidated HMS FMP and its amendments. NMFS is required under the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest quotas under relevant international fishery agreements such as the ICCAT Convention, which is implemented domestically pursuant to ATCA.

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

As described in § 635.27(a), the current baseline U.S. quota continues to be 1,247.86 metric tons (mt) (not including the 25 mt ICCAT allocated to the United States to account for bycatch of BFT in pelagic longline fisheries in the Northeast Distant Gear Restricted Area). The baseline quota for the General category is 555.7 mt. Each of the General category time periods (January, June through August, September, October through November, and December) is allocated a portion of the annual General category quota. The June through August subquota is 277.9 mt.

Closure of the June Through August 2021 General Category Fishery

As of August 2, 2021, reported landings total approximately 252.5 mt. Based on these landings data, as well as average catch rates and anticipated fishing conditions, we project that the General category June through August subquota will be reached and exceeded shortly. Therefore, retaining, possessing, or landing large medium or giant BFT (*i.e.,* measuring 73 inches (185 cm) curved fork length or greater) by persons aboard vessels permitted in the Atlantic tunas General category and HMS Charter/Headboat category (while fishing commercially) must cease at 11:30 p.m. local time on August 4, 2021. The General category will automatically reopen September 1, 2021, for the September 2021 subquota time period. This action applies to Atlantic tunas General category (commercial) permitted vessels and HMS Charter/Headboat category permitted vessels with a commercial sale endorsement when fishing commercially for BFT, and is taken consistent with the regulations at § 635.28(a)(1).

Fishermen may catch and release (or tag and release) BFT of all sizes, subject to the requirements of the catch-and-release and tag-and-release programs at § 635.26. All BFT that are released must be handled in a manner that will maximize their survival, and without removing the fish from the water, consistent with requirements at § 635.21(a)(1). For additional information on safe handling, see the ''Careful Catch and Release'' brochure available at *https://www.fisheries.noaa.gov/resource/outreach-and-education/careful-catch-and-release-brochure/.*

Monitoring and Reporting

NMFS will actively monitor the BFT fishery closely. Dealers are required to submit landing reports within 24 hours of a dealer receiving BFT. Late reporting by dealers compromises NMFS' ability to timely implement actions such as quota and retention limit adjustments, as well as closures, and may result in enforcement actions. Additionally, and separate from the dealer reporting requirement, General and HMS Charter/Headboat category vessel owners are required to report the catch of all BFT retained or discarded dead within 24 hours of the landing(s) or end of each trip, by accessing *hmspermits.noaa.gov,* using the HMS Catch Reporting app, or calling (888) 872–8862 (Monday through Friday from 8 a.m. until 4:30 p.m.).

After the fishery reopens on September 1, depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional adjustments are necessary to ensure available subquotas are not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas. If needed, subsequent adjustments will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (978) 281–9260, or access *hmspermits.noaa.gov,* for updates on quota monitoring and inseason adjustments.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 635, which was issued pursuant to section 304(c), and is exempt from review under Executive Order 12866.

The Assistant Administrator for NMFS finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

The regulations implementing the 2006 Consolidated HMS FMP and amendments provide for inseason retention limit adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. This fishery is currently underway and delaying this action would be contrary to the public interest as it could result in BFT landings exceeding the adjusted June through August 2021 General category quota, which could result in the need to reduce quota for the General category later in the year and thus could affect later fishing opportunities. Affording prior notice and opportunity for public comment to implement the quota transfer is impracticable and contrary to the public interest as such a delay would likely result in exceedance of the General category June through August fishery subquota or earlier closure of the fishery while fish are available on the fishing grounds. For all of the above reasons, there is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: August 2, 2021.

Jennifer M. Wallace,

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

[FR Doc. 2021–16784 Filed 8–3–21; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 86, No. 149
Friday, August 6, 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 ENERGY

10 CFR Part 429

[EERE–2012–BT–STD–0045]

RIN 1904–AE90

Energy Conservation Program for Appliance Standards: Certification for Ceiling Fan Light Kits, General Service Incandescent Lamps, Incandescent Reflector Lamps, Ceiling Fans, Consumer Furnaces and Boilers, Consumer Water Heaters, Dishwashers, Commercial Clothes Washers, Battery Chargers, and Dedicated-Purpose Pool Pumps

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

ACTION: Notice of proposed rulemaking and request for comment.

SUMMARY: The U.S. Department of Energy (''DOE'' or the ''Department'') proposes to amend the certification provisions for ceiling fan light kits (''CFLKs''), general service incandescent lamps (''GSILs''), incandescent reflector lamps (''IRLs''), ceiling fans, consumer furnaces and boilers, consumer water heaters, dishwashers, commercial clothes washers (''CCWs''), battery chargers, and dedicated-purpose pool pumps (''DPPPs''). DOE is proposing amendments to the certification and reporting provisions for these products and equipment to ensure reporting that is consistent with currently applicable energy conservation standards and to ensure DOE has the information necessary to determine the appropriate classification of products for the application of standards. DOE seeks comment from interested parties on all aspects of this proposal.

DATES: DOE will accept comments, data, and information regarding this proposal no later than October 5, 2021.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *https://www.regulations.gov.* Follow the instructions for submitting comments. Alternatively, interested persons may submit comments by email to the following email address: *ApplianceStandardsQuestions@ee.doe.gov.* Include docket number EERE–2012–BT–STD–0045 and/or RIN 1904–AE90 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 suspending receipt of public comments via postal mail and hand delivery/courier, and instead, the Department is only accepting 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 the rulemaking process, see section V (Public Participation) of this document.

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

The docket web page can be found at *https://www.regulations.gov/docket?D=EERE-2012-BT-STD-0045.* The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section V for information on how to submit comments through *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT:

Dr. Stephanie Johnson, 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) 287–1943. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Ms. Amelia Whiting, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–2588. Email: *Amelia.Whiting@hq.doe.gov.*

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I. Authority and Background

A. Authority

The Energy Policy and Conservation Act, as amended (''EPCA'') [1] authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317, as codified) Title III, Part B [2] of EPCA, Public Law 94–163, established the Energy Conservation Program for Consumer Products Other Than Automobiles, which sets forth a variety of provisions designed to improve energy efficiency. Title III, Part C [3] of EPCA, added by Public Law 95–619, Title IV, section 441(a), established the Energy Conservation Program for Certain Industrial Equipment. These products and equipment include CFLKs, GSILs, IRLs, ceiling fans, consumer furnaces and boilers, consumer water heaters, dishwashers, CCWs, battery chargers, and DPPPs, the subjects of this document. (42 U.S.C. 6292(a)(4–6) and (14); 42 U.S.C. 6295(u) and (ff); 42 U.S.C. 6311(1)(A) and (H))

Under EPCA, the energy conservation program consists essentially of four parts: (1) Testing, (2) labeling, (3) the establishment of Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA specifically include definitions (42 U.S.C. 6291; 42 U.S.C. 6311), test procedures (42 U.S.C. 6293; 42 U.S.C. 6314), labeling provisions (42 U.S.C. 6294; 42 U.S.C. 6315), energy conservation standards (42 U.S.C. 6295; 42 U.S.C. 6313), and the authority to require information and reports from manufacturers (42 U.S.C. 6296; 42 U.S.C. 6316).

The Federal testing requirements consist of test procedures that manufacturers of covered products and equipment must use as the basis for: (1) Certifying to DOE that their products or equipment comply with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6295(s); 42 U.S.C. 6316(a)), and (2) making representations about the efficiency of those consumer products or industrial equipment (42 U.S.C. 6293(c); 42 U.S.C. 6314(d)). Similarly, DOE must use these test procedures to determine whether the products or equipment comply with relevant standards promulgated under EPCA. (42 U.S.C. 6295(s); 42 U.S.C. 6316(a))

EPCA authorizes DOE to enforce compliance with the energy and water conservation standards established for covered products and equipment. (42 U.S.C. 6299–6305; 42 U.S.C. 6316(a)–(b)) DOE has promulgated enforcement regulations that include reporting requirements for covered products and equipment including CFLKs, GSILs, IRLs, ceiling fans, consumer furnaces and boilers, consumer water heaters, dishwashers, CCWs, battery chargers, and DPPPs. *See* title 10 of the Code of Federal Regulations (''CFR'') part 429. The certification regulations ensure that DOE has the information it needs to assess whether regulated products and equipment sold in the United States comply with the law.

B. Background

DOE's certification regulations are a mechanism that DOE uses to help ensure compliance with its regulations by collecting information about the energy and water use characteristics of covered products and covered equipment sold in the United States. Manufacturers of all covered products and covered equipment must submit a certification report before a basic model is distributed in commerce, annually thereafter, and if the basic model is redesigned in such a manner to increase the consumption or decrease the efficiency of the basic model such that the certified rating is no longer supported by test data. Additionally, manufacturers must report when production of a basic model has ceased and is no longer offered for sale as part of the next annual certification report following such cessation. DOE requires the manufacturer of any covered product or covered equipment to establish, maintain, and retain the records of certification reports, of the underlying test data for all certification testing, and of any other testing conducted to satisfy the requirements of part 429, part 430, and/or part 431 until two years after notifying DOE that a model has been discontinued. 10 CFR 429.71. Certification reports provide DOE and consumers with comprehensive, up-to-date efficiency information and support effective enforcement.

To ensure that all covered products and covered equipment distributed in the United States comply with DOE's energy and water conservation standards and reporting requirements, DOE has promulgated certification, compliance, and enforcement regulations in 10 CFR part 429. On March 7, 2011, the Department published in the **Federal Register** a final rule regarding Certification, Compliance, and Enforcement for Consumer Products and Commercial and Industrial Equipment, which revised, consolidated, and streamlined the Department's existing certification, compliance, and enforcement regulations for certain consumer products and commercial and industrial equipment covered under EPCA. 76 FR 12422.[4] Since that time, DOE has also completed multiple rulemakings regarding Certification, Compliance, and Enforcement for specific covered products or equipment. See, for example, the May 5, 2014, final rule regarding certification of commercial and industrial heating, ventilating, air conditioning (HVAC), refrigeration, and water heating equipment. 79 FR 25486. In this rulemaking, DOE is once again proposing to revise its certification regulations for certain covered products, as further detailed below.

1. Ceiling Fan Light Kits

CFLKs are ''covered products'' for which DOE is authorized to establish and amend energy conservation standards and test procedures. (42

[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 re-designated as Part A.

[3] For editorial reasons, upon codification in the U.S. Code, Part C was re-designated at Part A–1.

[4] DOE subsequently published two correction notifications on May 2, 2011 (to correct a drafting error and erroneous internal cross references) and on August 2, 2011 (to correct presentation of a formula). 76 FR 24762; 76 FR 46202, respectively.

U.S.C. 6291(50), 42 U.S.C. 6293(b)(16)(A)(ii), 42 U.S.C. 6295(ff)(2)–(5)) DOE's energy conservation standards for CFLKs are currently prescribed at 10 CFR 430.32(s). Test procedures for CFLKs are currently prescribed at 10 CFR 430.23; 10 CFR part 430, subpart B, appendix V, ''Uniform Test Method for Measuring the Energy Consumption of Ceiling Fan Light Kits With Pin-Based Sockets for Fluorescent Lamps'' (''appendix V''); and 10 CFR part 430, subpart B, appendix V1, ''Uniform Test Method for Measuring the Energy Consumption of Ceiling Fan Light Kits Packaged With Other Fluorescent Lamps (not Compact Fluorescent Lamps or General Service Fluorescent Lamps), Packaged With Other SSL Lamps (not Integrated LED Lamps), or With Integrated SSL Circuitry'' (''appendix V1''). The sampling requirements for determining represented values based on the results of testing of CFLKs are found at 10 CFR 429.33(a) and (b) specifies the information that must be included in certification reports submitted to DOE for CFLKs.

EPCA directed that the initial test procedures for CFLKs be based on the test procedures referenced in the ENERGY STAR® specifications for Residential Light Fixtures and Compact Fluorescent Light Bulbs as in effect on August 8, 2005. (42 U.S.C. 6293(b)(16)(A)(ii)) DOE published a final rule on December 8, 2006, establishing test procedure requirements for CFLKs in appendix V that incorporated by reference the relevant ENERGY STAR requirements. 71 FR 71340.

CFLKs manufactured on or after January 1, 2007, and prior to January 21, 2020, must be packaged with lamps to fill all sockets, with additional standards applicable based on the type of the CFLK's lamp sockets. 10 CFR 430.32(s)(3)–(5). Lamps packaged with CFLKs with medium screw base sockets must meet efficacy standards, while medium screw base compact fluorescent lamps (''CFLs'') must additionally meet standards for lumen maintenance, rapid cycle stress, and lifetime. 10 CFR 432.32(s)(3). CFLKs with pin-based sockets for fluorescent lamps must use an electronic ballast and the lamp-ballast platform must meet efficacy standards. 10 CFR 432.32(s)(4). CFLKs with other than medium screw base or pin-based sockets must not be capable of operating with lamps that total more than 190 watts. 10 CFR 432.32(s)(5). The standards at 10 CFR 430.32(s)(3)–(5) will be referred to collectively in this document as the January 1, 2007 standards.

EPCA also provides that DOE ''may review and revise'' the initial ceiling fan light kit test procedure (TP). (42 U.S.C. 6293(b)(16)(B)). On December 24, 2015, DOE published a final rule (''December 2015 CFLK TP Final Rule'') making two key updates to its CFLK test procedure. 80 FR 80209. First, DOE updated the CFLK test procedure to require that representations of efficacy, including certifications of compliance with CFLK standards, be made according to the corresponding DOE lamp test procedures, where they exist (*e.g.,* for a CFLK with medium screw base sockets that is packaged with CFLs, the CFLK test procedure references the DOE test procedure for CFLs at 10 CFR 430.23(y)). 80 FR 80209, 80210 (Dec. 24, 2015). Second, DOE updated the CFLK test procedure by establishing in a separate appendix, *i.e.,* appendix V1, the test procedure for CFLKs packaged with inseparable light sources that require luminaire efficacy testing (*e.g.,* CFLKs with integrated solid state lighting (''SSL'') circuitry) and for CFLKs packaged with lamps for which DOE test procedures did not exist. 80 FR 80209, 80212. With these changes, the December 2015 CFLK TP Final Rule aligned requirements for measuring efficacy of lamps and/or light sources in CFLKs with current DOE lamp test procedures.

DOE published a final rule on January 6, 2016, amending energy conservation standards (ECS) for CFLKs (''January 2016 CFLK ECS Final Rule''). 81 FR 580. In that final rule, DOE established amended standards based on the efficacy of the lamps (with additional requirements for medium base CFLs and pin-based fluorescent lamps) packaged with the CFLK, except where the lamps are not designed to be consumer replaceable from the CFLK (*i.e.,* integrated SSLs), in which case luminaire efficacy is used. *Id.* These amended standards apply to CFLKs manufactured on or after January 21, 2020,[5] and will be referred to collectively in this document as the January 21, 2020 standards. *See* 10 CFR 432.32(s)(6).

[5] After DOE's promulgation of final rules establishing energy conservation standards for CFLKs and ceiling fans, Congress enacted S. 2030, the ''Ceiling Fan Energy Conservation Harmonization Act'' (''the Act''), which was signed into law as Public Law 115–161 on April 3, 2018. The Act amended the compliance date for the CFLK standards to establish a single compliance date for the energy conservation standards for both CFLKs and ceiling fans. On May 16, 2018, DOE published a final rule that amended the compliance date for CFLKs in the relevant sections of the CFR by replacing ''January 7, 2019'' with ''January 21, 2020.'' 83 FR 22587.

In the December 2015 CFLK TP Final Rule, DOE determined that the amendments in that final rule would likely change the measured values required to comply with the then-existing CFLK standards for all CFLKs except CFLKs with medium screw base sockets. 80 FR 80209, 80212. As such, representations regarding CFLKs subject to the January 21, 2020 standards must be based on the amended test procedure, including appendix V1. See *id.* and 81 FR 580 (January 6, 2016).

Neither the December 2015 CFLK TP Final Rule nor the January 2016 CFLK ECS Final Rule amended the reporting requirements for CFLKs to reflect the updated metrics from the test procedure and amended standards. The reporting requirements at 10 CFR 429.33 continue to require manufacturers to report based on the January 1, 2007 standards, including information that is no longer relevant. This inconsistency between the reporting requirements and the January 21, 2020 standards may lead to confusion regarding which standards are applicable as well as the reporting of unnecessary information. Therefore, DOE is proposing to update the reporting requirements to address the January 21, 2020 standards and remove the reporting requirements for the January 1, 2007 standards.

2. GSILs and IRLs

GSILs and IRLs are ''covered products'' for which DOE is authorized to establish and amend energy conservation standards and test procedures. (42 U.S.C. 6292(a)(14)) DOE's existing test procedures for general service fluorescent lamps (''GSFLs''), IRLs and GSILs appear at title 10 CFR part 430, subpart B, appendix R (''appendix R'') (''Uniform Test Method for Measuring Average Lamp Efficacy (''LE''), Color Rendering Index (''CRI''), and Correlated Color Temperature (''CCT'') of Electric Lamps'').

DOE test procedures for GSFLs, IRLs, and GSILs are codified in appendix R and associated sampling and reporting requirements are codified in 10 CFR 429.27. DOE standards for GSFLs, IRLs, and GSILs are codified respectively at 10 CFR 430.32(n)(1), (2), (4), (6), and (7) and (x).

On July 6, 2009, DOE published a final rule amending the test procedures for GSFLs, IRLs, and GSILs. 74 FR 31829. These amendments consisted largely of: (1) Referencing the most current versions of several lighting industry test standards incorporated by reference; (2) adopting certain technical changes and clarifications; and (3) expanding the test procedures to

accommodate new classes of lamps to which coverage was extended by the Energy Independence and Security Act of 2007 (Pub. L. 110–140). *Id.* The final rule also addressed the then recently established statutory requirement to expand test procedures to incorporate a measure of standby mode and off mode energy consumption and determined that, because these modes of energy consumption were not applicable to the lamps, an expansion of the test procedures was not necessary. *Id.* Shortly thereafter, DOE again amended the test procedures to adopt reference ballast settings necessary for the additional GSFLs for which DOE was establishing standards. 74 FR 34080, 34096 (July 14, 2009).

DOE most recently amended the test procedures for GSFLs and GSILs in a final rule published on January 27, 2012. 77 FR 4203. DOE updated several references to the industry test standards referenced in DOE's test procedures and established a lamp lifetime test method for GSILs. *Id.* In that final rule, DOE determined amendments to the existing test procedure for IRLs were not necessary. *Id.*

On June 3, 2021, DOE published a notice of proposed rulemaking (NOPR) amending the test procedures for GSFL, IRLs, and GSILs. 86 FR 29888 (''June 2021 NOPR''). In the June 2021 NOPR, DOE proposed to update to the latest versions of the referenced industry test standards; clarify definitions, test conditions and methods; clarify test frequency and inclusion of cathode power in measurements for GSFLs; provide a test method for measuring CRI of GSILs and IRLs and for measuring lifetime of IRLs; allow manufacturers to make voluntary (optional) representations of GSFLs at high frequency settings; and to align sampling and certification requirements with proposed test procedure terminology and with the Federal Trade Commission's labeling program. *Id.*

In this NOPR, DOE is proposing to revise the reporting requirements to reflect the current energy conservation standards for GSILs and IRLs and include other characteristics in the certification report needed to determine the applicable product classes. DOE is not proposing revisions to GSFL reporting requirements in this NOPR.

3. Ceiling Fans

Ceiling fans are ''covered products'' for which DOE is authorized to establish and amend energy conservation standards and test procedures. (42 U.S.C. 6291(49), 42 U.S.C. 6293(b)(16)(A)(ii) and (B), 42 U.S.C. 6295(ff)(1) and (6)(C)) DOE's existing test procedure for ceiling fans appears at 10 CFR 430.23 and appendix U of 10 CFR part 430, subpart B, ''Uniform Test Method for Measuring the Energy Consumption of Ceiling Fans.'' Sampling and reporting requirements for ceiling fans are set forth at 10 CFR 429.32. DOE's existing energy conservation standards for ceiling fans are located in 10 CFR 430.32(s).

On July 25, 2016, DOE published a final rule which amended the test procedures for ceiling fans at appendix U. 81 FR 48620 (''July 2016 Final Rule''). On January 19, 2017, DOE established energy conservation standards for ceiling fans, expressed as the minimum allowable efficiency in terms of cubic feet per minute per watt (''CFM/W''), as a function of ceiling fan diameter in inches. These standards are applicable to all ceiling fans manufactured in, or imported into, the United States on and after January 21, 2020. 82 FR 6826, 6827 (''January 2017 CF ECS Final Rule'').

On September 30, 2019, DOE published a NOPR proposing amendments to the test procedure. 84 FR 51440 (''September 2019 NOPR''). Additionally, on October 17, 2019, DOE hosted a public meeting to present the September 2019 NOPR proposals.

On December 27, 2020, the Energy Act of 2020 (Pub. L. 116–260) was signed into law, and amended performance standards for large-diameter ceiling fans (''LDCFs'').[6] (42 U.S.C. 6295(ff)(6)(C)(i), as codified) Specifically, section 1008 of the Energy Act of 2020 amended section 325(ff)(6) of EPCA to specify that large-diameter ceiling fans manufactured on or after January 21, 2020, are not required to meet minimum ceiling fan efficiency requirements in terms of the ratio of the total airflow to the total power consumption (*i.e.,* CFM/W) as established in the January 2017 CF ECS Final Rule. (42 U.S.C. 6295(ff)(6)(C)(i)(I), as codified) Instead, LDCFs are required to meet specified minimum efficiency requirements based on the Ceiling Fan Energy Index (''CFEI'') metric, with one standard based on operation of the fan at high speed and a second standard based on operation of the fan at 40 percent speed or the nearest speed that is not less than 40 percent speed. (42 U.S.C. 6295(ff)(6)(C)(i)(II), as codified)

On May 27, 2021, DOE published a final rule to amend the current regulations for large-diameter ceiling fans, corresponding to the provisions in the Energy Act of 2020. 86 FR 28469 (''May 2021 Technical Amendment'') The May 2021 Technical Amendment also implemented conforming amendments to the ceiling fan test procedure to ensure consistency with the Energy Act of 2020.

Current ceiling fan reporting requirements do not reflect the amended energy conservation standards adopted in the January 2017 CF ECS final rule, nor do they reflect the updated performance standards for large-diameter ceiling fans as established in the Energy Act of 2020. Therefore, DOE is proposing to update the reporting requirements to reflect current standards.

4. Consumer Furnaces and Boilers

Consumer furnaces and boilers are included in the list of ''covered products'' for which DOE is authorized to establish and amend energy conservation standards and test procedures.[7] (42 U.S.C. 6292(a)(5)) DOE's energy conservation standards for consumer furnaces and boilers are currently prescribed at 10 CFR 430.32(e). Test procedures for consumer furnaces and boilers are currently specified in 10 CFR part 430, subpart B, appendix N, ''Uniform Test Method for Measuring the Energy Consumption of Furnaces and Boilers'' (''appendix N''). Reporting requirements for consumer furnaces and boilers are set forth in 10 CFR 429.18.

The DOE test procedure for consumer furnaces and boilers at appendix N is used to determine the annual fuel utilization efficiency (''AFUE''), which for gas-fired and oil-fired furnaces and boilers accounts for fossil fuel consumption in active, standby, and off modes, but does not include electrical energy consumption. For electric furnaces and boilers, AFUE accounts for electrical energy consumption in active mode. Appendix N also includes separate provisions to determine the electrical energy consumption in standby mode ($P_{W,SB}$) and off mode ($P_{W,OFF}$) in watts for gas-fired, oil-fired, and electric furnaces and boilers.

On October 20, 2010, DOE published a final rule in the **Federal Register** to amend its test procedure for consumer furnaces and boilers to establish a method for measuring the electrical energy use in standby mode and off mode for gas-fired and oil-fired boilers in satisfaction of 42 U.S.C. 6295(gg)(2)(A), which requires that test

[6] A large-diameter ceiling fan is a ceiling fan that is greater than seven feet in diameter. 10 CFR part 430, subpart B, appendix U, section 1.14.

[7] The list of covered products includes ''furnaces;'' however, EPCA defines a ''furnace,'' in relevant part, as ''an electric central furnace, electric boiler, forced-air central furnace, gravity central furnace, or low pressure steam or hot water boiler.'' (42 U.S.C. 6291(23)(C))

procedures for all covered products account for standby mode and off mode energy consumption. 75 FR 64621. DOE most recently updated its test procedure for consumer furnaces and boilers in a final rule published in the **Federal Register** on January 15, 2016 (January 2016 final rule). 81 FR 2628. The January 2016 final rule amended the existing DOE test procedure for consumer furnaces and boilers through a number of modifications designed to improve the consistency and accuracy of test results generated using the DOE test procedure and to reduce test burden. 81 FR 2628, 2629–2630 (Jan. 15, 2016).

EPCA established the initial energy conservation standards for consumer furnaces and boilers in terms of 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)). On November 19, 2007, DOE published a final rule in the **Federal Register** (the November 2007 final rule) that revised the energy conservation standards for certain consumer furnace and boiler product classes, with compliance required beginning on November 19, 2015. 72 FR 65136. Following DOE's adoption of the November 2007 final rule, several parties jointly sued DOE in the United States Court of Appeals for the Second Circuit (Second Circuit) to invalidate the rule, arguing that the standards adopted did not reflect the maximum improvement in energy efficiency that is technologically feasible and economically justified, as required by EPCA. Petition for Review, *State of New York, et al.* v. *Department of Energy, et al.,* Nos. 08–0311–ag(L); 08–0312–ag(con) (2d Cir. Filed Jan. 17, 2008). On April 21, 2009, the Second Circuit granted a motion by DOE for voluntary remand (which the petitioners did not oppose) that indicated that DOE would revisit its initial conclusions outlined in the November 2007 final rule in a subsequent rulemaking action but did not vacate the standards adopted in the November 2007 final rule.

On June 27, 2011, DOE published a direct final rule (June 2011 DFR) revising the energy conservation standards for consumer furnaces (as well as consumer central air conditioners and heat pumps) pursuant to the voluntary remand in *State of New York, et al.* v. *Department of Energy, et al.* 76 FR 37408. The June 2011 DFR amended the existing energy conservation standards for non-weatherized gas furnaces, mobile home gas furnaces, and non-weatherized oil furnaces, and amended the compliance date (but left the existing standards in place) for weatherized gas furnaces. The June 2011 DFR also established electrical standby mode and off mode standards for non-weatherized gas furnaces, mobile home gas furnaces, non-weatherized oil furnaces, mobile home oil furnaces, and electric furnaces. DOE confirmed the standards and compliance dates promulgated in the June 2011 DFR in a notice of effective date and compliance dates published in the **Federal Register** on October 31, 2011. 76 FR 67037.

Following DOE's adoption of the June 2011 DFR, the American Public Gas Association (APGA) filed a petition for review with the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) to invalidate the DOE rule as it pertained to non-weatherized natural gas furnaces and mobile home gas furnaces. Petition for Review, *American Public Gas Association, et al.* v. *Department of Energy, et al.,* No. 11–1485 (D.C. Cir. filed Dec. 23, 2011). On April 24, 2014, the Court granted a motion that approved a settlement agreement that was reached between DOE, APGA, and the various intervenors in the case, in which DOE agreed to a remand of the non-weatherized gas furnace and mobile home gas furnace portions of the June 2011 DFR in order to conduct further notice-and-comment rulemaking. Accordingly, the Court's order vacated the June 2011 DFR in part (*i.e.,* those portions relating to non-weatherized gas furnaces and mobile home gas furnaces) and remanded to the agency for further rulemaking. The energy conservation standards in the June 2011 DFR for the other consumer furnace product classes (as well as central air conditioners and heat pumps) were left in place.

On December 19, 2007, the Energy Independence and Security Act of 2007 (''EISA 2007''), Public Law 110–140, was signed into law. EISA 2007 revised the AFUE requirements and set design requirements for most consumer boiler product classes and required compliance with the amended standards beginning on September 1, 2012. (42 U.S.C. 6295(f)(3)) For gas-fired hot water boilers, oil-fired hot water boilers, and electric hot water boilers, EISA 2007 requires that residential boilers have an automatic means for adjusting water temperature.[8] EISA 2007 also disallows the use of constant-burning pilot lights in gas-fired hot water boilers and gas-fired steam boilers. EISA 2007 provided an exception for boilers that operate without any need for electricity or any electric connection, electric gauges, electric pumps, electric wires, or electric devices; those boilers were not required to meet the requirements outlined in EISA 2007 for other consumer boilers that require an electrical connection. (42 U.S.C. 6295(f)(3)(A)–(C); 10 CFR 430.32(e)(2)(ii)–(v)) DOE published a final rule technical amendment in the **Federal Register** on July 28, 2008 (July 2008 final rule technical amendment) to codify the energy conservation standard levels, design requirements, and compliance dates for residential boilers outlined in EISA 2007. 73 FR 43611. 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 terms of $P_{W,SB}$ and $P_{W,OFF}$ in addition to amended AFUE energy conservation standards. Compliance with the new and amended standards for consumer boilers was required beginning January 15, 2021. *Id.*

In this NOPR, DOE proposes to require certification and reporting of standby mode and off mode energy consumption for certain product classes, consistent with the energy conservation standards for standby mode and off mode energy consumption adopted in the June 2011 DFR and January 2016 final rule. DOE also proposes to require certification of the type of ignition system for all gas-fired consumer boilers consistent with the prescriptive design requirement set forth in EISA 2007 and subsequently codified by DOE in the July 2008 final rule technical amendment, which applies to all gas-fired consumer boilers.

5. Consumer Water Heaters

Consumer water heaters are included in the list of ''covered products'' for which DOE is authorized to establish and amend energy conservation standards and test procedures. (42 U.S.C. 6292)(a)(4)) DOE's energy conservation standards and test procedures for consumer water heaters are currently prescribed at 10 CFR 430.32(d) and 10 CFR part 430, subpart B, appendix E, respectively.

The Energy Efficiency Improvement Act of 2015 (EEIA 2015), Public Law 114–11, was enacted on April 30, 2015. The EEIA 2015 amended EPCA, in relevant part, by adding definitions for ''grid-enabled water heater'' and

[8] The automatic means for adjusting water temperature must ensure that an incremental change in the inferred heat load produces a corresponding incremental change in the temperature of the water supplied by the boiler.

''activation lock'' at 42 U.S.C. 6295(e)(6)(A). These products are intended for use as part of an electric thermal storage or demand response program. Among the criteria that define a ''grid-enabled water heater'' is an energy-related performance standard that is either an energy factor (EF) specified by a formula set forth in the statute, or an equivalent alternative standard that DOE may prescribe. (42 U.S.C. 6295(e)(6)(A)(ii)(III)(aa) and (bb)) In addition, the EEIA 2015 amendments to EPCA also directed DOE to require reporting on shipments and activations of grid-enabled water heaters and to establish procedures, if appropriate, to prevent product diversion for non-program purposes, and to publish related results. (42 U.S.C. 6295(e)(6)(C)–(D)) EEIA 2015 also required DOE to treat shipment data reported by manufacturers as confidential business information. (42 U.S.C. 6295(e)(6)(C)(iii)) On August 11, 2015, DOE published a final rule (August 2015 final rule) in the **Federal Register** that added definitions for ''grid-enabled water heater'' and ''activation lock'' to 10 CFR 430.2 and energy conservation standards for grid-enabled water heaters to 10 CFR 430.32(d). 80 FR 48004, 48009–48010. The August 2015 final rule did not establish provisions to require the reporting of shipments by manufacturers.

In this NOPR, DOE proposes to require each manufacturer to report annual shipments of their grid-enabled water heaters and to treat the annual shipments of grid-enabled water heaters as confidential business information.

6. Dishwashers

Dishwashers are included in the list of ''covered products'' for which DOE is authorized to establish and amend test procedures and energy conservation standards. (42 U.S.C. 6292)(a)(6)) DOE's test procedures for dishwashers are currently prescribed at 10 CFR 430.23(c) and appendix C1 to subpart B of 10 CFR part 430 (''appendix C1''). DOE's energy conservation standards for dishwashers are currently prescribed at 10 CFR 430.32(f).

In a direct final rule published on May 30, 2012 (''May 2012 direct final rule''), DOE amended the energy conservation standards and water use standards for dishwashers consistent with the levels submitted in a petition by groups representing manufacturers, energy and environmental advocates, and consumer groups. 77 FR 31918, 31919. Compliance with the standards established in the May 2012 direct final rule was required beginning May 30, 2013. *Id.* at 77 FR 31918. In a final determination published on December 13, 2016, DOE concluded that the amended energy conservation standards would not be economically justified at any level above the standards established in the May 2012 direct final rule, and therefore determined not to amend the standards. 81 FR 90072.

DOE most recently amended its dishwasher test procedures in a final rule published October 31, 2012, which established appendix C1. 77 FR 65942, 65947. Appendix C1 is currently required to demonstrate compliance with the energy conservation standards prescribed at 10 CFR 430.32(f). The current version of the DOE test procedure includes provisions for determining estimated annual energy use and per-cycle water consumption, among other metrics. (10 CFR 430.23(c))

In this NOPR, DOE proposes adding a certification reporting requirement to ensure that any assessment or enforcement testing pursuant to 10 CFR 429.104 and 429.110, respectively, would be performed using the same detergent used by the manufacturer for certifying compliance with the energy conservation standards.

7. Commercial Clothes Washers

CCWs are included in the list of ''covered equipment'' for which DOE is authorized to establish and amend energy conservation standards and test procedures. (42 U.S.C. 6311(1)(H)) EPCA requires the test procedures for CCWs to be the same as those established for consumer (residential) clothes washers (''RCWs''). (42 U.S.C. 6314(a)(8)) DOE's test procedures for CCWs are currently prescribed at 10 CFR 431.154 and reference DOE's test procedure for RCWs currently prescribed at appendix J2 to subpart B of 10 CFR part 430 (''appendix J2'').[9] DOE's energy conservation standards for CCWs are prescribed at 10 CFR 431.156(b).

In a final rule published on December 15, 2014, DOE amended the energy conservation standards and water standards for CCWs. 79 FR 74492 (''December 2014 Standards Final Rule''). Compliance with the standards established in the December 2014 Standards Final Rule was required beginning January 1, 2018. *Id.*

DOE most recently amended its CCW test procedures in a final rule published December 3, 2014. 79 FR 71624 (''December 2014 TP Final Rule''). The December 2014 TP Final Rule amended 10 CFR 431.152 to provide definitions for integrated water factor (''IWF'') and modified energy factor value calculated using appendix J2 (''MEF_{J2}'')—the metrics on which the current energy conservation standards are based—among other minor changes.

In this NOPR, DOE proposes to require reporting model characteristics used for determining applicable standards and for conducting product-specific enforcement provisions for clothes washers (which includes CCWs), and to specify rounding instructions for each newly reported value.

8. Battery Chargers

Battery chargers are ''covered products'' for which DOE is authorized to establish and amend energy conservation standards and test procedures. (42 U.S.C. 6295(u)) DOE's energy conservation standards for battery chargers are currently prescribed at 10 CFR 430.32(z). The test procedures for battery chargers are currently prescribed at 10 CFR part 430, subpart B appendix Y, ''Uniform Test Method for Measuring the Energy Consumption of Battery Chargers'' (''appendix Y''). The sampling and reporting requirements for battery chargers are set forth in 10 CFR 429.39.

On May 20, 2016, DOE published a final rule that established the test procedure for battery chargers at appendix Y. 81 FR 31827. In that final rule, DOE updated the battery selection criteria for multi-voltage, multi-capacity battery chargers; harmonized the instrumentation resolution and uncertainty requirements with the second edition of the International Electrotechnical Commission (''IEC'') 62301 standard for measuring standby power; defined and excluded back-up battery chargers from the testing requirements; outlined provisions for conditioning lead acid batteries; specified sampling and certification requirements; and corrected typographical errors in the current test procedure. *Id.*

On June 13, 2016, DOE established the current energy conservation standards for battery chargers, expressed as the maximum allowable unit energy consumption (''kWh/yr'') as a function of battery energy and voltage. 81 FR 38266.

Consistent with these prior regulatory amendments affecting battery chargers, this proposal would establish an annual filing date by which manufacturers

[9] The test procedures for CCWs prescribed at 10 CFR 431.154 also reference appendix J1 to subpart B of 10 CFR part 430 (''appendix J1''). For CCWs, Appendix J1 is required to demonstrate compliance with energy conservation standards applicable to CCWs manufactured before January 1, 2018. Any representations of compliance with the standards applicable to CCWs manufactured on or after January 1, 2018 must be based upon results generated using appendix J2.

would be required to submit the required certification information to DOE.

9. Dedicated-Purpose Pool Pumps

DPPPs are a subset of pumps, which are included in the list of ''covered equipment'' for which DOE is authorized to establish and amend energy conservation standards and test procedures. (42 U.S.C. 6311(1)(A)) DOE's test procedures for DPPPs are currently prescribed at 10 CFR 431.464(b) and DOE's energy conservation standards for DPPPs are prescribed at 10 CFR 431.465(f)–(h). The certification and reporting requirements for DPPPs are set forth in 10 CFR 429.59(b)(2)(iv)–(v) and (b)(3)(iv).

DOE's test procedure for determining DPPP energy efficiency was established in a final rule published on August 7, 2017. 82 FR 36858 (''August 2017 Final Rule''). The test procedure reflects the consensus of the Appliance Standards Rulemaking Federal Advisory Committee (ASRAC) negotiated rulemaking working group for DPPPs. (Docket No. EERE–2015–BT–STD–0008, Nos. 51 and 82) The August 2017 Final Rule also included certification and enforcement provisions for DPPPs.

In this NOPR, DOE proposes to clarify the certification reporting requirements for DPPPs in 10 CFR 429.59(b)(2)(iv) and (b)(3)(iv), in order to resolve potential confusion as to the scope of these provisions.

II. Synopsis of the Notice of Proposed Rulemaking

In this NOPR, DOE proposes to update the certification reporting requirements as follows:

(1) Align the CFLK certification reporting requirements at 10 CFR 429.33 with the CFLK energy conservation standards relating to: (a) Efficacy for light sources in CFLKs; (b) lumen maintenance, lifetime, and rapid cycle stress testing for medium screw base CFLs in CFLKs; (c) electronic ballasts for pin-based fluorescent lamps in CFLKs; (d) test sample size; and (e) kind of lamp.

(2) Include rated voltage and lamp diameter for IRLs and initial lumen output for GSILs in certification reports to determine applicable energy conservation standards under the GSIL and IRL certification reporting requirements at 10 CFR 429.27. Additionally, for IRLs include CRI in certification reports, an existing minimum energy conservation requirement for these products.

(3) Align the ceiling fan certification reporting requirements at 10 CFR 429.32 with existing energy conservation standards established in the January 2017 CF ECS Final Rule and the Energy Act of 2020. Additionally, specify rounding requirements for CFM/W and CFEI. Finally, add a reporting requirement for standby power consumption for small-diameter ceiling fans.

(4) Align the consumer furnace and boiler certification reporting requirements at 10 CFR 429.18 with the existing energy conservation standards by requiring reporting of standby mode and off mode energy consumption for classes with existing standby mode and off mode energy conservation standards, and clarifying that the requirement for certifying the type of ignition system applies to all gas-fired boilers (rather than just cast iron sectional gas-fired boilers).

(5) Add certification provisions at 10 CFR 429.17 to require water heater manufacturers to report the number of annual shipments of grid-enabled water heaters.

(6) Add certification provisions at 10 CFR 429.19 to require dishwasher manufacturers to indicate use of a new detergent formulation that replaces the detergent formulation currently specified, which has been discontinued.

(7) Add certification provisions at 10 CFR 429.46 to require CCW manufacturers to report model characteristics used for determining applicable standards and for conducting product-specific enforcement provisions; and specify rounding instructions for these reported values.

(8) Establish an annual filing date in 10 CFR 429.12, by which manufacturers of battery chargers would be required to submit the required certification information to DOE.

(9) Clarify the certification reporting requirements in 10 CFR 429.59 for DPPPs.

DOE's current and proposed reporting requirements, as well as the reason for the proposed change, are summarized in Table II.1 of this document.

TABLE II.1—SUMMARY OF PROPOSED CHANGES TO CERTIFICATION REPORTING REQUIREMENTS RELATIVE TO CURRENT CERTIFICATION REPORTING REQUIREMENTS

Current DOE certification reporting requirements	Proposed certification reporting requirements	Attribution
For CFLKs, no reporting requirement for efficacy for a lamp and integrated SSL circuitry.	Add reporting requirement for efficacy in lumens per watt (lm/W) and for lumen output in lumens (to determine the minimum efficacy standard) for a lamp and integrated SSL circuitry in a CFLK.	Required to verify whether the information provided is consistent with the certifier's statement of compliance with January 21, 2020 energy conservation standards.
For CFLKs, no reporting requirements for lumen maintenance at 1,000 hours, lumen maintenance at 40 percent of lifetime, the results of rapid cycle stress testing, and lifetime for medium screw base CFLs.	Add reporting requirements to specify the lumen maintenance at 1,000 hours in percent, lumen maintenance at 40 percent of lifetime in percent, number of units passing rapid cycle stress testing, and the lifetime in hours for medium screw base CFLs in a CFLK.	Required to verify whether the information provided is consistent with the certifier's statement of compliance with January 21, 2020 energy conservation standards.
For CFLKs, no reporting requirement specifying that a CFLK with pin-based sockets for fluorescent lamps have an electronic ballast.	Add reporting requirement to provide a declaration that CFLKs with pin-based sockets for fluorescent lamps have an electronic ballast.	Required to verify whether the information provided is consistent with the certifier's statement of compliance with January 21, 2020 energy conservation standards.
For CFLKs, no reporting requirement specifying that a CFLK is packaged with lamps to fill all sockets.	Add reporting requirement to provide a declaration that CFLKs are packaged with lamps to fill all sockets.	Required to verify whether the information provided is consistent with the certifier's statement of compliance with January 21, 2020 energy conservation standards.
For CFLKs, no reporting requirement for lab accreditation.	Add requirement for declaration that lamps packaged with CFLKs were tested by an International Laboratory Accreditation Cooperation (''ILAC'') accredited laboratory as required under 10 CFR 430.25.	Required to verify whether the information provided is consistent with the certifier's statement of compliance with laboratory accreditation requirements in 10 CFR 430.25.
For CFLKs, no reporting requirement for test sample size or kind of lamp for basic model of lamp.	Add a reporting requirement to provide the test sample size and kind of lamp for each basic model of lamp in the CFLK.	Required to verify whether the information provided is consistent with the certifier's statement of compliance with sampling requirements in 10 CFR 429.12(b).

TABLE II.1—SUMMARY OF PROPOSED CHANGES TO CERTIFICATION REPORTING REQUIREMENTS RELATIVE TO CURRENT CERTIFICATION REPORTING REQUIREMENTS—Continued

Current DOE certification reporting requirements	Proposed certification reporting requirements	Attribution
For GSILs and IRLs, does not require reporting all metrics that aid in ensuring compliance.	Add reporting requirements for rated voltage, lamp diameter, and CRI for IRLs and initial lumen output for GSILs.	Required to verify whether the information provided is consistent with the certifier's statement of compliance with existing standards or product class characterizations.
For ceiling fans, reporting requirement includes number of speeds and design requirement declaration.	Add reporting requirements for small diameter ceiling fans to include blade span, ceiling fan efficiency in CFM/W, declarations regarding multi-head fans along with additional product-specific information for small-diameter ceiling fans: Standby power, blade edge thickness (in), airflow (CFM) at high speed, blade RPM at high speed, and the distance (in) between the ceiling and the lowest point on the fan blades (in both hugger and standard configurations for multi-mount fans).	Required to verify whether the information provided is consistent with the certifier's statement of compliance with January 21, 2020 energy conservation standards to reflect the January 2017 CF ECS Final Rule.
For ceiling fans, reporting requirement includes number of speeds and design requirement declaration.	Add reporting requirements for large diameter ceiling fans to include CFEI for high speed and 40 percent speed or the nearest speed that is not less than 40 percent speed.	Required to verify whether the information provided is consistent with the certifier's statement of compliance with January 21, 2020 energy conservation standards to reflect the Energy Act of 2020.
For ceiling fans, no rounding requirements for the small diameter or large diameter ceiling fan efficiencies.	Amend 10 CFR 429.32 to specify that represented values of efficiency must be rounded to the nearest whole number for small diameter ceiling fans in terms of CFM/W and to the nearest hundredth for large diameter ceiling fans in terms of CFEI.	Required to verify whether the information provided is consistent with the certifier's statement of compliance with January 21, 2020 energy conservation standards to reflect the January 2017 CF ECS Final Rule and the Energy Act of 2020.
For consumer boilers, non-weatherized oil-fired furnaces (including mobile home furnaces) and electric furnaces, no reporting requirement for standby mode and off mode energy consumption.	Add reporting requirement for standby mode and off mode energy consumption of consumer boilers, non-weatherized oil-fired furnaces (including mobile home furnaces), and electric furnaces.	Required to verify whether the information provided is consistent with the certifier's statement of compliance with May 1, 2013 energy conservation standards for non-weatherized oil-fired furnaces (including mobile home furnaces) and electric furnaces, and the January 15, 2021 energy conservation standards for consumer boilers.
For gas-fired boilers, reporting requirement to certify type of ignition system applies only to cast iron sectional gas-fired boilers.	Expand reporting requirement for type of ignition system to apply to all gas-fired boiler.	Required to verify whether the information provided is consistent with the certifier's statement of compliance with September 1, 2012 energy conservation standards, which includes a prescriptive requirement that disallows a constant-burning pilot ignition for all gas-fired boilers.
For grid-enabled water heaters, no requirement for manufacturers to submit annual shipment data.	Require manufacturers to submit annual shipment data for grid-enabled water heaters at 10 CFR 429.17.	Required by EPCA under 42 U.S.C. 6295(e)(6)(C)(i).
For testing dishwashers, no reporting requirement for certification based on testing with an alternate detergent in place of the one currently specified for use, which has been discontinued.	Require manufacturers to report use of the new detergent formulation that replaces the detergent formulation currently specified.	Required to ensure that any assessment or enforcement testing would be performed using the same detergent used by the manufacturer for certifying compliance with the energy conservation standards.
For CCWs, does not require reporting of clothes container capacity, loading axis, or remaining moisture content value.	Add reporting requirements for clothing container capacity, type of loading (top-loading or front-loading), and remaining moisture content, including applicable rounding instructions for these reported values.	Required to verify whether the information provided is consistent with the certifier's statement of compliance with January 1, 2018 energy conservation standards and to conduct product-specific enforcement provisions.
For battery chargers, reporting requirements are included in 10 CFR 429.39, but no annual filing date is specified in 10 CFR 429.12.	Establish an annual filing date of September 1, by which manufacturers would be required to submit required reporting information to DOE.	Required to ensure certification information is current on an annual basis, consistent with the requirements for other covered products and equipment.
For DPPPs, includes certification reporting requirements for certain models that may cause confusion as to the scope of these provisions.	Clarify that reporting requirements apply only to models subject to energy conservation standards.	Eliminate possible misunderstanding that these reporting requirements apply to models that are not subject to energy conservation standards, when in fact these requirements do not apply to such models, per the current provisions in § 429.12(a).

DOE is not proposing amendments to the test procedures or energy conservation standards for CFLKs, GSILs, IRLs, ceiling fans, consumer furnaces and boilers, consumer water heaters, dishwashers, CCWs, battery chargers, or DPPPs.

III. Discussion

Certification of compliance to DOE is a mechanism that helps manufacturers understand their obligations for distributing models of covered products and equipment that are subject to energy conservation standards. Certification reports include characteristics of covered products or equipment used to determine which standard applies to a given basic model, and they also help DOE identify models and/or regulated entities that may not be in compliance with the applicable regulations.

For the products and equipment addressed in this NOPR, DOE has identified areas in which the certification reporting requirements are not consistent with the information required to verify whether the information provided is consistent with the certifier's statement of compliance with current energy conservation standards. DOE is proposing amendments to the certification and reporting provisions for these products and equipment, as discussed in the following sections, to ensure reporting that is consistent with currently applicable energy conservation standards and to ensure DOE has the information necessary to determine the appropriate classification of products for the application of standards. In addition to the specific proposals discussed in the following sections, DOE is also proposing minor

amendments to ensure consistency among terms used throughout DOE's certification and reporting provisions.

A. Ceiling Fan Light Kits

1. Scope of Applicability

This NOPR applies to CFLKs, which are products designed to provide light from a ceiling fan and can be either: (1) Integral, such that the equipment is attached to the ceiling fan prior to the time of retail sale; or (2) attachable, such that at the time of retail sale the equipment is not physically attached to the ceiling fan, but may be included inside the ceiling fan packaging at the time of sale or sold separately for subsequent attachment to the fan. 10 CFR 430.2 (42 U.S.C. 6291(50)). In the December 2015 CFLK TP Final Rule, DOE revised its interpretation of the CFLK definition to state that the requirement for a CFLK to be ''designed to provide light'' includes all light sources in a CFLK, including accent lighting. 80 FR 80209, 80214. DOE seeks comment on whether CFLKs are still being distributed in commerce that were manufactured prior to January 21, 2020, and therefore, DOE should retain compliance requirements for these standards.

2. Reporting

Under the existing requirements in 10 CFR 429.33(b), manufacturers must report: (1) System efficacy and rated wattage for CFLKs with medium screw base lamps; (2) system efficacy, rated wattage, and lamp length for CFLKs with pin-based fluorescent lamps; and (3) rated wattage and number of individual sockets for CFLKs with any other socket type. The existing reporting requirements also require a declaration that CFLKs with any other socket type (*i.e.,* not medium screw base or pin-based) meet the applicable design requirements. These requirements provide for certifying compliance with the January 1, 2007 standards. DOE is proposing to replace these requirements and align the reporting requirements with the January 21, 2020 standards and proposing general certification requirements for CFLKs. DOE discusses these proposed updates in the sections as follows.

a. Efficacy

The January 21, 2020 standards require that all lamps and integrated SSL packaged with CFLKs meet certain efficacy standards based on the lumens of the lamp. To reflect the January 21, 2020 standards, DOE proposes to require a certification report to identify each basic model of lamp or integrated SSL circuitry packaged with the CFLK basic model and to provide the corresponding lumen output in lumens and the efficacy in lumens per watt (''lm/W'') for each lamp/SSL basic model. The inclusion of basic model number, associated lumen output, and efficacy in the certification report provides necessary data to determine whether the basic model of the lamp in the CFLK complies with the January 21, 2020 standards requiring a minimum efficacy based on the lumens of the lamp.

The current test procedures and reporting requirements for various lighting products do not all use the same terms for lumen output and efficacy (*e.g.,* lumen output, average lumen output, initial lumen output, rated lumen output, efficacy, lamp efficacy, initial lamp efficacy, system efficacy). DOE therefore proposes to use the common terms ''lumen output'' and ''efficacy'' to identify the required values, and to make conforming revisions to the rounding requirements at 10 CFR 429.33(c).

DOE seeks comments on requiring the reporting of lumen output and efficacy to certify compliance to January 21, 2020 standards.

b. Lumen Maintenance, Lifetime, and Rapid Cycle Stress Test

Both the January 1, 2007 standards and January 21, 2020 standards include, for medium screw base CFLs packaged with a CFLK, minimum requirements for lumen maintenance at 1,000 hours, lumen maintenance at 40 percent of lifetime, lifetime, and the number of units in the tested sample that must pass the rapid cycle stress test. 10 CFR 430.32(s)(3)(i) and (s)(6)(i). Currently, the reporting requirements do not reflect these requirements for CFLs packaged with CFLKs. DOE proposes to require these values to verify whether the information provided is consistent with the certifier's statement of compliance with the January 21, 2020 standards. Specifically, for CFLKs packaged with a medium screw base CFL, for each basic model of CFL, DOE proposes to require reporting lumen maintenance at 1,000 hours and lumen maintenance at 40 percent of lifetime in percentages; lifetime in hours; and the number of CFL units that pass rapid cycle stress testing. Similar to DOE's reporting requirements for CFLs sold individually (see 10 CFR 429.35), DOE proposes to allow certification of lumen maintenance at 40 percent of lifetime, lifetime, and rapid cycle stress testing of a medium screw base CFL in a CFLK to be based on estimations until testing is complete. This would allow new basic models of CFLKs with medium screw based CFLs to be distributed prior to completion of lifetime testing.

DOE seeks comment on reporting lumen maintenance at 1,000 hours and at 40 percent of lifetime, lifetime, and the rapid cycle stress test results for medium screw base CFLs in CFLKs. DOE seeks comment on allowing estimates for lumen maintenance at 40 percent of lifetime, lifetime, and the rapid cycle stress test result.

c. Design Requirement Declarations

The January 21, 2020 standards continue to require that CFLKs with pin-based sockets for fluorescent lamps must use an electronic ballast. 10 CFR 430.32(s)(6)(ii). The current certification reporting requirements require for CFLKs with any socket type other than medium screw base or pin base a declaration that the basic model meets the applicable EPCA design requirement [10] and that the features that have been incorporated into the ceiling fan light kit meet the applicable design requirement (*e.g.,* circuit breaker, fuse, ballast). 10 CFR 429.33(b)(3). DOE proposes to make this declaration more specific to existing requirements and require that, for a CFLK with a pin-based socket for a fluorescent lamp, the manufacturer provide in the certification report a declaration that that such a CFLK has an electronic ballast. This will allow DOE to verify whether the information provided is consistent with the certifier's statement of compliance with the January 21, 2020 standard requirement that a pin-based socket fluorescent lamp in a CFLK have an electronic ballast. 10 CFR 429.12(b).

The January 21, 2020 standards also continue to require that, for all lamp types, the CFLK be packaged with lamps to fill all of the sockets. 10 CFR 430.32(s)(6). DOE proposes to require a declaration that the CFLK is packaged with lamps to fill all sockets of all lamp types (*e.g.,* candelabra base, medium screw base, pin-based). The declaration provides DOE with data indicating whether the manufacturers have addressed the January 21, 2020 standard requirement that for all lamp types the CFLK is packaged with lamps to fill all of the sockets.

DOE seeks comment on requiring a declaration that pin-based fluorescent lamps in CFLKs have an electronic ballast. DOE also seeks comment on requiring a declaration that the CFLK are packaged with lamps sufficient to fill all sockets.

[10] CFLKs that meet the January 21, 2020 efficacy standards are presumed to meet the EPCA-mandated 190 W limit requirement. See 42 U.S.C. 6295(ff)(4)(C) and 10 CFR 430.32(s)(5).

d. Basic Model, Lamp Type, and Sample Size Requirements

In this NOPR, DOE is also proposing certain certification reporting requirements for CFLKs to provide further specificity as to what is required to be reported. DOE is proposing to add language in 10 CFR 429.33(b) stating that manufacturers must provide certification values for each basic model of lamp included in the basic model of CFLK under test. This will allow DOE to use the appropriate certification values to verify whether the information provided is consistent with the certifier's statement of compliance with January 21, 2020 standards. If the same basic model of lamp is used in multiple CFLK basic models, manufacturers may use the same set of test data for that basic model of lamp to show compliance for each CFLK basic model in which it is included.

DOE is also proposing manufacturers provide the test sample size and kind of lamp for each basic model of a lamp and/or each basic model of integrated SSL circuitry packaged with a basic model of CFLK. Because pin-based socket fluorescent lamps and medium-based socket CFLs in CFLKs are lamp types subject to additional standards, the lamp type of the basic model in the CFLK is necessary to determine which product class the basic model falls into.

Additionally, DOE is proposing that manufacturers provide, if applicable, a declaration that each basic model of lamp packaged with the basic model of CFLK was tested by an ILAC accredited laboratory. Lamps identified in 10 CFR 430.25 must be tested by laboratories with these accreditation requirements, and this declaration will allow DOE to verify whether the information provided is consistent with the certifier's statement of compliance with this requirement. DOE seeks comment on the other proposed amendments to the certification reporting requirements.

e. Rounding Requirements

DOE is proposing rounding requirements for the certification reporting requirements proposed in this notice. DOE is proposing that lumen output be rounded to three significant digits; lumen maintenance at 1,000 hours and at 40 percent of lifetime be rounded to the nearest tenth of a percent; and lifetime be rounded to the nearest whole hour. Currently, DOE specifies that any represented value of initial lamp efficacy, system efficacy or luminaire efficacy be rounded to the nearest tenth. DOE is proposing to simplify this to state any represented value of efficacy be rounded to the nearest tenth.

3. Reporting Costs and Impacts

In this NOPR, DOE proposes to align CFLK certification reporting requirements with the energy conservation standard requirements applicable to CFLKs manufactured on and after January 21, 2020.

For CFLKs with sockets for medium screw base lamps, manufacturers currently report two values (*i.e.,* efficacy, wattage), but would report four to nine values (*e.g.,* efficacy, lumen output, test sample size, kind of lamp, a declaration of ILAC accreditation, lumen maintenance at 40 percent of lifetime, lumen maintenance at 1,000 hours, lifetime, units passing rapid cycle stress test), depending on the kind of lamps packaged with the CFLK, if the proposed amendments are adopted. For CFLKs with pin-based sockets for fluorescent lamps, manufacturers currently report three values (*i.e.,* efficacy, wattage, length of lamp) and would report five values (*i.e.,* efficacy, lumen output, test sample size, kind of lamp, and a declaration of ILAC accreditation), if the proposed amendments are adopted. For CFLKs with lamps of other socket types, manufacturers currently report two values (*i.e.,* wattage, number of individual sockets), but would report five values (*i.e.,* efficacy, lumen output, test sample size, kind of lamp, and a declaration of ILAC accreditation), if the proposed amendments are adopted.

DOE has tentatively determined that these proposed amendments would not impose additional costs for manufacturers because manufacturers of CFLKs are already submitting certification reports to DOE and should have readily available the information that DOE is proposing to collect as part of this rulemaking. DOE does not believe the revised reporting requirements will cause any measurable change in reporting burden or hours as compared to what CFLK manufacturers are currently doing today. DOE requests comment on the certification reporting costs of the amendments proposed for CFLKs.

B. GSILs and IRLs

1. Scope of Applicability

This NOPR applies to GSILs and IRLs. DOE defines GSILs as a standard incandescent or halogen type lamp intended for general service applications; has a medium screw base; has a lumen range between 310–2600 lumens or, in the case of a modified spectrum lamp, between 232–1,950 lumens; and is capable of being operated at a voltage range at least partially within 110–130 volts. The GSIL definition does not include certain lamp types (see 10 CFR 430.2). 10 CFR 430.2. DOE defines IRLs as any lamp in which light is produced by a filament heated to incandescence by an electric current; contains an inner reflective coating on the outer bulb to direct the light; is not colored; is not designed for rough or vibration service applications; is not an R20 short lamp; has an R, PAR, ER, BR, BPAR,[11] or similar bulb shapes with an E26 medium screw base; has a rated voltage or voltage range that lies at least partially in the range of 115–130 volts; has a diameter that exceeds 2.25 inches; and has a rated wattage that is 40 watts or higher. 10 CFR 430.2.

2. Reporting

Under the existing requirements in 10 CFR 429.27(b)(2)(ii) for IRLs manufacturers must report: (1) The testing laboratory's International Laboratory Accreditation Cooperation (''ILAC'') accreditation body's identification number or other approved identification assigned by the ILAC accreditation body; (2) production dates of the units tested; (3) the 12-month average lamp efficacy in lumens per watt (lm/W), and (4) lamp wattage (W).

EISA 2007 established a CRI requirement for IRLs.[12] In the June 2021 NOPR, DOE is proposing to include a test method for determining CRI of IRLs. 86 FR 29888, 29902. To verify whether the information provided is consistent with the certifier's statement of compliance with standards, DOE is proposing to require the reporting of CRI for IRLs. Additionally, for IRLs DOE is proposing to require the reporting of rated voltage and lamp diameter. Because rated voltage and lamp diameter are used to determine the applicable energy conservation standards for IRLs, collecting this information helps DOE evaluate whether a basic model meets the appropriate energy conservation standard requirements (see 10 CFR 430.32(n)(6)). DOE is proposing to add rated voltage, lamp diameter and CRI for IRLs only for annual filing certification

[11] Reflector (''R''), parabolic aluminized reflector (''PAR''), elliptical reflector (''ER''), bulged reflector (''BR''), bulged parabolic aluminized reflector (''BPAR'').

[12] Section 321(a) of EISA 2007 established CRI requirements for lamps that are intended for a general service or general illumination application (whether incandescent or not); have a medium screw base or any other screw base not defined in ANSI C81.61–2006; are capable of being operated at a voltage at least partially within the range of 110 to 130 volts; and are manufactured or imported after December 31, 2011.

reporting and not for the new basic model initial certification reporting. In the June 2021 NOPR, DOE is proposing to remove the requirement of submitting new basic model initial certification reports for IRLs. 86 FR 29888, 29905. Hence, in this NOPR, DOE does not propose to make changes to the initial certification reporting for IRLs. If the proposed removal of initial certification reports for IRLs is not adopted, DOE will add these values to the initial certification reporting requirements. DOE seeks comments on requiring the reporting of CRI to certify compliance with existing energy conservation standard requirements for IRLs. DOE also seeks comment on requiring the reporting of lamp diameter and rated voltage to help determine the applicable energy conservation standard for IRLs.

Under the existing requirements in 10 CFR 429.27(b)(2)(iii) for GSILs manufacturers must report: (1) The testing laboratory's ILAC accreditation body's identification number or other approved identification assigned by the ILAC accreditation body; (2) production dates of the units tested; (3) the 12-month average maximum rate wattage in watts (''W''); (4) the 12-month average minimum rated lifetime (hours), and (5) the 12-month average CRI. DOE is proposing to also require the reporting of initial lumen output for GSILs because the lamp lumens help DOE evaluate whether a basic model meets the appropriate energy conservation standard requirements (see 10 CFR 430.32(x)). DOE seeks comment on requiring the reporting of initial lumen output to help determine the applicable energy conservation standard for GSILs.

3. Reporting Costs and Impacts

In this NOPR, DOE proposes to align IRL certification reporting requirements with the existing energy conservation standard requirements. Additionally, it proposes to include reporting requirements for GSILs and IRLs that will help DOE determine applicable energy conservation standards for these products.

For IRLs, manufacturers currently certify four values (*i.e.,* ILAC accreditation, production dates, lamp efficacy, and lamp wattage), but would report seven values with the three additional proposed reporting values (*i.e.,* CRI, lamp diameter, rated voltage), if the proposed amendments are adopted. For GSILs, manufacturers currently report five values (*i.e.,* ILAC accreditation, production dates, wattage, lifetime, and CRI), but would report six values with the one additional proposed reporting value (*i.e.,* lumens), if the proposed amendments are adopted. Note that in the June 2021 NOPR, DOE is proposing to remove the reporting of production dates for IRLs and GSILs. 86 FR 29888, 29905.

DOE has tentatively determined that these proposed amendments would not impose additional costs for manufacturers because manufacturers of IRLs and GSILs are already submitting certification reports to DOE. Hence, manufacturers should have readily available the information that DOE is proposing to collect as part of this rulemaking because it is necessary to determine applicable energy conservation standards or to meet existing statutory requirements. DOE does not believe the revised reporting requirements will cause any measurable change in reporting burden or hours as compared to what manufacturers of IRLs and GSILs are currently doing today. DOE requests comment on the certification and reporting costs of the amendments proposed for IRLs and GSILs and whether it will result in an increase in reporting burden.

C. Ceiling Fans

1. Scope of Applicability

The Energy Policy and Conservation Act defines ''ceiling fan'' as ''a nonportable device that is suspended from a ceiling for circulating air via the rotation of fan blades.'' (42 U.S.C. 6291(49)) DOE codified the statutory definition in 10 CFR 430.2. In the July 2016 Final Rule, DOE stated that the test procedure applies to any product meeting this definition, including fans designed for applications where large airflow volume may be needed and highly decorative fans. 81 FR 48620, 48622. DOE stated, however, that the ceiling fan test procedure does not apply to the following fans: belt-driven ceiling fans, centrifugal ceiling fans, oscillating ceiling fans, and ceiling fans whose blades' plane of rotation cannot be within 45 degrees of horizontal. *Id.*

2. Reporting

Ceiling fan manufacturers must submit certification reports for ceiling fan basic models before they are distributed in commerce. 10 CFR 429.12. The current requirements for certification reports for ceiling fans correspond to the design requirements specified in EPCA. (See 42 U.S.C. 6295(ff)(1)) These requirements are set forth at 10 CFR 429.32(b), which requires reporting of the number of speeds within the ceiling fan controls, and a declaration that the manufacturer has incorporated the applicable design requirements. The current certification requirements do not reflect the amended energy conservation standards adopted in the January 2017 CF ECS final rule or the amended standards for large-diameter ceiling fans adopted by Congress in the Energy Act of 2020. 82 FR 6826; 42 U.S.C. 6295(ff)(6)(C)(i), as codified; 86 FR 28469.

a. Small-Diameter Ceiling Fan Requirements

In the September 2019 NOPR, DOE proposed to update the reporting requirements for ceiling fans to include product-specific information that would be required to certify compliance with the amended energy conservation standards established in January 2017 CF ECS final rule. 84 FR 51440, 51450. DOE did not finalize the proposed requirements from the September 2019 NOPR and is revisiting the certification and rounding requirements in this NOPR with a new proposal.

Product-specific information is necessary to determine the product class and minimum allowable ceiling fan efficiency that would be required to certify compliance with current energy conservation standards. For small-diameter ceiling fans, the product class (*i.e.,* very small-diameter, standard, hugger, high-speed small-diameter) is determined using blade span (in), blade edge thickness (in), airflow (CFM) at high speed, blade revolutions per minute (''RPM'') at high speed, and the represented distance (in) between the ceiling and the lowest point on the fan blades. Further, identification of whether a small-diameter ceiling fan is a multi-head ceiling fan is necessary to determine applicable standards. Specifically, a multi-head ceiling fans require calculating ceiling fan efficiency differently than other small-diameter ceiling fans by including the airflow and power consumption of all fan heads (see section 4.1.1 of appendix U).

Accordingly, DOE proposes to require that certification reports include the following public product-specific information for each ceiling fan basic model: (1) Blade span in inches; (2) ceiling fan efficiency in CFM/W; and (3) a declaration whether the fan is a multi-head ceiling fan.

For each ceiling fan basic model, DOE also proposes to require additional product-specific information, including: (1) Blade edge thickness (in), airflow (CFM) at high speed, and blade revolutions per minute (''RPM'') at high speed; and (2) for LSSD ceiling fans, the distance (in) between the ceiling and the lowest point on the fan blades. Manufacturers are already required to determine these values as part of the current test procedure for ceiling fans and would be required to use these

values to determine which amended energy conservation standards apply to their basic models.

Further, DOE proposes to require reporting of standby power consumption (in watts) for small-diameter ceiling fans. DOE notes that standby power consumption is already required to be measured in section 3.6 of appendix U and is an input into the calculation of ceiling fan efficiency in section 4 of appendix U. Therefore, DOE determines that the reporting of standby power for these ceiling fans will not result in an increase in reporting burden for manufacturers.

b. Large-Diameter Ceiling Fan Requirements

The LDCF product class is identified based on blade span (in) only. In addition, consistent with the Energy Act of 2020, LDCFs must now meet two separate standards based on the CFEI metric, with one standard based on operation of the fan at high speed and a second standard based on operation of the fan at 40 percent speed or the nearest speed that is not less than 40 percent speed. (See 42 U.S.C. 6295(ff)(6)(C)(i)(II), as codified) Accordingly, DOE proposes to amend the reporting requirements for LDCFs to require reporting blade span in inches, CFEI for high speed, and CFEI for 40 percent speed or the nearest speed that is not less than 40 percent speed.

c. Rounding Requirements

DOE proposes amendments to 10 CFR 429.32 to specify that represented values are to be determined consistent with the test procedures in appendix U and to specify rounding requirements for represented values. DOE proposes that manufacturers round any represented value of ceiling fan efficiency for small diameter ceiling fans, expressed in CFM/W, to the nearest whole number. Additionally, for large diameter fans, DOE proposes to specify that any represented value of CFEI must be rounded to the nearest hundredth of a CFEI.

DOE seeks comment on the proposed updated reporting requirements for small-diameter ceiling fans and LDCFs.

3. Reporting Costs and Impacts

In this NOPR, DOE proposes to align ceiling fan certification reporting requirements with the energy conservation standard requirements applicable to ceiling fans manufactured on and after January 21, 2020, and with the May 2021 Technical Amendment.

For all ceiling fans, manufacturers currently report two fields (*i.e.,* the number of speeds within the ceiling fan controls and a declaration that the manufacturer has incorporated the applicable design requirements). 10 CFR 429.32(b)(2). For small-diameter ceiling fans, manufacturers would be required to additionally report five to eight fields (*i.e.,* blade span, CFM/W, standby power, a declaration whether the fan is a multi-head ceiling fan, blade edge thickness, CFM and RPM at high speed, and the represented distance between the ceiling and the lowest point on the fan blades), if the proposed amendments are adopted. For large-diameter ceiling fans, manufacturers would be required to additionally report three fields (*i.e.,* blade span, CFEI for high speed and 40 percent speed or the nearest speed that is not less than 40 percent speed), if the proposed amendments are adopted.

DOE has tentatively determined that these proposed amendments would not impose additional costs for manufacturers because manufacturers of ceiling fans are already submitting certification reports to DOE and should have readily available the information that DOE is proposing to collect as part of this rulemaking. Any added fields are reflective of the product-specific information needed to verify whether the information provided is consistent with the certifier's statement of compliance with the energy conservation standard requirements applicable to ceiling fans manufactured on and after January 21, 2020, established in January 2017 CF ECS final rule and the Energy Act of 2020. DOE does not believe the revised reporting requirements will cause any measurable change in reporting burden or hours as compared to the current requirements for ceiling fan manufacturers. DOE seeks comment on the certification and reporting costs of the amendments proposed for ceiling fans.

D. Consumer Furnaces and Boilers

1. Scope of Applicability

EPCA defines the term ''furnace'' to mean a product which utilizes only single-phase electric current, or single-phase electric current or DC current in conjunction with natural gas, propane, or home heating oil, and which: (1) Is designed to be the principal heating source for the living space of a residence; (2) is not contained within the same cabinet with a central air conditioner whose rated cooling capacity is above 65,000 Btu per hour; (3) is an electric central furnace, electric boiler, forced-air central furnace, gravity central furnace, or low pressure steam or hot water boiler; and (4) has a heat input rate of less than 300,000 Btu per hour for electric boilers and low pressure steam or hot water boilers and less than 225,000 Btu per hour for forced-air central furnaces, gravity central furnaces, and electric central furnaces. (42 U.S.C. 6291(23)) DOE has codified this definition at 10 CFR 430.2, where it also defines ''electric central furnace,'' ''electric boiler,'' ''forced-air central furnace,'' ''gravity central furnace,'' and ''low pressure steam or hot water boiler''.

The changes proposed in this section apply to non-weatherized oil-fired furnaces, electric furnaces, and consumer boilers meeting the definitions in 10 CFR 430.2.

2. Reporting

Consumer furnace and boiler manufacturers currently must provide the AFUE in percent and the input capacity in British thermal units per hour (''Btu/h'') in their certification report. In addition, for cast-iron sectional boilers, manufacturers must include the type of ignition system for gas-fired steam and hot water boilers and a declaration of whether certification is based on linear interpolation or testing. For hot water boilers, manufacturers must also include a declaration that the manufacturer has incorporated the applicable design requirements. For multi-position furnaces, the AFUE reported for each basic model must be based on testing in the least-efficient configuration, but manufacturers can optionally report and make representations of additional AFUE values based on testing in other configurations. 10 CFR 429.18(b). DOE proposes to modify some of these requirements and add new requirements to better align with the existing standards and aid in determining which energy conservation standards apply to a given basic model for non-weatherized oil-fired consumer furnaces (including mobile home furnaces), electric consumer furnaces, and consumer boilers. The specific changes are discussed in more detail in the following sections.

a. Standby Mode and Off Mode Energy Consumption

DOE's current standby mode and off mode energy consumption standards for non-weatherized oil-fired furnaces (including mobile home furnaces), electric furnaces, and consumer boilers are in terms of $P_{W,SB}$ and $P_{W,OFF}$ (watts). 10 CFR 430.32(e)(1)(iii) and (e)(2)(iii)(B). However, the reporting requirements for consumer furnaces and boilers at 10 CFR 429.18 do not include a requirement to certify the standby mode

and off mode energy consumption of non-weatherized oil-fired furnaces (including mobile home furnaces), electric furnaces, or consumer boilers. Therefore, DOE proposes to require that manufacturers report values for $P_{W,SB}$ and $P_{W,OFF}$ in their certification reports for non-weatherized oil-fired furnaces (including mobile home furnaces), electric furnaces, and consumer boilers.

Additionally, some manufacturers of consumer furnaces and consumer boilers use identical controls and electrical components across various models and/or product lines with different characteristics (*e.g.,* input capacity) and across AFUE levels. The differences in characteristics may prevent these basic models from being grouped as a single basic model, but because the basic models have identical controls and electrical components affecting standby mode and off mode energy consumption, the standby mode or off mode test result would be expected to be the same for both models. Therefore, DOE proposes that if all electrical components that would impact the standby mode and off mode energy consumption are identical between multiple basic models, manufacturers can optionally test only one of the basic models and use test data from that basic model to rate the standby mode and off mode consumption for other basic models having identical controls and electrical components affecting standby mode and off mode energy consumption.

b. Type of Ignition System for Gas-Fired Consumer Boilers

The energy conservation standards for consumer boilers specify that for gas-fired hot water boilers and gas-fired steam boilers, a constant-burning pilot ignition system is not permitted. 10 CFR 430.32(e)(2)(iii). Currently, manufacturers are required to certify the type of ignition system only for cast iron sectional gas-fired hot water and steam boilers. 10 CFR 429.18(b)(2)(ii). ''Cast iron sectional'' refers to the construction of the boiler heat exchanger, which is composed of cast iron sections. The energy conservation standards are not limited to only consumer boilers with cast iron sectional heat exchangers, but rather are applicable to all gas-fired hot water boilers and gas-fired steam boilers, including those with heat exchangers made from other materials (*e.g.,* copper, aluminum, stainless steel). Therefore, DOE proposes to modify the reporting requirement for the type of ignition system such that the type of ignition system must be certified for all gas-fired hot water boilers and gas-fired steam boilers. This change would allow DOE to confirm that the manufacturer-reported type of ignition system for a given basic model meets the design requirement for all types of gas-fired hot water boilers and gas-fired steam boilers. In addition, 10 CFR 429.18(b)(3) requires that for hot water boilers, the manufacturer include in their certification report a declaration that the manufacturer has incorporated the applicable design requirements. As discussed, the standards for gas-fired steam boilers also include a design requirement that use of a constant-burning pilot ignition is not permitted. Therefore, DOE proposes to update the reporting requirements in 10 CFR 429.18(b)(3) to require that manufacturers of gas-fired steam boilers also include a declaration in the certification report that the basic model meets the design requirement criterion.

c. Rounding Requirements

DOE is proposing rounding requirements for the certification reporting requirements proposed in this notice for standby mode and off mode energy consumption. Specifically, DOE proposes to require that values for standby mode and off mode energy consumption be rounded to the nearest 0.1 watts.

In addition, the represented value of AFUE currently must be truncated to one-tenth of a percentage point. 10 CFR 429.18(a)(2)(vii). DOE proposes to modify this requirement to state that AFUE must be rounded to the nearest one-tenth of a percentage point. This change, if adopted, would treat consumer furnaces and boilers in a manner consistent with other types of covered products and equipment, for which represented values are generally required to be rounded rather than truncated. DOE notes that this change could only increase the represented AFUE value, and as such manufacturers would have an option of whether to re-rate the AFUE of existing models that would be impacted by this change.

3. Reporting Costs and Impacts

In this NOPR, DOE proposes to align consumer furnace and boiler certification reporting requirements with the existing energy conservation standard requirements.

For non-weatherized oil-fired consumer furnaces (including mobile home furnaces), electric consumer furnaces, and consumer boilers, the proposed changes, if finalized, would require manufacturers to report two additional values (*i.e.,* $P_{W,SB}$ and $P_{W,OFF}$) in their annual certification reports. For gas-fired hot water and gas-fired steam boiler models that are not cast-iron sectional boilers, the proposed changes, if finalized, would require additional reporting of the type of ignition system.

Manufacturers of consumer furnaces and boilers are currently required to certify various items to DOE, depending on the product class and applicable standards, which can include AFUE, input rate, type of ignition system, and whether applicable design requirements are incorporated. Because manufacturers of these products are already submitting certification reports to DOE and should have readily available the information that DOE is proposing to collect as part of this rulemaking, DOE does not believe the revised reporting requirements would cause any appreciable change in reporting burden or hours as compared to what consumer furnace and boiler manufacturers do currently. Additionally, because the proposed AFUE rounding requirement would only increase represented AFUE values, manufacturers may choose to maintain current AFUE ratings; therefore, DOE does not expect any cost associated with this proposal.

The only product class for which no certification reporting is currently required is electric steam boilers, as there is no AFUE standard or design requirement for this class. However, there are standby mode and off mode standards for electric steam boilers, so the addition of reporting requirements for $P_{W,SB}$ and $P_{W,OFF}$ would require new certification reporting for electric steam boilers, if manufacturers are not already doing so. Costs associated with the proposed updates to reporting requirements are discussed in section IV.C of this document. DOE requests comment on its proposed changes to the reporting requirements for consumer furnaces and boilers, including any cost impacts.

E. Grid-Enabled Water Heaters

1. Scope of Applicability

As discussed in section I.B.5 of this document, DOE defines a ''grid-enabled water heater'' at 10 CFR 430.2, consistent with EPCA's definition at 42 U.S.C. 6295(e)(6)(A)(ii), to mean an electric resistance water heater that has a rated storage tank volume of more than 75 gallons, is manufactured on or after April 16, 2015, is equipped at the point of manufacture with an activation lock, and bears a permanent label applied by the manufacturer that is made of material not adversely affected by water, is attached by means of a non-water-soluble adhesive, and advises purchasers and end-users of the intended and appropriate use of the

product as part of an electric thermal storage or demand response program.

2. Reporting

Currently, for grid-enabled consumer water heater basic models, manufacturers are required to report the uniform energy factor (''UEF''), the rated storage volume in gallons, the first-hour rating in gallons, the recovery efficiency in percent, a declaration that the model is a grid-enabled water heater, whether it is equipped at the point of manufacture with an activation lock, and whether it bears a permanent label applied by the manufacturer that advises purchasers and end-users of the intended and appropriate use of the product. 10 CFR 429.17(b)(2)(iii).

EPCA, as amended, requires manufacturers to report the quantity of grid-enabled water heaters that the manufacturer ships each year and requires DOE to keep the shipment data reported by manufacturers as confidential business information.[13] (42 U.S.C. 6295(e)(6)(C)(i)–(iii)) As stated in section I.B.5 of this document, the August 2015 final rule, which established definitions and energy conservation standards for grid-enabled water heaters, did not establish provisions to require the reporting of shipments by manufacturers. 80 FR 48004, 48009–48010 (August 11, 2015). Therefore, DOE is proposing to add reporting requirements to 10 CFR 429.17 that would require manufacturers to report the total number of grid-enabled water heaters shipped each year for sale in the U.S., along with the calendar year that the shipments cover, in accordance with the aforementioned requirement of EPCA. DOE also proposes to clarify that the annual shipments of grid-enabled water heaters reported by manufacturers will be treated as confidential business information by the Department. Because the annual shipments of grid-enabled water heaters would be treated differently than other water heater reporting requirements (*i.e.,* the shipments would be reported on an annual basis rather than ongoing based on model availability; and the reported shipments will be treated as confidential business information), DOE is proposing that the annual shipments be reported separately from the other certification reporting requirements for water heaters in 10 CFR 429.17(b).

[13] EPCA also requires that utilities and other demand response and thermal storage program operators report annually the quantity of grid-enabled water heaters activated for their programs. (42 U.S.C. 6295(e)(6)(C)(ii))

3. Reporting Costs and Impacts

The addition of reporting requirements for annual shipments of grid-enabled consumer water heaters would newly require manufacturers to report this information. DOE discusses reporting cost impacts corresponding to this proposal in section IV.C of this document. DOE requests comment on its proposal to add new reporting requirements for the number of annual shipments of grid-enabled consumer water heaters, and on its proposal that this information be reported separately from the information that is currently required to be reported under 10 CFR 429.17(b).

F. Dishwashers

1. Scope of Applicability

This NOPR applies to dishwashers, which are cabinet-like appliances which with the aid of water and detergent, wash, rinse, and dries (when a drying process is included) dishware, glassware, eating utensils, and most cooking utensils by chemical, mechanical and/or electrical means and discharge to the plumbing drainage system. 10 CFR 430.2.

2. Reporting

Under the existing requirements in 10 CFR 429.19(b), a certification report must include the following public product-specific information: The estimated annual energy use in kilowatt hours per year (kWh/yr) and the water consumption in gallons per cycle. 10 CFR 429.19(b)(2). In addition, a certification report must include the following additional product-specific information: The capacity in number of place settings as specified in ANSI/AHAM DW–1–2010; presence of a soil sensor (if yes, the number of cycles required to reach calibration); the water inlet temperature used for testing in degrees Fahrenheit (°F); the cycle selected for energy testing and whether that cycle is soil-sensing; the options selected for the energy test; and presence of a built-in water softening system (if yes, the energy use in kilowatt-hours and the water use in gallons required for each regeneration of the water softening system, the number of regeneration cycles per year, and data and calculations used to derive these values). 10 CFR 429.19(b)(3).

In conducting testing according to DOE's test procedure, section 2.10 of appendix C1 specifies using Cascade® with the Grease Fighting Power of Dawn® powder as the detergent formulation, at half the quantity specified according to section 4.1 of the industry standard ANSI/Association of Home Appliance Manufacturers (''AHAM'') DW–1–2010 (''ANSI/AHAM DW–1–2010''). During AHAM task group meetings in 2020 to establish an updated version of the industry standard, in which DOE participated, AHAM informed DOE that Cascade® with the Grease Fighting Power of Dawn® has been discontinued and has been replaced with Cascade® Complete. AHAM has updated its industry standard to specify the use of Cascade® Complete for testing.[14] Given that the currently specified detergent is no longer available on the market, DOE expects that manufacturers may need to (or have already had to) switch to the new detergent formulation to conduct testing according to appendix C1.

DOE seeks to ensure that any assessment or enforcement testing conducted pursuant to 10 CFR 429.104 and 429.110, respectively, would be performed using the same detergent used by the manufacturer for certifying compliance with the applicable energy conservation standard. Therefore, DOE is proposing to require manufacturers to indicate in the certification report whether Cascade® Complete powder was used as the detergent formulation in lieu of Cascade® with the Grease Fighting Power of Dawn®. DOE proposes to add this requirement to the list of additional product-specific information specified at 10 CFR 429.19(b)(3).

DOE also proposes to reorganize the requirements specified at 10 CFR 429.19(b)(3) as a numbered list for easier readability.

3. Reporting Costs and Impacts

In this NOPR, DOE proposes to add one additional reported value for dishwashers tested using the new detergent formulation that replaces the currently specified detergent formulation. DOE has tentatively determined that the proposed amendment would not impose additional costs for manufacturers because manufacturers of dishwashers are already submitting certification reports to DOE and should have readily available the information that DOE is proposing to collect as part of this rulemaking (*i.e.,* whether a dishwasher model was tested using Cascade® Complete powder as the detergent formulation in lieu of Cascade® with the Grease Fighting Power of Dawn®). DOE does not believe the revised reporting requirements would cause any measurable change in reporting burden or hours as compared to what

[14] See AHAM DW–1–2020 and AHAM DW–2–2020, available at *www.aham.org.*

dishwasher manufacturers are currently doing today.

DOE requests comment on the proposed reporting requirement for dishwashers, including any corresponding certification and reporting costs.

G. Commercial Clothes Washers

1. Scope of Applicability

This NOPR applies to commercial clothes washers, which means a soft-mounted front-loading or soft-mounted top-loading clothes washer that: (1) Has a clothes container compartment that for horizontal-axis clothes washers is not more than 3.5 cubic feet, and for vertical-axis clothes washers is not more than 4.0 cubic feet; and (2) is designed for use in applications in which the occupants of more than one household will be using the clothes washer, such as multi-family housing common areas and coin laundries; or other commercial applications. 10 CFR 431.152; 42 U.S.C. 6311(21).

2. Reporting

Under the existing requirements in 10 CFR 429.46(b), a CCW certification report must include the following public information: The modified energy factor (MEF_{J2}) in cu ft/kWh/cycle and the integrated water factor (IWF) in gal/cu ft/cycle. 10 CFR 429.46(b)(2)(ii). DOE also maintains reporting requirements at 10 CFR 429.46(b)(2)(i) for models tested using Appendix J1, which as of January 1, 2018 is no longer used as the basis for demonstrating compliance with energy conservation standards.

In this NOPR, DOE proposes to remove the reporting requirements currently specified at 10 CFR 429.46(b)(2)(i) for models tested using appendix J1. As discussed, appendix J1 is used as the basis for demonstrating compliance with energy conservation standards for CCWs manufactured prior to January 1, 2018. DOE also proposes to update the term ''water factor'' in 10 CFR 429.46(a)(2)(i) to ''integrated water factor'' to match the current metric used as the basis for standards.[15]

In addition, DOE proposes to amend the CCW certification reporting requirements by adding to the list of reported values the clothes container capacity (in cubic feet), the type of loading (top-loading or front-loading), and the corrected RMC value (expressed as a percentage), as discussed in the following sections. DOE also proposes rounding instructions for each newly reported value.

a. Clothes Container Capacity

DOE's definition of ''commercial clothes washer'' at 10 CFR 431.152, which is consistent with the EPCA definition (see 42 U.S.C. 6311(21)), incorporates clothes container capacity, among other characteristics. Specifically, equipment meeting the definition of CCW has a clothes container compartment that for horizontal-axis clothes washers is not more than 3.5 cubic feet, and for vertical-axis clothes washers is not more than 4.0 cubic feet (among other criteria). 10 CFR 431.152. Clothes container capacity is also a key parameter in the calculation of MEF_{J2} and IWF, in that capacity is used to represent the per-cycle energy and water use on per-cubic-foot of capacity basis. To verify whether the information provided is consistent with the certifier's statement of compliance with standards, DOE is proposing to amend 10 CFR 429.46(b)(2) to add clothes container capacity (in cubic feet) to the information required to be included in the certification report.

DOE also proposes accompanying sampling provisions for determining the reported values for capacity. Specifically, DOE proposes to add new section 10 CFR 429.46(a)(3), which would specify that the reported capacity of a basic model shall be the mean of the measured clothes container capacity, C, of all tested units of the basic model. This new section would parallel the existing requirement for RCWs in 10 CFR 429.20(a)(3).

b Axis of Loading

DOE has established equipment classes for CCWs defined by axis of loading (*i.e.,* top-loading and front-loading). Separate energy conservation standards apply to each class. 10 CFR 431.156. As such, the axis of loading is integral in determining the energy conservation standard that applies to each basic model. DOE is proposing to amend 10 CFR 429.46(b)(2) to add the type of loading (top-loading or front-loading) to the information required to be included in the certification report.

c. Remaining Moisture Content

DOE specifies product-specific enforcement provisions for ''clothes washers'', which includes both RCWs and CCWs. 10 CFR 429.134(c). Specifically, 10 CFR 429.134(c)(1) specifies provisions for the determination of remaining moisture content (''RMC''):[16] The procedure for determining RMC will be performed once in its entirety for each unit tested. The measured RMC value of a tested unit will be considered the tested unit's final RMC value if the measured RMC value is within two RMC percentage points of the certified RMC value of the basic model (expressed as a percentage) or is lower than the certified RMC value. 10 CFR 429.134(c)(1)(i). If the measured RMC value of a tested unit is more than two RMC percentage points higher than the certified RMC value of the basic model, DOE will perform two additional replications of the RMC measurement procedure, for a total of three independent RMC measurements of the tested unit. The average of the three RMC measurements will be the tested unit's final RMC value and will be used as the basis for the calculation of per-cycle energy consumption for removal of moisture from the test load for that unit. 10 CFR 429.134(c)(1)(ii).

The application of this product-specific enforcement provision for clothes washers requires a certified value of ''corrected'' RMC[17] for each basic model. Therefore, DOE is proposing to amend 10 CFR 429.46(b)(2) to add the corrected RMC value (expressed as a percentage) to the information required to be included in the certification report.

DOE also proposes accompanying sampling provisions for determining the reported values for corrected RMC. Specifically, DOE proposes to add new section 10 CFR 429.46(a)(4), which would specify that the reported value of corrected RMC of a basic model shall be the mean of the final RMC value measured for all tested units of the basic model. This new section would parallel the existing requirements for RCWs in 10 CFR 429.20(a)(4).

d. Rounding Instructions

DOE proposes to specify at new section 10 CFR 429.46(c) that clothes container capacity must be rounded to the nearest 0.1 cubic feet (''cu ft''), and that corrected RMC must be rounded to the nearest 0.1 percentage point. These rounding instructions would be consistent with the existing rounding instructions for RCWs specified at 10 CFR 429.20(c).

[15] Prior to January 1, 2018, the water efficiency standard for CCWs was defined using the Water Factor metric.

[16] The RMC measurement is used to determine the per-cycle energy consumption for removal of moisture from the test load; *i.e.,* the ''drying energy'' portion of the MEF_{J2} calculation.

[17] ''Corrected'' RMC refers to the final RMC value obtained in appendix J2 after applying specified correction factors (based on the lot of test cloth used for testing) to the ''uncorrected'' RMC value.

3. Reporting Costs and Impacts

In this NOPR, DOE proposes to add three additional reported values for CCWs (*i.e.,* the clothes container capacity, the type of loading, and the corrected RMC value). Currently, manufacturers report two values, as described in the previous section.

DOE has tentatively determined that the proposed amendment would not impose additional costs for manufacturers because manufacturers of CCWs are already submitting certification reports to DOE and should have readily available the information that DOE is proposing to collect as part of this rulemaking. In particular, the clothes container capacity and corrected RMC values are already measured as part of the test procedure and are required for calculating the MEF_{J2} metric. DOE does not believe the revised reporting requirements would cause any measurable change in reporting burden or hours as compared to what CCW manufacturers are currently doing today.

DOE seeks comment on its proposal to change the reporting requirements, specify rounding instructions, and specify sampling provisions for certain reported values for CCWs, including any corresponding certification and reporting costs.

H. Battery Chargers

1. Scope of Applicability

This NOPR applies to battery chargers, which means a device that charges batteries for consumer products, including battery chargers embedded in other consumer products. 10 CFR 430.2.

2. Reporting

Under the existing requirements in 10 CFR 429.39(b), a certification report must include the following public product-specific information for all battery chargers other than uninterruptable power supplies: Nameplate battery voltage of the test battery in volts (V), nameplate battery charge capacity of the test battery in ampere-hours (Ah), nameplate battery energy capacity of the test battery in watt-hours (Wh), maintenance mode power (P_m), standby mode power (P_{sb}), off mode power (P_{off}), battery discharge energy (E_{batt}), 24-hour energy consumption (E_{24}), duration of the charge and maintenance mode test (t_{cd}), and unit energy consumption (UEC). 10 CFR 429.39(b)(2).

In addition, a certification report must include the following additional product-specific information for all battery chargers other than uninterruptible power supplies: The manufacturer and model of the test battery, and the manufacturer and model, when applicable, of the external power supply. 10 CFR 429.39(b)(3).

Certification reports must also include the following product-specific information for all uninterruptible power supplies: Supported input dependency mode(s); active power in watts (W); apparent power in volt-amperes (VA); rated input and output voltages in volts (V); efficiencies at 25 percent, 50 percent, 75 percent and 100 percent of the reference test load; and average load adjusted efficiency of the lowest and highest input dependency modes. 10 CFR 429.39(b)(4).

DOE notes that 10 CFR 429.12(a) states that basic models of covered products require annual filings on or before the dates provided in 10 CFR 429.12(d) but paragraph (d) does not specifically list an annual filing date for battery chargers. In light of this omission, DOE proposes to explicitly specify in 10 CFR 429.12(d) that battery chargers be recertified annually on or before September 1.

3. Reporting Costs and Impacts

In this NOPR, DOE proposes no changes to the reported information required for battery chargers. DOE only proposes to specify the annual date by which manufacturers must submit annual certification filings to DOE. DOE has tentatively determined that the proposed amendment would not impose additional costs for manufacturers because manufacturers of battery chargers are already submitting certification reports to DOE. DOE does not believe the revised reporting requirements would cause any measurable change in reporting burden or hours as compared to what battery charger manufacturers are currently doing today.

DOE requests comment on the proposed annual filing date for battery chargers and any corresponding certification and reporting costs.

I. Dedicated-Purpose Pool Pumps

1. Scope of Applicability

This NOPR applies to DPPPs, which comprises self-priming pool filter pumps, non-self-priming pool filter pumps, waterfall pumps, pressure cleaner booster pumps, integral sand-filter pool pumps, integral-cartridge filter pool pumps, storable electric spa pumps, and rigid electric spa pumps. 10 CFR 431.462. In the August 2017 Final Rule, DOE adopted certification and reporting requirements for DPPPs. 82 FR 36858, 36908.

2. Reporting

Under the existing requirements in 10 CFR 429.59(b)(2)(iv) and (b)(3)(iv), there are requirements for certification reports for DPPPs subject to the test methods prescribed in § 431.464(b). However, in 10 CFR 429.12, certification is only required for covered equipment subject to an applicable energy conservation standard, and certain DPPPs that are subject to the test method, specifically waterfall pumps and polyphase self-priming pool filter pumps, are not subject to an energy conservation standard. Therefore, in this NOPR, DOE proposes to clarify the reporting requirements by removing the language in 10 CFR 429.59(b)(2)(iv) and (b)(3)(iv) that references the test method (as well as a reference to waterfall pumps). In addition, DOE would amend the same provisions to specify that they do not apply to integral cartridge-filter and sand filter pool pumps. Rather, because those pumps are subject to design requirements, they have separate reporting requirements in 10 CFR 429.59(b)(2)(v).

3. Reporting Costs and Impacts

In this NOPR, DOE proposes to clarify the existing certification requirements for DPPPs. Therefore, DOE has tentatively determined that the proposed amendment would not impose additional costs or burden for manufacturers.

DOE requests comment on its proposal to clarify the certification requirement for certain models of DPPPs.

J. Draft Certification Templates for Review

To help interested parties better understand and review the proposed amendments discussed in the earlier sections of this NOPR, DOE has developed a draft document that includes example tables showing the certification report template inputs as would be required in accordance with the proposals in this NOPR, if finalized.[18] (The draft reporting template requirements will be made available in docket number EERE–2012–BT–STD–0045, available at *https://www.regulations.gov,* upon publication of this NOPR.) The draft tables also include the data entry requirements for each field in the certification report input table.

The draft certification table headers are not reflective of the final

[18] The draft document does not include battery chargers or DPPPs, as DOE is not proposing any amendments to the reporting requirements for those products, as discussed in sections III.H and III.I of this document.

certification regulations that may be adopted by a subsequent final rule, nor do they represent the entirety of the information required in a certification report. Upon completion of this rulemaking, DOE will revise the reporting templates to reflect the final certification regulations once DOE has received approval from the Office of Management and Budget (OMB) to collect the revised information. The specific templates that should be used for certifying compliance of covered products and equipment to DOE are available for download at *https://www.regulations.doe.gov/ccms/templates.*

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866 and 13563

OMB has determined that this rulemaking does not constitute a ''significant regulatory action'' under section 3(f) of Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993). Accordingly, this action was not subject to review under the Executive order by the Office of Information and Regulatory Affairs (''OIRA'') at OMB.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (''IRFA'') for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website: (*https://energy.gov/gc/office-general-counsel*).

DOE has tentatively concluded that the removal of outdated reporting requirements and the addition of new reporting requirements as proposed in this NOPR would not impose additional costs for manufacturers of CFLKs, GSILs, and IRLs, ceiling fans, consumer furnaces and boilers (except electric steam boilers), dishwashers, CCWs, battery chargers, and DPPPs for the reasons discussed in section III of this document. For these products and equipment, DOE has tentatively determined that the proposed amendments would not impose additional costs for manufacturers because manufacturers are already submitting certification reports to DOE and should have readily available the information that DOE is proposing to collect as part of this rulemaking, and for DPPPs, the proposed amendments clarify the existing reporting requirements. Consequently, for these types of covered products and equipment, the changes proposed in this NOPR would not be expected to have a significant economic impact on related entities regardless of size.

However, for electric steam boilers, no certification is currently required. This proposal would amend 10 CFR 429.18 to include a requirement to certify the standby mode and off mode energy consumption for electric steam boilers. This amendment aligns the certification requirements with the existing energy conservation standard requirements. 10 CFR 430.32(e)(1)(iii) and (e)(2)(iii)(B). For electric steam boiler manufacturers that are not already certifying, there could be additional paperwork costs. Likewise, for grid-enabled water heaters, this proposal would add reporting requirements to align with the requirements of EPCA. EPCA, as amended, requires manufacturers to report the quantity of grid-enabled water heaters that the manufacturer ships each year and requires DOE to keep the shipment data reported by manufacturers as confidential business information. (42 U.S.C. 6295(e)(6)(C)(i)–(iii)) Therefore, grid-enabled water heater manufacturers would incur additional paperwork costs.

The Small Business Administration (''SBA'') considers a business entity to be a small business, if, together with its affiliates, it employs less than a threshold number of workers specified in 13 CFR part 121. The size standards and codes are established by the 2017 North American Industry Classification System (''NAICS'').

Electric steam boiler manufacturers are classified under NAICS code 333414, ''Heating Equipment (except Warm Air Furnaces) Manufacturing.'' The SBA sets a threshold of 500 employees or fewer for an entity to be considered as a small business in this category. DOE used available public information to identify potential small manufacturers. DOE accessed the Compliance Certification Database [19] and reviewed manufacturer literature to create a list of companies that import or otherwise manufacture the electric steam boilers covered by this proposal. Using these sources, DOE identified four manufacturers of electric steam boilers. All four manufacturers are small businesses. DOE estimates that the increased certification burden would result in 35 hours per manufacturer to develop the required certification reports. Therefore, based on a fully burdened labor rate of $100 per hour, the estimated total annual cost to manufacturers would be $3,500 per manufacturer.[20] Using available public information, DOE estimated the annual revenue for all four small businesses that manufacture electric steam boilers. The small business with the least annual revenue has an annual revenue of approximately $5.4 million. Therefore, this additional certification cost of $3,500 per manufacturer represents significantly less than 1 percent of each identified manufacturer's annual revenue.

Grid-enabled water heater manufacturers are classified under NAICS code 335220, ''Major Household Appliance Manufacturing.'' The SBA sets a threshold of 1,500 employees or fewer for an entity to be considered as a small business in this category. DOE used available public information to identify potential small manufacturers. DOE accessed the Compliance Certification Database [21] and the certified product directory of the Air Conditioning, Heating and Refrigeration Institute [22] (''AHRI''), and the Department also reviewed manufacturer literature. These actions allowed DOE to create a list of companies that import or otherwise manufacture the grid-enabled water heaters. Using these sources, DOE identified five manufacturers of grid-enabled water heaters. The five manufacturers exceed the SBA threshold to be considered a small business. Thus, DOE did not identify any small business manufacturers of grid-enabled water heaters.

DOE reviewed this proposed rule under the provisions of the Regulatory Flexibility Act and the policies and procedures published on February 19, 2003. On the basis of the foregoing, DOE

[19] U.S. Department of Energy Compliance Certification Management System (Available at: *https://www.regulations.doe.gov/ccms*).

[20] The estimates of 35 hours per response and $100 per hour fully burdened labor rate are based on the collection of information estimates for consumer products and commercial/industrial equipment subject to energy or water conservation standards. *See* 82 FR 57240 (Dec. 4, 2017).

[21] U.S. Department of Energy Compliance Certification Management System (Available at: *https://www.regulations.doe.gov/ccms*).

[22] AHRI Directory of Certified Product Performance (Available at: *https://www.ahridirectory.org/Search/SearchHome*).

initially concludes that the impacts of the amendments to DOE's certification regulations proposed in this NOPR would not have a ''significant economic impact on a substantial number of small entities.'' Accordingly, DOE has not prepared an IRFA for this NOPR. DOE will transmit this certification of no significant impact on a substantial number of small entities and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of CFLKs, GSILs, IRLs, ceiling fans, consumer furnaces and boilers (except for electric steam boilers), consumer water heaters, dishwashers, CCWs, battery chargers, and DPPPs must certify to DOE that their products or equipment comply with any applicable energy conservation standards. To certify compliance, manufacturers must first obtain test data for their products or equipment according to the DOE test procedures, including any amendments adopted for those test procedures. DOE's current reporting requirements are approved under OMB Control Number 1910–1400.

1. Description of the Requirements

DOE is proposing to amend the reporting requirements for CFLKs, GSILs, IRLs, ceiling fans, consumer furnaces and boilers, consumer water heaters, dishwashers, CCWs, battery chargers, and DPPPs. DOE will send a revised information collection approval to OMB under the existing Control Number 1910–1400. The revisions will just reflect the changes proposed in this rulemaking as an amendment to the existing information collection.

2. Method of Collection

DOE is proposing that respondents must submit electronic forms using DOE's online Compliance Certification Management System (''CCMS''). DOE's CCMS is publicly accessible at *https://www.regulations.doe.gov/ccms/,* and includes instructions for users, registration forms, and the product-specific reporting templates required for use when submitting information to CCMS.

3. Data

The following are DOE estimates of the total annual reporting and recordkeeping burden imposed on manufacturers of CFLKs, GSILs, IRLs, ceiling fans, consumer furnaces and boilers, consumer water heaters, dishwashers, CCWs, battery chargers, and DPPPs subject to the amended certification reporting requirements proposed in this proposed rule. These estimates take into account the time necessary to develop any additional testing documentation, maintain any additional documentation supporting the development of the certified rating for each basic model, complete any additional certification, and submit any additional required documents to DOE electronically.

DOE has tentatively determined that these proposed amendments would not impose additional costs for manufacturers of CFLKs, GSILs, IRLs, ceiling fans, dishwashers, CCWs, battery chargers, most consumer furnaces and boilers, and most consumer water heaters, because manufacturers of these products or equipment are already submitting certification reports to DOE and should have readily available the information that DOE is proposing to collect as part of this rulemaking. DOE has also tentatively determined that these proposed amendments would not impose additional costs for manufacturers of DPPPs because the proposals only clarify the existing certification requirements.

DOE's proposed amendments for the reporting requirements for electric steam boilers would require new certification reporting for electric steam boilers manufacturers and importers. DOE estimates there are four manufacturers of electric steam boilers that would have to submit annual certification reports to DOE for those products based on the proposed reporting requirements. The following section estimates the burden for these four electric steam boiler manufacturers.

OMB Control Number: 1910–1400.

Form Number: DOE F 220.7.

Type of Review: Regular submission.

Affected Public: Domestic manufacturers and importers of electric steam boilers covered by this rulemaking.

Estimated Number of Respondents: 4.

Estimated Time per Response: Certification reports, 35 hours.

Estimated Total Annual Burden Hours: 140.

Estimated Total Annual Cost to the Manufacturers: $14,000 in recordkeeping/reporting costs.

For grid-enabled consumer water heaters, DOE is proposing to add reporting requirements to 10 CFR 429.17 that would require manufacturers and importers to report the total number of grid-enabled water heaters shipped each year in accordance with the requirement in EPCA. The following are DOE estimates of the total annual reporting and recordkeeping burden imposed on manufacturers of grid-enabled consumer water heaters subject to the proposed reporting provisions in this NOPR. These estimates take into account the time necessary to develop testing documentation, maintain all the documentation supporting the development of the certified rating for each basic model, complete the certification, and submit all required documents to DOE electronically.

OMB Control Number: 1910–1400.

Form Number: DOE F 220.92.

Type of Review: Regular submission.

Affected Public: Manufacturers and importers of grid-enabled consumer water heaters covered by this rulemaking.

Estimated Number of Respondents: 5.

Estimated Time per Response: Certification reports, 35 hours.

Estimated Total Annual Burden Hours: 175.

Estimated Total Annual Cost to the Manufacturers: $17,500 in recordkeeping/reporting costs.

4. Conclusion

DOE has tentatively concluded that the removal of outdated reporting requirements and the addition of reporting requirements as proposed in this NOPR would not impose additional costs for CFLK, GSIL, IRL, CF, dishwasher, CCW, battery charger, DPPP, most consumer water heater, and most consumer furnace and boiler manufacturers (see sections III.A.3, III.B.3, III.C.3, III.D.3, III.E, III.F.3,III.G.3, and III.H.3 of this document for a more complete discussion). Furthermore, DOE has tentatively concluded that there are four electric steam boiler manufacturers and five consumer water heater manufacturers that would have to submit new annual certification reports to DOE for those products. For all other manufacturers of covered products or equipment described in this NOPR, the public reporting burden for certification remains unchanged.

Public comment is sought regarding: (1) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (2) the accuracy of the burden estimate; (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, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to the email address listed in the **ADDRESSES** section

and to the OMB Desk Officer by email to *Sofie.E.Miller@omb.eop.gov.*

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (PRA), unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

DOE is analyzing this proposed regulation in accordance with the National Environmental Policy Act of 1969 (''NEPA'') and DOE's NEPA implementing regulations (10 CFR part 1021). DOE's regulations include a categorical exclusion for rulemakings interpreting or amending an existing rule or regulation that does not change the environmental effect of the rule or regulation being amended. 10 CFR part 1021, subpart D, appendix A5. DOE anticipates that this rulemaking qualifies for categorical exclusion A5 because it is a rulemaking that does not change the environmental effect of the current rule and otherwise meets the requirements for application of a categorical exclusion. *See* 10 CFR 1021.410. DOE will complete its NEPA review before issuing the final rule.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 10, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has tentatively determined that it would not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products and equipment that are the subject of this proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297; 42 U.S.C. 6316(a) and (b)(2)(D)) Therefore, no further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. Regarding the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms, and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met, or whether it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA'') requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820 (also available at *https://energy.gov/gc/office-general-counsel*). DOE examined this proposed rule according to UMRA and its statement of policy and determined that the proposed rule contains neither a Federal intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year by State, local, and Tribal governments, in the aggregate, or by the private sector. As a result, the analytical requirements of UMRA do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

Pursuant to Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 18, 1988), DOE has determined that this proposed rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under information quality

guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). Pursuant to OMB Memorandum M–19–15, Improving Implementation of the Information Quality Act (April 24, 2019), DOE published updated guidelines which are available at: *https://www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf.* DOE has reviewed this proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This proposed regulatory action to amend the certification provisions for CFLKs, GSILs, IRLs, ceiling fans, consumer furnaces and boilers, consumer water heaters, dishwashers, CCWs, battery chargers, and DPPPs is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; ''FEAA'') Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (''FTC'') concerning the impact of the commercial or industry standards on competition.

The proposed modifications to the certification reporting requirements for CFLKs, GSILs, IRLs, ceiling fans, consumer furnaces and boilers, consumer water heaters, dishwashers, CCWs, battery chargers, and DPPPs do not incorporate testing methods contained in any commercial standards.

M. Materials Incorporated by Reference

The Director of the Federal Register previously approved the following standards from the Association of Home Appliance Manufacturers (''AHAM'') and the American National Standards Institute (ANSI) for incorporation by reference into §§ 429.19 and 429.59: ANSI/AHAM DW–1–2010, ''Household Electric Dishwashers'', and NSF International (NSF)/ANSI 50–2015, ''Equipment For Swimming Pools, Spas, Hot Tubs and Other Recreational Water Facilities,'' Annex C—''Test methods for the evaluation of centrifugal pumps,'' Section C.3, ''self-priming capability.''

V. Public Participation

A. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this document.

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

However, your contact information will be publicly viewable if you include it in the comment itself 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 these directions are 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 *https://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 *https://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 *https://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 *https://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 *https://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. With this instruction followed, 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. No telefacsimiles (faxes) will 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).

B. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

(1) DOE seeks comment on whether CFLKs are still being distributed in commerce and manufactured prior to January 21, 2020, and, therefore, DOE should retain compliance requirements for these standards.

(2) DOE seeks comments on requiring the reporting of lumen output and efficacy to certify compliance to January 21, 2020 standards.

(3) DOE seeks comment on reporting lumen maintenance at 1,000 hours and at 40 percent of lifetime, lifetime, and the rapid cycle stress test results for medium screw base CFLs in CFLKs. DOE seeks comment on allowing estimates for lumen maintenance at 40 percent of lifetime, lifetime, and the rapid cycle stress test result.

(4) DOE seeks comment on requiring a declaration that pin-based fluorescent lamps in CFLKs have an electronic ballast. DOE also seeks comment on requiring a declaration that CFLKs are packaged with lamps sufficient to fill all sockets.

(5) DOE seeks comment on the other proposed amendments to the CFLK reporting requirements.

(6) DOE requests comment on the certification reporting costs of the amendments proposed for CFLKs.

(7) DOE seeks comments on requiring the reporting of CRI to certify compliance with existing energy conservation standard requirements for IRLs. DOE also seeks comment on requiring the reporting of lamp diameter and rated voltage to help determine the applicable energy conservation standard for IRLs.

(8) DOE seeks comment on requiring the reporting of initial lumen output to help determine the applicable energy conservation standard for GSILs.

(9) DOE requests comment on the certification and reporting costs of the amendments proposed for IRLs and GSILs and whether it will result in an increase in reporting burden.

(10) DOE seeks comment on the proposed updated reporting requirements for small-diameter ceiling fans and LDCFs.

(11) DOE seeks comment on the certification and reporting costs of the amendments proposed for ceiling fans.

(12) DOE seeks comment on its proposed changes to the reporting requirements for consumer furnaces and boilers, including any cost impacts.

(13) DOE seeks comment on its proposal to add new reporting requirements for the number of shipments of grid-enabled consumer water heaters, and on its proposal that this information be reported separately from the information that is currently required to be reported under 10 CFR 429.17(b).

(14) DOE requests comment on the proposed reporting requirement for dishwashers, including any corresponding certification and reporting costs.

(15) DOE seeks comment on its proposal to change the reporting requirements, specify rounding instructions, and specify sampling provisions for certain reported values for CCWs, including any corresponding certification and reporting costs.

(16) DOE requests comment on the proposed annual filing date for battery chargers and any corresponding certification and reporting costs.

(17) DOE requests comment on its proposal to clarify the certification requirement for certain models of DPPPs.

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this proposed rule.

List of Subjects in 10 CFR Part 429

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Small businesses.

Signing Authority

This document of the Department of Energy was signed on July 17, 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 July 19, 2021.

Treena V. Garrett,

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

For the reasons stated in the preamble, DOE proposes to amend part 429 of title 10 of the Code of Federal Regulations as set forth below:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 2. Section 429.12 is amended by revising paragraph (d) to read as follows:

§ 429.12 General requirements applicable to certification reports.

* * * * *

(d) *Annual filing.* All data required by paragraphs (a) through (c) of this section shall be submitted to DOE annually, on or before the following dates:

TABLE 1 TO PARAGRAPH (d)

Product category	Deadline for data submission
(1) Portable air conditioners	February 1.
(2) Fluorescent lamp ballasts; Compact fluorescent lamps; General service fluorescent lamps, general service incandescent lamps, and incandescent reflector lamps; Candelabra base incandescent lamps and intermediate base incandescent lamps; Ceiling fans; Ceiling fan light kits; Showerheads; Faucets; Water closets; and Urinals.	March 1.
(3) Water heaters; Consumer furnaces; Pool heaters; Commercial water heating equipment; Commercial packaged boilers; Commercial warm air furnaces; Commercial unit heaters; and Furnace fans.	May 1.
(4) Dishwashers; Commercial pre-rinse spray valves; Illuminated exit signs; Traffic signal modules and pedestrian modules; and Distribution transformers.	June 1.
(5) Room air conditioners; Central air conditioners and central air conditioning heat pumps; and Commercial heating, ventilating, air conditioning (HVAC) equipment.	July 1.
(6) Consumer refrigerators, refrigerator-freezers, and freezers; Commercial refrigerators, freezers, and refrigerator-freezers; Automatic commercial ice makers; Refrigerated bottled or canned beverage vending machines; Walk-in coolers and walk-in freezers; and Consumer miscellaneous refrigeration products.	August 1.
(7) Torchieres; Dehumidifiers; Metal halide lamp ballasts and fixtures; External power supplies; Pumps; and Battery chargers	September 1.
(8) Residential clothes washers; Residential clothes dryers; Direct heating equipment; Cooking products; and Commercial clothes washers.	October 1.

* * * * *

■ 3. Section 429.17 is amended by adding paragraph (c) to read as follows:

§ 429.17 Water heaters.

* * * * *

(c) *Reporting of annual shipments for grid-enabled water heaters.* Pursuant to 42 U.S.C. 6295(e)(6)(C)(i), manufacturers of grid-enabled water heaters must report the total number of grid-enabled water heater units shipped for sale in the U.S. by the manufacturer for the previous calendar year (*i.e.,* January 1st through December 31st), as well as the calendar year that the shipments cover, starting on or before May 1, 2022 and annually on or before May 1 each year thereafter. This information shall be reported separately from the certification report required under paragraph (b)(2) of this section and must be submitted to DOE in accordance with the submission procedures set forth in § 429.12(h). DOE will consider the annual reported shipments to be confidential business information without the need for the manufacturer to request confidential treatment of the information pursuant to § 429.7(c).

■ 4. Section 429.18 is amended by revising the section heading and paragraphs (a)(2)(vii) and (b)(2) and (3) to read as follows:

§ 429.18 Consumer furnaces.

(a) * * *

(2) * * *

(vii) The represented value of annual fuel utilization efficiency must be rounded to the nearest one-tenth of a percentage point. The represented values of standby mode power and off mode power must be rounded to the nearest one-tenth of a watt.

(b) * * *

(2) Pursuant to § 429.12(b)(13), a certification report shall include the following public product-specific information:

(i) Consumer furnaces and boilers: The annual fuel utilization efficiency (AFUE) in percent (%) and the input capacity in British thermal units per hour (Btu/h).

(ii) For gas-fired hot water and gas-fired steam boilers: The type of ignition system.

(iii) For non-weatherized oil-fired furnaces (including mobile home furnaces), electric furnaces, and boilers: The standby mode power consumption ($P_{W,SB}$) and off mode power consumption ($P_{W,OFF}$) in watts.

(3) Pursuant to § 429.12(b)(13), a certification report shall include the following additional product-specific information:

(i) For cast-iron sectional boilers: A declaration of whether certification is based on linear interpolation or testing.

(ii) For hot water boilers and gas-fired steam boilers: A declaration that the manufacturer has incorporated the applicable design requirements.

* * * * *

■ 5. Section 429.19 is amended by revising paragraph (b)(3) to read as follows:

§ 429.19 Dishwashers.

* * * * *

(b) * * *

(3) Pursuant to § 429.12(b)(13), a certification report shall include the following additional product-specific information—

(i) The capacity in number of place settings as specified in ANSI/AHAM DW–1–2010 (incorporated by reference, see § 429.4);

(ii) Presence of a soil sensor (if yes, the number of cycles required to reach calibration);

(iii) The water inlet temperature used for testing in degrees Fahrenheit (°F);

(iv) The cycle selected for energy testing and whether that cycle is soil-sensing;

(v) The options selected for the energy test;

(vi) Presence of a built-in water softening system (if yes, the energy use in kilowatt-hours and the water use in gallons required for each regeneration of the water softening system, the number of regeneration cycles per year, and data and calculations used to derive these values); and

(vii) Indication of whether Cascade® Complete powder was used as the detergent formulation in lieu of Cascade® with the Grease Fighting Power of Dawn® powder.

■ 6. Section 429.27 is amended by revising paragraphs (b)(2)(ii) and (iii) to read as follows:

§ 429.27 General service fluorescent lamps, general service incandescent lamps, and incandescent reflector lamps.

* * * * *

(b) * * *

(2) * * *

(ii) Incandescent reflector lamps: The testing laboratory's International Laboratory Accreditation Cooperation (ILAC) accreditation body's

identification number or other approved identification assigned by the ILAC accreditation body, production dates of the units tested, the 12-month average lamp efficacy in lumens per watt (lm/W), lamp wattage (W), rated voltage (V), diameter in inches, and CRI.

(iii) General service incandescent lamps: The testing laboratory's ILAC accreditation body's identification number or other approved identification assigned by the ILAC accreditation body, production dates of the units tested, the 12-month average maximum rate wattage in watts (W), the 12-month average minimum rated lifetime (hours), and the 12-month average CRI, and initial lumen output in lumens (lm).

* * * * *

■ 7. Section 429.32 is amended by:
■ a. Revising paragraph (b); and
■ b. Adding paragraph (c).

The revision and addition read as follows:

§ 429.32 Ceiling fans.

* * * * *

(b) *Certification reports.* (1) The requirements of § 429.12 are applicable to ceiling fans; and

(2) Pursuant to § 429.12(b)(13), a certification report shall include the following public product-specific information:

(i) For all ceiling fans: Blade span (in), the number of speeds within the ceiling fan controls, and a declaration that the manufacturer has incorporated the applicable design requirements.

(ii) For small-diameter ceiling fans: A declaration whether the ceiling fan is a multi-head ceiling fan, and the ceiling fan efficiency (cubic feet per minute per watt (CFM/W)).

(iii) For large-diameter ceiling fans: Ceiling fan energy index (CFEI) for high speed and 40 percent speed or the nearest speed that is not less than 40 percent speed.

(3) Pursuant to § 429.12(b)(13), a certification report shall include the following additional product-specific information:

(i) For small-diameter ceiling fans: Standby power, blade edge thickness (in), airflow (CFM) at high speed, and blade revolutions per minute (RPM) at high speed.

(ii) For low-speed small-diameter ceiling fans: The distance (in) between the ceiling and the lowest point on the fan blades (in both hugger and standard configurations for multi-mount fans).

(c) *Rounding requirements.* Any represented value of ceiling fan efficiency, as described in paragraph (a)(2)(i) of this section must be expressed in cubic feet per minute per watt (CFM/W) and rounded to the nearest whole number. Any represented value of ceiling fan energy index, as described in paragraph (a)(2)(i) of this section must be expressed in CFEI and rounded to the nearest hundredth of a CFEI.

■ 8. Section 429.33 is amended by revising paragraphs (b) and (c) to read as follows:

§ 429.33 Ceiling fan light kits.

* * * * *

(b) *Certification reports.* (1) The requirements of § 429.12 are applicable to ceiling fan light kits (CFLKs); and

(2) Pursuant to § 429.12(b)(13), a certification report shall include the following product-specific information:

(i) A declaration that the CFLK is packaged with lamps sufficient to fill all of the lamp sockets;

(ii) For each basic model of lamp and/or each basic model of integrated solid state lighting (SSL) circuitry packaged with the ceiling fan light kit, the brand, basic model number, test sample size, kind of lamp (*i.e.,* general service fluorescent lamp [GSFL]; fluorescent lamp with a pin base that is not a GSFL; compact fluorescent lamp [CFL] with a medium screw base; CFL with a base that is not medium screw base [*e.g.,* candelabra base]; other fluorescent lamp [not GSFL or CFL]; general service incandescent lamp [GSIL]; candelabra base incandescent lamp; intermediate base incandescent lamp; incandescent reflector lamp; other incandescent lamp [not GSIL, IRL, candelabra base or intermediate base incandescent lamp], integrated LED lamp; integrated SSL circuitry; other SSL products [not integrated LED lamp]; other lamp not mentioned), lumen output in lumens, efficacy in lumens per watt (lm/W), and a declaration that, where applicable, the lamp basic model was tested by a laboratory accredited as required under § 430.25;

(iii) For each lamp basic model identified in paragraph (b)(2)(ii) of this section that is a compact fluorescent lamp with a medium screw base, the lumen maintenance at 40 percent of lifetime in percent (%) (and whether value is estimated), the lumen maintenance at 1,000 hours in percent (%), the lifetime in hours (h) (and whether value is estimated), and the sample size for rapid cycle stress testing and results in number of units passed (and whether the value is estimated). Estimates of lifetime, lumen maintenance at 40 percent of lifetime, and rapid cycle stress test surviving units may be reported until testing is complete. Manufacturers are required to maintain records in accordance with § 429.71 of the development of all estimated values and any associated initial test data; and

(iv) For ceiling fan light kits with pin-based sockets for fluorescent lamps, a declaration that each ballast for such lamps is an electronic ballast.

(c) *Rounding requirements.* (1) Any represented value of efficacy of CFLKs as described in paragraph (a) of this section must be expressed in lumens per watt and rounded to the nearest tenth of a lumen per watt.

(2) Round lumen output to three significant digits.

(3) Round lumen maintenance at 1,000 hours to the nearest tenth of a percent.

(4) Round lumen maintenance at 40 percent of lifetime to the nearest tenth of a percent.

(5) Round lifetime to the nearest whole hour.

■ 9. Section 429.46 is amended by:
■ a. Revising paragraph (a)(2)(i) introductory text;
■ b. Adding paragraphs (a)(3) and (4);
■ c. Revising paragraph (b)(2); and
■ d. Adding paragraph (c).

The revisions and additions read as follows:

§ 429.46 Commercial clothes washers.

(a) * * *

(2) * * *

(i) Any represented value of the integrated water factor or other measure of energy or water consumption of a basic model for which consumers would favor lower values shall be greater than or equal to the higher of:

* * * * *

(3) The clothes container capacity of a basic model reported in accordance with paragraph (b)(2) of this section shall be the mean of the measured clothes container capacity, C, of all tested units of the basic model.

(4) The corrected remaining moisture content (RMC) of a basic model reported in accordance with paragraph (b)(2) of this section shall be the mean of the final RMC value measured for all tested units of the basic model.

(b) * * *

(2) Pursuant to § 429.12(b)(13), a certification report shall include the following public product-specific information:

(i) The modified energy factor (MEF_{J2}), in cubic feet per kilowatt-hour per cycle (cu ft/kWh/cycle);

(ii) The integrated water factor (IWF), in gallons per cycle per cubic feet (gal/cycle/cu ft);

(iii) The clothes container capacity, in cubic feet (cu ft);

(iv) The type of loading (top-loading or front-loading); and

(v) The corrected RMC (expressed as a percentage).

(c) *Reported values.* Values reported pursuant to this section must be rounded as follows: Clothes container capacity to the nearest 0.1 cu ft, and corrected RMC to the nearest 0.1 percentage point.

■ 10. Section 429.59 is amended by revising paragraphs (b)(2)(iv) and (b)(3)(iv) to read as follows:

§ 429.59 Pumps.

* * * * *

(b) * * *

(2) * * *

(iv) For a dedicated-purpose pool pump (other than an integral cartridge-filter or sand-filter pool pump): Weighted energy factor (WEF) in kilogallons per kilowatt-hour (kgal/kWh); rated hydraulic horsepower in horsepower (hp); the speed configuration for which the pump is being rated (*i.e.,* single-speed, two-speed, multi-speed, or variable-speed); true power factor at all applicable test procedure load points i (dimensionless), as specified in Table 1 of appendix B or C to subpart Y of part 431 of this chapter, as applicable; dedicated-purpose pool pump nominal motor horsepower in horsepower (hp); dedicated-purpose pool pump motor total horsepower in horsepower (hp); dedicated-purpose pool pump service factor (dimensionless); for self-priming pool filter pumps and non-self-priming pool filter pumps: The maximum head (in feet) which is based on the mean of the units in the tested sample; a statement regarding whether freeze protection is shipped enabled or disabled; for dedicated-purpose pool pumps distributed in commerce with freeze protection controls enabled: The default dry-bulb air temperature setting (in °F), default run time setting (in minutes), and default motor speed (in rpm); for self-priming pool filter pumps a statement regarding whether the pump is certified with NSF/ANSI 50–2015 (incorporated by reference, see § 429.4) as self-priming; and, for self-priming pool filter pumps that are not certified with NSF/ANSI 50–2015 as self-priming: The vertical lift (in feet) and true priming time (in minutes) for the dedicated-purpose pool pump (DPPP) model.

* * * * *

(3) * * *

(iv) For a dedicated-purpose pool pump (other than an integral cartridge-filter or sand-filter pool pump): Calculated driver power input and flow rate at each load point i (P_i and Q_i), in horsepower (hp) and gallons per minute (gpm), respectively.

* * * * *

■ 11. Section 429.70 is amended by adding paragraph (i) to read as follows:

§ 429.70 Alternative methods for determining energy efficiency and energy use.

* * * * *

(i) *Alternative determination of standby mode and off mode power consumption for untested basic models of consumer furnaces and consumer boilers.* For models of consumer furnaces or consumer boilers that have identical standby mode and off mode power consuming components, ratings for untested basic models may be established in accordance with the following procedures in lieu of testing. This method allows only for the use of ratings identical to those of a tested basic model as provided below; simulations or other modeling predictions for ratings for standby mode power consumption and off mode power consumption are not permitted.

(1) *Consumer furnaces.* Rate the standby mode and off mode power consumption of an untested basic model of a consumer furnace using the standby mode and off mode power consumption obtained from a tested basic model as a basis for ratings if all aspects of the electrical components, controls, and design that impact the standby mode power consumption or off mode power consumption are identical.

(2) *Consumer boilers.* Rate the standby mode and off mode power consumption of an untested basic model of a consumer boiler using the standby mode and off mode power consumption obtained from a tested basic model as a basis for ratings if all aspects of the electrical components, controls, and design that impact the standby mode power consumption or off mode power consumption are identical.

[FR Doc. 2021–15579 Filed 8–5–21; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 210

[Regulation J; Docket No. R–1750]

RIN 7100–AG16

Collection of Checks and Other Items by Federal Reserve Banks and Funds Transfers Through Fedwire (Regulation J), Extension of Comment Period

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: On June 11, 2021, the Board of Governors of the Federal Reserve System (Board) published in the **Federal Register** a proposal to amend Regulation J to govern funds transfers through the Federal Reserve Banks' (Reserve Banks) new FedNow℠ Service by establishing a new subpart C. The Board also proposed changes and clarifications to subpart B, governing the Fedwire Funds Service, to reflect the fact that the Reserve Banks will be operating a second funds transfer service in addition to the Fedwire Funds Service, as well as technical corrections to subpart A, governing the check service. The proposal provided for a comment period ending on August 10, 2021. The Board is extending the comment period for 30 days, until September 9, 2021.

DATES: For the notice of proposed rulemaking published on June 11, 2021 (86 FR 31376), comments must be received by September 9, 2021.

ADDRESSES: You may submit comments by any of the methods identified in the proposal.

FOR FURTHER INFORMATION CONTACT: Jess Cheng, Senior Counsel (202) 452–2309, Gavin L. Smith, Senior Counsel (202) 452–3474, Legal Division, or Ian C.B. Spear, Manager (202) 452–3959, Kirstin E. Wells, Principal Economist (202) 452–2962, Division of Reserve Bank Operations and Payment Systems; for users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION: On June 11, 2021, the Board of Governors of the Federal Reserve System (Board) published in the **Federal Register** a proposal to amend Regulation J to govern funds transfers through the Federal Reserve Banks' (Reserve Banks) new FedNow Service by establishing a new subpart C. The Board also proposed changes and clarifications to subpart B, governing the Fedwire Funds Service, to reflect the fact that the Reserve Banks will be operating a second funds transfer service in addition to the Fedwire Funds Service, as well as technical corrections to subpart A, governing the check service.[1]

The proposal provided for a comment period ending on August 10, 2021. Since the publication of the proposal, the Board has received a request for an extension of the comment period. An extension of the comment period will provide additional opportunity for interested parties to analyze the proposal and prepare and submit comments. Therefore, the Board is extending the end of the comment

[1] 86 FR 31376 (June 11, 2021).

period for the proposal from August 10, 2021 to September 9, 2021.

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

Ann Misback,

Secretary of the Board.

[FR Doc. 2021–16826 Filed 8–5–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0600; Airspace Docket No. 21–ANE–4]

Proposed Revocation of Class E Airspace and Proposed Amendment of Class E Airspace; Concord, NH

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to remove Class E airspace in Concord, NH, as Class E surface airspace is no longer required at Concord Municipal Airport. This action would also amend the Class E airspace extending upward from 700 feet above the surface and update the geographic coordinates of the airport. This action would enhance the safety and management of controlled airspace within the national airspace system.

DATES: Comments must be received on or before September 20, 2021.

ADDRESSES: Send comments on this proposal to: The U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; Telephone: (800) 647–5527, or (202) 366–9826. You must identify the Docket No. FAA–2021–0600; Airspace Docket No. 21–ANE–4, at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov*.

FAA Order 7400.11E, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/*. For further information, you can contact the 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 *fr.inspection@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html*.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; Telephone (404) 305–6364.

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 proposed 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 would remove Class E surface airspace and amend Class E airspace extending upward from 700 feet above the surface at Concord Municipal Airport, Concord, NH.

Comments Invited

Interested persons are invited to comment on this proposed rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2021–0600 and Airspace Docket No. 21–ANE–4) and be submitted in triplicate to the DOT Docket Operations (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *https://www.regulations.gov*.

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2021–0600; Airspace Docket No. 21–ANE–4.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *https://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's web page at *https://www.faa.gov/air_traffic/publications/airspace_amendments/*.

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays, at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, GA 30337.

Availability and Summary of Documents for Incorporation by Reference

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

The Proposal

The FAA proposes an amendment to 14 CFR part 71 to remove Class E surface airspace as it is no longer required and amending Class E airspace extending upward from 700 feet above the surface at Concord Municipal Airport, Concord, NH. An airspace review determined the navigational aids listed in the airspace description should

be removed, resulting in the removal of existing extensions, and adding the following extensions; 155° bearing, from the 12 mile radius to 18 miles southeast of the airport, 285° bearing, from the 12 mile radius to 15 miles west of the airport, and 335° bearing, from the 12 mile radius to 15.4 mile northwest of the airport. Also, the geographic coordinates would be updated to coincide with the FAA's data base. This action would enhance the safety and management of controlled airspace within the national airspace system.

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

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

Regulatory Notices and Analyses

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

Environmental Review

This proposal would be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' prior to any FAA final regulatory action.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6002 Class E Surface Airspace.

* * * * *

ANE NH E2 Concord, NH [Removed]

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

* * * * *

ANE NH E5 Concord, NH [Amended]

Concord Municipal Airport, NH
(Lat. 43°12′2710″ N, long. 71°30′08″ W)

That airspace extending upward from 700 feet above the surface within a 12-mile radius of Concord Municipal Airport, and within 3.1-miles each side of the 155° bearing from the airport, extending from the 12-mile radius to 18-miles southeast of the airport; and within 3-miles each side of the 285° bearing from the airport, extending from the 12-mile radius to 15-miles west of the airport; and within 2-miles each side of the 335° bearing from the airport, extending from the 12-mile radius to 15.4-miles northwest of the airport.

Issued in College Park, Georgia, on August 2, 2021.

Andreese C. Davis,

Manager, Airspace & Procedures Team South, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2021–16773 Filed 8–5–21; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 74

[MB Docket No. 21–263; FCC 21–84; FR ID 38739]

Updating Broadcast Radio Technical Rules

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Communication Commission proposes to amend the rules applicable to broadcast radio stations to better reflect current requirements and eliminate redundant, outdated, or conflicting technical provisions.

DATES: Comments may be filed on or before September 7, 2021 and reply comments may be filed on or before September 20, 2021.

ADDRESSES: You may submit comments, identified by MB Docket No. 21–263, by any of the following methods:

- *Federal Communications Commission's Electronic Comment Filing System (ECFS): http://apps.fcc.gov/ecfs/.* Follow the instructions for submitting comments.
- *Mail:* Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20743. U.S. Postal Service First Class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 888–835–5322.

FOR FURTHER INFORMATION CONTACT: James Bradshaw, Deputy Division Chief, Media Bureau, Audio Division (202) 418–2739, *James.Bradshaw@fcc.gov;* Christine Goepp, Attorney Advisor, Media Bureau, Audio Division, (202) 418–7834, *Christine.Goepp@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (*NPRM*), MB Docket No. 21–263, FCC 21–84, adopted and released on July 12, 2021. The full text of this document will be available for public inspection and copying via ECFS. The full text of this document can also be downloaded in Word or Portable Document Format (PDF) at *http://www.fcc.gov/ndbedp.*

Synopsis

1. The Federal Communication Commission proposes to amend the following rules applicable to broadcast radio stations to better reflect current requirements and eliminate redundant, outdated, or conflicting technical provisions.

2. *Maximum rated transmitter power for AM stations.* The Commission proposes to amend 47 CFR 73.1665(b) to

remove the maximum rated transmitter power limit for AM stations and delete the corresponding ''Table 1 to paragraph (b).'' The Commission tentatively concludes that an equipment limitation on potential transmitter power is outdated and unnecessary given its current reliance on actual operating antenna input power as the most accurate and effective means of ensuring that AM stations adhere to their authorized power limits. The restriction on AM transmitter power goes back many decades and was adopted in substantially its current form in 1978. The Commission tentatively concludes that retaining an equipment-based maximum rated transmitter power rule is unnecessary and inconsistent with the standard governing the operating power of AM stations set out in 47 CFR 73.51. It seeks comment on eliminating this requirement and on any other changes to the rules necessary or appropriate to reflect this change.

3. *NCE community of license coverage.* The Commission proposes to amend 47 CFR 73.316(c)(2)(ix)(B) and 73.1690(c)(8)(i) to harmonize with the later-adopted NCE FM community coverage standard set out in 47 CFR 73.515. Specifically, it proposes that the requirement in section 73.515 that stations reach 50% of their community of license or 50% of the population in their community should replace the more general requirement in sections 73.316(c)(2)(ix)(B) and 73.1690(c)(8)(i) that the station cover ''a portion of the community.'' Applications covered by sections 73.316(c)(2)(ix)(B) and 73.1690(c)(8)(i) must already satisfy the requirement set out in section 73.515. To harmonize these provisions, the Commission proposes to amend these two rules to state that an NCE FM station operating on a reserved channel must provide a predicted 60 dBμ signal to at least 50% of its community of license or reach 50% of the population within the community. It seeks comment on this proposal.

4. *FM transmitter interference to nearby antennas.* The Commission proposes to eliminate 47 CFR 73.316(d), which it tentatively concludes is an unnecessary burden on applicants. This is a seldom-used rule, which the Commission tentatively concludes does not prevent interference to any significant degree, if at all. The Commission seeks comment on this tentative conclusion as well as any other applicable considerations it should take into account when eliminating this rule. Section 73.316(d) provides that ''[a]pplications proposing the use of FM transmitting antennas in the immediate vicinity (*i.e.,* 60 meters or less) of other FM or TV broadcast antennas must include a showing as to the expected effect, if any, of such approximate operation.'' Based on the Commission's experience, it tentatively concludes that broadcast radio antennas within this physical proximity are unlikely to create interference problems if they are otherwise compliant with the transmission system requirements set out in 47 CFR 73.317 and states that it is not aware of any industry complaints of such interference during the more than 70 years this rule has been in effect. Therefore, the Commission proposes to eliminate section 73.316(d) as an unnecessary application requirement and seeks comment on this proposal.

5. *NCE FM Class D second-adjacent channel interference ratio.* The Commission proposes to amend 47 CFR 73.509(b), which sets out signal strength contour overlap requirements for NCE FM Class D stations, to harmonize with the more permissive standard applied to all other NCE–FM stations. This change will create consistency across different NCE FM station classes regarding contour overlap limitations. The Commission tentatively concludes that the current Class D contour overlap requirement is not necessary given the proven efficacy of the less restrictive requirements for other stations and anticipates that this change will allow Class D stations greater site selection flexibility as well as the opportunity to potentially increase their coverage areas. Currently, section 73.509(b) provides that applications by NCE FM Class D station licensees will not be accepted if they propose overlap of the applicant station's 80 dBu (interfering) contour with the 60 dBu (protected) contour of any second-adjacent channel station (*i.e.,* a 20 dBu interference ratio). In contrast, section 73.509(a) prohibits overlap of any other NCE applicant station's 100 dBu (interfering) contour with the 60 dBu (protected) contour of any second-adjacent channel station (*i.e.,* a 40 dBu interference ratio). When it adopted section 73.509(a) in 2000, the Commission explained that the 100 dBu standard is a better gauge of potential second-adjacent channel interference than the 80 dBu standard and that adoption of a less preclusive 100 dBu standard would create opportunities for NCE FM and FM translator stations to increase power and coverage, and provide them with greater site selection flexibility. However, because of a then-pending proceeding to establish the LPFM service, the Commission deferred any action on proposals involving NCE FM Class D stations. The LPFM service has now been established and is currently a relatively mature service, so the Commission tentatively concludes that the time is ripe to extend the otherwise universal 100 dBu contour overlap standard for second-adjacent channels to NCE FM Class D stations. It seeks comment on this proposal.

6. *Protection for grandfathered common carriers in Alaska in the 76–100 MHz band.* The Commission proposes to delete the outdated requirement that radio stations operating in the 76–100 MHz band protect common carrier services in Alaska. It states that this rule is unnecessary and obsolete because the Commission's licensing databases indicate that there are no common carrier services remaining in this band in Alaska. The relevant provisions, 47 CFR 73.501(b), 74.1202(b)(3), the second sentence of 74.702(a)(1), and the second sentence of 74.786(b), all contain similar language requiring broadcast services to protect grandfathered common carrier services in Alaska operating in the 76–100 MHz frequency band. With the exception of section 74.786(b), which was added in 2004 to apply the Alaska rule to digital LPTV and TV translators, this suite of rule provisions was created in 1982 when the Commission reallocated the 76–100 MHz band in Alaska from government and non-government fixed services to broadcast services. In doing so, the Commission grandfathered existing common carrier operations, protecting them from new broadcast services in that band. At the time, the Commission anticipated that such protection would become unnecessary as the common carriers gradually moved to other parts of the spectrum. Accordingly, in 2005, the Commission deleted two of the original five rules on the basis that there were no longer any common carrier stations in Alaska in the 76–100 MHz band. For the same reason, the Commission proposes to delete the remaining sections 73.501(b), 74.1202(b)(3), and portions of 74.702(a)(1) and 74.786(b) of the Commission's rules as obsolete and unnecessary. It seeks comment on this proposal.

7. *AM fill-in area definition.* The Commission proposes to amend the definition of ''AM fill-in area'' set out in 47 CFR 74.1201(j) to conform to the requirement in 47 CFR 74.1201(g) that the ''coverage contour of an FM translator rebroadcasting an AM radio broadcast station as its primary station must be contained within the greater of either the 2 mV/m daytime contour of the AM station or a 25-mile (40 km) radius centered at the AM transmitter site.'' It does not propose any change to

section 74.1201(g). The Commission anticipates that this change will create consistency across different rules governing fill-in translator transmitter siting. In 2009, when it modified the FM translator rules to allow AM stations to retransmit using fill-in FM translators, the Commission adopted new section (j) and amended section (g) to define an AM fill-in area for FM translators as the lesser of the 2 mV/m daytime contour of the AM station and a 25-mile (40 km) radius centered at the AM transmitter site. When the Commission relaxed this cross-service siting requirement in 2017, it amended section (g) to provide that an FM translator rebroadcasting an AM broadcast station must be located such that the 60 dBu contour is contained within the greater of either (a) the 2 mV/m daytime contour of the AM station, or (b) a 25-mile radius centered at the AM station's transmitter site. However, it did not update section (j) to reflect this change. The Commission proposes to do so now and seeks comment on this proposal.

8. *International agreements.* To fully implement the provisions of relevant agreements with the Canadian and Mexican governments, the Commission proposes to amend 47 CFR 73.207(b) and 74.1235(d). Section 73.207(b)(2) states, ''Under the Canada-United States FM Broadcasting Agreement, domestic U.S. allotments and assignments within 320 kilometers (199 miles) of the common border must be separated from Canadian allotments and assignments by not less than the distances given in Table B, which follows.'' The 1991 U.S.-Canada FM Broadcasting Agreement contains minimum distance separations but also offers contour overlap parameters for short-spaced stations to demonstrate compliance with the Agreement. Accordingly, the Commission proposes to include contour overlap-based protection for short-spaced stations in this rule. It also proposes to replace the current Table B with the superseding minimum distance separations table set out in a 1997 Amendment to the 1991 U.S.-Canada FM Broadcasting Agreement.

9. Currently, section 73.207(b)(3) provides that ''[u]nder the 1992 Mexico-United States FM Broadcasting Agreement, domestic U.S. assignments or allotments within 320 kilometers (199 miles) of the common border must be separated from Mexican assignments or allotments by not less than the distances given in Table C in this paragraph (b)(3).'' This provision is no longer accurate, as, except for intermediate frequency separations, the 1992 U.S.-Mexico FM Broadcasting Agreement provides for contour-overlap-based protection as well as minimum spacing protection. Therefore, the Commission proposes to revise this section to include contour overlap-based protection for short-spaced stations. It seeks comment on these proposed changes.

10. The Commission also proposes to update 47 CFR 74.1235(d), governing FM translators, to conform with the relevant treaties. With respect to Canada, section 74.1235(d) states, ''Applications for FM translator stations located within 320 km of the Canadian border will not be accepted if they specify more than 50 watts effective radiated power in any direction or have a 34 dBu interference contour, calculated in accordance with § 74.1204 of this part, that exceeds 32 km.'' This provision codifies section 4.3 of the 1991 U.S.-Canada FM Broadcasting Agreement. In 1997, the United States and Canada amended section 4.3 of the 1991 U.S.-Canada FM Broadcasting Agreement to increase the permissible effective radiated power (ERP) for border FM translator stations from 50 to 250 watts and the interference contour from 32 to 60 kilometers. To implement this change, in 1998, the Commission amended section 74.1235 by adding section (d)(3), which states, ''Applications for translator or booster stations within 320 km of the Canadian border may employ an ERP up to a maximum of 250 watts, as specified in § 74.1235(a) and (b). The distance to the 34 dBu interfering contour may not exceed 60 km in any direction.'' Because the first sentence of section (d) is now outdated and conflicts with section (d)(3), the Commission proposes to modify it to conform to current treaty requirements and to eliminate section (d)(3).

11. With respect to Mexico, section 74.1235(d) provides, ''FM translator stations located within 320 kilometers of the Mexican border must be separated from Mexican allotments and assignments in accordance with § 73.207(b)(3) of this chapter and are limited to a transmitter power output of 10 watts or less. For purposes of compliance with that section, FM translators will be considered as Class D FM stations.'' In the 1992 U.S.-Mexico FM Broadcasting Agreement, translator stations are classified as LPFM stations rather than full service stations, and thus not subject to distance separation requirements. The Commission tentatively concludes that neither the rules nor the relevant international agreements require translator stations to adhere to those distance separations. In addition, the 10-watt transmitter power output limitation is a superseded provision originally set out in the U.S.-Mexican FM Broadcast Agreement of 1972 and is no longer consistent with current treaty requirements. For these reasons, the Commission proposes to delete these two sentences in the introductory paragraph of section 74.1235(d) and seeks comments on this proposal.

12. Finally, the Commission proposes to revise the translator power limitations set out in 47 CFR 74.1235(d)(1) and (2). The 1992 U.S.-Mexico FM Broadcasting Agreement provides in relevant part that a translator's ERP may not exceed 50 watts in the direction of the other country nor produce an interfering contour more than 32 kilometers in the direction of the other country. Within 125 km of the common border, the maximum distance to the protected contour of a translator must be 8.7 km in the direction of the other country. However, a translator located more than 125 km from the border may operate with more than 50 watts in the direction of the other country, provided that its protected contour is not greater than, starting from 125 km from the border, 8.7 km in the direction of the other country. In addition, under the 1992 U.S.-Mexico FM Broadcasting Agreement, translators must protect the allotments and assignments of the other country based on their maximum permitted parameters. To accurately implement these provisions, the Commission proposes to amend sections 74.1235(d)(1) and (2) to reflect current treaty requirements, as set out in Appendix A. Because these changes are intended to codify the existing state of international agreements to which the United States is a party, the Commission requests commenters to focus on whether the proposed changes properly implement the relevant treaty provisions rather than suggest changes to any of the agreed-upon limits.

Comments and Reply Comments

13. *Filing Requirements.—Comments and Replies.* Pursuant to 47 CFR 1.415 and 1.419, interested parties may file comments and reply comments on or before the dates indicated in the **DATES** section of this notice. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *http://apps.fcc.gov/ecfs/*.
- *Paper Filers:* Parties who choose to file by paper must file an original and

one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by commercial overnight courier or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20743.
- U.S. Postal Service First Class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.

14. *People with Disabilities.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Government Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

15. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available via ECFS.

Procedural Matters

Ex Parte Rules

16. This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's ex parte rules, 47 CFR 1.1200 *et seq.* Persons making ex parte presentations must file a copy of any written presentation or memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine Period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to the Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with 47 CFR 1.1206(b). In proceedings governed by 47 CFR 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppl, searchable .ppl). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

17. *Initial Paperwork Reduction Act Analysis.* This document does not contain proposed new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection 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).

Initial Regulatory Flexibility Analysis

18. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies proposed in the Notice of Proposed Rulemaking (*NPRM*). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM* provided on the first page of the *NPRM*. The Commission will send a copy of this entire *NPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *NPRM* and the IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rule Changes

19. The Commission initiates this rulemaking proceeding to obtain comments regarding its proposal to update certain of its technical rules to better reflect current requirements and eliminate redundant, outdated, or conflicting provisions. Specifically, the Commission seeks comment on the following proposed rule changes: (1) Eliminating the maximum rated transmitter power limit rule for AM stations; (2) updating rule provisions containing an NCE FM community of license coverage requirement; (3) eliminating the requirement that applicants demonstrate the effect of any FM applicant transmitting antenna on nearby FM or TV broadcast antennas; (4) updating the signal strength contour overlap requirements for NCE FM Class D stations to harmonize with the contour overlap requirements for all other NCE FM stations; (5) eliminating the requirement for broadcast services to protect grandfathered common carrier services in Alaska operating in the 76–100 MHz frequency band; (6) harmonizing the definition of an ''AM fill-in area'' set out in multiple rule sections; and (7) amending the power limits for translators within 320 kilometers of the Mexican and Canadian borders to comply with current treaty provisions.

B. Legal Basis

20. The proposed action is authorized pursuant to sections 1, 4(i), 4(j), 301, 303, 307, 308, 309, 316, and 319 of the Communications Act, 47 U.S.C. 151, 154(i), 154(j), 301, 303, 307, 308, 309, 316, 319.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

21. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. The rules proposed herein will directly affect small television and radio broadcast stations. Below, we provide a description of these small entities, as well as an estimate of the number of such small entities, where feasible.

22. Radio Stations. This Economic Census category ''comprises establishments primarily engaged in broadcasting aural programs by radio to the public.'' The SBA has created the following small business size standard for this category: Those having $41.5 million or less in annual receipts.

Census data for 2012 show that 2,849 firms in this category operated in that year. Of this number, 2,806 firms had annual receipts of less than $25 million, and 43 firms had annual receipts of $25 million or more. Because the Census has no additional classifications that could serve as a basis for determining the number of stations whose receipts exceeded $41.5 million in that year, we conclude that the majority of radio broadcast stations were small entities under the applicable SBA size standard.

23. Apart from the U.S. Census, the Commission has estimated the number of licensed commercial AM radio stations to be 4,406 and the number of commercial FM radio stations to be 6,726 for a total number of 11,132, along with 8,126 FM translator and booster stations. As of September 2019, 4,294 AM stations and 6,739 FM stations had revenues of $41.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA). In addition, the Commission has estimated the number of noncommercial educational FM radio stations to be 4,195. NCE stations are non-profit, and therefore considered to be small entities. Therefore, we estimate that the majority of radio broadcast stations are small entities.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

24. The *NPRM* proposes to amend existing rules to better reflect current requirements and eliminate redundant, outdated, or conflicting provisions. None of the proposed revisions require additional paperwork obligations and in one instance eliminates a currently required application showing.

E. Steps Taken To Minimize Significant Impact on Small Entities and Significant Alternatives Considered

25. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

26. In the *NPRM,* the Commission proposes to amend existing rules to better reflect current requirements and eliminate redundant, outdated, or conflicting provisions. The proposed rules will eliminate the requirement that applicants demonstrate the effect of any FM applicant transmitting antenna on nearby FM or TV broadcast antennas. They will also eliminate the need for small entities and other licensees to comply with outdated technical regulations such as the maximum rated transmitter power limit rule for AM stations, the signal strength contour overlap requirements for NCE FM Class D stations, and the requirement for broadcast services to protect grandfathered common carrier services in Alaska operating in the 76–100 MHz frequency band. In addition, the rules clarify and harmonize provisions such as the definition of an ''AM fill-in area,'' power limits for FM translators near the Canadian and Mexican borders, and required community of license coverage for NCE FM stations, many of whom are small entities. These revisions will make the rules more transparent and accessible to small entities and thus reduce the need for expert engineering or legal assistance with compliance and reporting requirements.

27. Alternatives considered by the Commission include retaining the existing rules and amending other, related rules to further improve the accuracy of the Code of Federal Regulations. The Commission seeks comment on the effect of the proposed rule changes on all affected entities. The Commission is open to consideration of alternatives to the proposals under consideration, including but not limited to alternatives that will minimize the burden on broadcasters, many of whom are small businesses.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

28. None.

Ordering Clauses

29. Accordingly, *it is ordered* that, pursuant to the authority contained in sections 1, 4(i), 4(j), 301, 303, 307, 308, 309, 316, and 319 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 301, 303, 307, 308, 309, 316, and 319, this Notice of Proposed Rulemaking *is adopted*.

30. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 73

Mexico, Radio.

47 CFR Part 74

Radio.

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer, Office of the Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 and part 74 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 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, 339.

■ 2. Amend § 73.207 by revising paragraphs (b)(2) and (3) to read as follows:

§ 73.207 Minimum distance separation between stations.

* * * * *

(b) * * *

(2) Unless demonstrating compliance with the overlap provisions of the 1991 United States-Canada FM Broadcasting Agreement, any domestic U.S. allotment or assignment within 320 kilometers (199 miles) of the common border must be separated from Canadian allotments and assignments by not less than the distances given in Table B, which follows. When applying Table B, U.S. Class C0 allotments and assignments are considered to be Class C; U.S. Class C2 allotments and assignments are considered to be Class B; and U.S. Class C3 allotments and assignments are considered to be Class B1.

TABLE B TO PARAGRAPH (b)—MINIMUM DISTANCE SEPARATION REQUIREMENTS IN KILOMETERS

Relation	Co-channel	Adjacent channels			I.F.
	0 kHz	200 kHz	400 kHz	600 kHz	10.6/10.8 MHz
A1–A1	78	45	24	20	4
A1–A	131	78	44	40	7
A1–B1	164	98	57	53	9
A1–B	190	117	71	67	12
A1–C1	223	148	92	88	19
A1–C	227	162	103	99	26
A–A	151	98	51	42	10
A–B1	184	119	64	55	12
A–B	210	137	78	69	15
A–C1	243	168	99	90	22
A–C	247	182	110	101	29
B1–B1	197	131	70	57	24
B1–B	223	149	84	71	24
B1–C1	256	181	108	92	40
B1–C	259	195	116	103	40
B–B	237	164	94	74	24
B–C1	271	195	115	95	40
B–C	274	209	125	106	40
C1–C1	292	217	134	101	48
C1–C	302	230	144	111	48
C–C	306	241	153	113	48

(3) Unless demonstrating compliance with the overlap provisions of the 1992 United States-Mexico FM Broadcasting Agreement, any domestic U.S. assignment or allotment within 320 kilometers (199 miles) of the common border must be separated from Mexican assignments or allotments by not less than the distances given in Table C in this paragraph (b)(3). However, the I.F. minimum distance separations in Table C apply regardless of short-spaced status. When applying Table C—

* * * * *

■ 3. Amend § 73.316 by revising the second sentence of (c)(2)(ix)(B), removing paragraph (d), and redesignating paragraph (e) as paragraph (d) to read as follows:

§ 73.316 FM antenna systems.

* * * * *

(c) * * *

(2) * * *

(ix) * * *

(B) * * * The application for license must also demonstrate that coverage of the community of license by the 70 dBu contour is maintained for stations authorized pursuant to § 73.215 on Channels 221 through 300, as required by § 73.315(a), while noncommercial educational stations operating on Channels 201 through 220 must show that the proposed transmitter location will provide a minimum field strength of 1 mV/m (60 dBu) over at least 50 percent of its community of license or reach 50 percent of the population within the community.

* * * * *

§ 73.501 [Amended]

■ 4. Amend § 73.501 by removing and reserving paragraph (b).

■ 5. Amend § 73.509 by revising paragraph (b) to read as follows:

§ 73.509 Prohibited overlap.

* * * * *

(b) An application by a Class D (secondary) station, other than an application to change class, will not be accepted if the proposed operation would involve overlap of signal strength contours with any other station as set forth in Table 2 to paragraph (b):

TABLE 2 TO PARAGRAPH (b)

Frequency separation	Contour of proposed station	Contour of any other station
Co-channel	0.1 mV/m (40 dBu)	1 mV/m (60 dBu).
200 kHz	0.5 mV/m (54 dBu)	1 mV/m (60 dBu).
400/600 kHz	100 mV/m (100 dBu)	1 mV/m (60 dBu).

■ 6. Amend § 73.1665 by revising paragraph (b) and removing Table 1 to paragraph (b) to read as follows:

§ 73.1665 Main transmitters.

* * * * *

(b) There is no maximum manufacturer-rated power limit for AM, FM, TV or Class A TV station transmitters.

* * * * *

■ 7. Amend § 73.1690 by revising the second sentence of paragraph (c)(8)(i) to read as follows:

§ 73.1690 Modification of transmission systems.

* * * * *

(c) * * *

(8) * * *

(i) * * * Noncommercial educational FM stations must continue to provide a 60 dBu contour over at least 50 percent of its community of license or reach 50 percent of the population within the community. * * *

* * * * *

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

■ 8. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 307, 309, 310, 336 and 554.

§ 74.702 [Amended]

■ 9. Amend § 74.702 by removing the second sentence of paragraph (a)(1).

§ 74.786 [Amended]

■ 10. Amend § 74.786 by removing the second sentence of paragraph (b). Amend § 74.1201 by revising paragraph (j) to read as follows:

§ 74.1201 Definitions.

* * * * *

(j) *AM Fill-in area.* The area within the greater of the 2 mV/m daytime contour of the AM radio broadcast station being rebroadcast or a 25–mile (40 km) radius centered at the AM transmitter site.

* * * * *

§ 74.1202 [Amended]

■ 11. Amend § 74.1202 by removing paragraph (b)(3).

■ 12. Amend § 74.1235 by revising paragraph (d) to read as follows:

§ 74.1235 Power limitations and antenna systems.

* * * * *

(d) Applications for FM translator stations located within 320 km of the Canadian border will not be accepted if they specify more than 250 watts effective radiated power in any direction or have a 34 dBu interference contour that exceeds 60 km. Applications for FM translator stations located within 320 kilometers of the Mexican border must adhere to the following provisions.

(1) Translator stations located within 125 kilometers of the Mexican border may operate with a maximum ERP of 250 watts (0.250 kW) but must not exceed an ERP of 50 watts (0.050 kW) in the direction of the Mexican border. A translator station may not produce an interfering contour in excess of 32 km from the transmitter site in the direction of the Mexican border, nor may the 60 dBu service contour of the translator station exceed 8.7 km from the transmitter site in the direction of the Mexican border.

(2) Translator stations located between 125 kilometers and 320 kilometers from the Mexican border may operate with a maximum ERP of 250 watts in any direction. However, in no event shall the location of the 60 dBu contour lie within 116.3 km of the Mexican border.

[FR Doc. 2021–15684 Filed 8–5–21; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 210730–0156; RTID 0648–XT040]

Atlantic Highly Migratory Species; 2022 Atlantic Shark Commercial Fishing Year

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

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would adjust quotas and retention limits and establish the opening date for the 2022 fishing year for the Atlantic commercial shark fisheries. Quotas would be adjusted as required or allowable based on any underharvests experienced during the 2021 fishing year. NMFS proposes the opening date and commercial retention limits to provide, to the extent practicable, fishing opportunities for commercial shark fishermen in all regions and areas. The proposed measures could affect fishing opportunities for commercial shark fishermen in the northwestern Atlantic Ocean, the Gulf of Mexico, and the Caribbean Sea.

DATES: Written comments must be received by September 7, 2021.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2021–0056, by electronic submission. Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter ''NOAA–NMFS–2021–0056'' in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.

Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Copies of this proposed rule and supporting documents are available from the HMS Management Division website at *https://www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species* or by contacting Lauren Latchford (*lauren.latchford@noaa.gov*) by phone at 301–427–8503.

FOR FURTHER INFORMATION CONTACT: Lauren Latchford (*lauren.latchford@noaa.gov*), Derek Kraft (*derek.kraft@noaa.gov*), or Karyl Brewster-Geisz (*karyl.brewster-geisz@noaa.gov*) at 301–427–8503.

SUPPLEMENTARY INFORMATION:

Background

The Atlantic commercial shark fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The 2006 Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP) and its amendments are implemented by regulations at 50 CFR part 635. For the Atlantic commercial shark fisheries, the 2006 Consolidated HMS FMP and its amendments established default commercial shark retention limits, commercial quotas for species and management groups, and accounting measures for underharvests and overharvests. The retention limits, commercial quotas, and accounting measures can be found at 50 CFR 635.24(a) and 635.27(b). Regulations also include provisions allowing flexible opening dates for the fishing year (§ 635.27(b)(3)) and inseason adjustments to shark trip limits (§ 635.24(a)(8)), which provide management flexibility in furtherance of equitable fishing opportunities, to the extent practicable, for commercial shark fishermen in all regions and areas. In addition, § 635.28(b)(4) lists species and/or management groups with quotas that are linked. If quotas are linked, when the specified quota threshold for one management group or species is reached and that management group or species is closed, the linked management group or species closes at the same time (§ 635.28(b)(3)). Lastly, pursuant to § 635.27(b)(3), any annual or inseason adjustments to the base annual commercial overall, regional, or sub-regional quotas will be published in the **Federal Register**.

2022 Proposed Commercial Shark Quotas

NMFS proposes adjusting the quota levels for the various shark stocks and management groups for the 2022 Atlantic commercial shark fishing year

based on underharvests that occurred during the 2021 fishing year, consistent with existing regulations at 50 CFR 635.27(b). Overharvests and underharvests are accounted for in the same region, sub-region, and/or fishery in which they occurred the following year, except that large overharvests may be spread over a number of subsequent fishing years up to a maximum of five years. If a sub-regional quota is overharvested, but the overall regional quota is not, no subsequent adjustment is required. Unharvested quota may be added to the quota for the next fishing year, but only for shark management groups that have shark stocks that do not have an unknown status or that have no overfishing occurring and are not overfished. No more than 50 percent of a base annual quota may be carried over from a previous fishing year.

Based on 2021 harvests to date, and after considering catch rates and landings from previous years, NMFS proposes to adjust the 2022 quotas for certain management groups as shown in Table 1. All of the 2022 proposed quotas for the respective stocks and management groups will be subject to further adjustment in the final rule after NMFS considers landings submitted in the dealer reports through mid-October. NMFS anticipates that dealer reports received after that time will be used to adjust 2022 quotas, as appropriate, noting that, in some circumstances, NMFS re-adjusts quotas during the subject year.

Because the Gulf of Mexico blacktip shark management group and smoothhound shark management groups in the Gulf of Mexico and Atlantic regions are not overfished, and overfishing is not occurring, available underharvest (up to 50 percent of the base annual quota) from the 2021 fishing year for these management groups may be added to the respective 2022 base quotas. NMFS proposes to account for any underharvest of Gulf of Mexico blacktip sharks by dividing underharvest between the eastern and western Gulf of Mexico sub-regional quotas based on the sub-regional quota split percentage implemented in Amendment 6 to the 2006 Consolidated HMS FMP (80 FR 50073; August 18, 2015).

For the sandbar shark, aggregated large coastal shark (LCS), hammerhead shark, non-blacknose small coastal shark (SCS), blacknose shark, blue shark, porbeagle shark, and pelagic shark (other than porbeagle or blue sharks) management groups, the 2021 underharvests cannot be carried over to the 2022 fishing year because those stocks or management groups are overfished, are experiencing overfishing, or have an unknown status. There are no overharvests to account for in these management groups to date. Thus, NMFS proposes that quotas for these management groups be equal to the annual base quota without adjustment, although the ultimate decision will be based on current data at the time of the final rule.

The proposed 2022 quotas by species and management group are summarized in Table 1 and the description of the calculations for each stock and management group can be found below. All quotas and landings are dressed weight (dw), in metric tons (mt), unless specified otherwise. Table 1 includes landings data as of July 9, 2021; final quotas are subject to change based on landings as of October 2021.

TABLE 1—2022 PROPOSED QUOTAS AND OPENING DATE FOR THE ATLANTIC SHARK MANAGEMENT GROUPS

Region or sub-region	Management group	2021 Annual quota (A)	Preliminary 2021 landings [1] (B)	Adjustments [2] (C)	2022 Base annual quota (D)	2022 Proposed annual quota (D + C)	Season opening dates
Western Gulf of Mexico.	Blacktip Sharks [3]	347.2 mt (765,392 lb).	210.7 mt (464,554 lb).	115.7 mt (255,131 lb).	231.5 mt (510,261 lb).	347.2 mt (765,392 lb).	January 1, 2022.
	Aggregated Large Coastal Sharks.	72.0 mt (158,724 lb).	66.6 mt (146,851 lb).		72.0 mt (158,724 lb).	72.0 mt (158,724 lb).	
	Hammerhead Sharks.	11.9 mt (26,301 lb).	<1.5 mt (<3,300 lb).		11.9 mt (26,301 lb).	11.9 mt (26,301 lb).	
Eastern Gulf of Mexico.	Blacktip Sharks [3]	37.7 mt (83,158 lb).	8.6 mt (18,858 lb)	12.6 mt (27,719 lb).	25.1 mt (55,439 lb).	37.7 mt (83,158 lb).	January 1, 2022.
	Aggregated Large Coastal Sharks.	85.5 mt (188,593 lb).	38.1 mt (84,047 lb).		85.5 mt (188,593 lb).	85.5 mt (188,593 lb).	
	Hammerhead Sharks.	13.4 mt (29,421 lb).	5.7 mt (12,458 lb)		13.4 mt (29,421 lb).	13.4 mt (29,421 lb).	
Gulf of Mexico	Non-Blacknose Small Coastal Sharks.	112.6 mt (248,215 lb).	23.1 mt (50,911 lb).		112.6 mt (248,215 lb).	112.6 mt (248,215 lb).	
	Smoothhound Sharks.	504.6 mt (1,112,441 lb).	—mt (—lb)	168.2 mt (370,814 lb).	336.4 mt (741,627 lb).	504.6 mt (1,112,441 lb).	
Atlantic	Aggregated Large Coastal Sharks.	168.9 mt (372,552 lb).	38.7 mt (85,317 lb).		168.9 mt (372,552 lb).	168.9 mt (372,552 lb).	January 1, 2022.
	Hammerhead Sharks.	27.1 mt (59,736 lb).	10.2 mt (22,542 lb).		27.1 mt (59,736 lb).	27.1 mt (59,736 lb).	
	Non-Blacknose Small Coastal Sharks.	264.1 mt (582,333 lb).	32.8 mt (72,243 lb).		264.1 mt (582,333 lb).	264.1 mt (582,333 lb).	
	Blacknose Sharks (South of 34 °N lat. only).	17.2 mt (37,921 lb).	4.8 mt (10,617 lb)		17.2 mt (37,921 lb).	17.2 mt (37,921 lb).	
	Smoothhound Sharks.	1,802.6 mt (3,971,587 lb).	192.8 mt (425,130 lb).	600.9 mt (1,324,634 lb).	1,201.7 mt (2,649,268 lb).	1,802.6 mt (3,973,902 lb).	
No regional quotas	Non-Sandbar LCS Research.	50.0 mt (110,230 lb).	5.0 mt (11,129 lb)		50.0 mt (110,230 lb).	50.0 mt (110,230 lb).	January 1, 2022.
	Sandbar Shark Research.	90.7 mt (199,943 lb).	35.4 mt (78,074 lb).		90.7 mt (199,943 lb).	90.7 mt (199,943 lb).	
	Blue Sharks	273.0 mt (601,856 lb).	<1.0 mt (<2,200 lb).		273.0 mt (601,856 lb).	273.0 mt (601,856 lb).	
	Porbeagle Sharks	1.7 mt (3,748 lb)	0.0 mt (0 lb)		1.7 mt (3,748 lb)	1.7 mt (3,748 lb).	

TABLE 1—2022 PROPOSED QUOTAS AND OPENING DATE FOR THE ATLANTIC SHARK MANAGEMENT GROUPS—Continued

Region or sub-region	Management group	2021 Annual quota (A)	Preliminary 2021 landings [1] (B)	Adjustments [2] (C)	2022 Base annual quota (D)	2022 Proposed annual quota (D + C)	Season opening dates
	Pelagic Sharks Other Than Porbeagle or Blue.	488.0 mt (1,075,856 lb).	25.2 mt (55,566 lb).	.....	488.0 mt (1,075,856 lb).	488.0 mt (1,075,856 lb).	

[1] Landings are from January 1, 2021, through July 9, 2021, and are subject to change.
[2] Underharvest adjustments can only be applied to stocks or management groups that are not overfished and have no overfishing occurring. Also, the underharvest adjustments cannot exceed 50 percent of the base quota.
[3] This adjustment accounts for underharvest in 2021. This proposed rule would increase the overall Gulf of Mexico blacktip shark quota by 128.3 mt (282,850 lb). Since any underharvest would be divided based on the sub-regional quota percentage split, the western Gulf of Mexico blacktip shark quota would be increased by 115.7 mt, while the eastern Gulf of Mexico blacktip shark quota would be increased by 12.6 mt.

1. Proposed 2022 Quotas for Shark Management Groups Where Underharvests Can Be Carried Over

The Gulf of Mexico blacktip shark management group (which is divided between the two sub-regions) and smoothhound shark management groups in the Gulf of Mexico and Atlantic regions are not overfished, and overfishing is not occurring. Pursuant to § 635.27(b)(2)(ii), available underharvest (up to 50 percent of the base annual quota) from the 2021 fishing year for these management groups may be added to the respective 2022 base quotas.

The 2022 proposed commercial quota for blacktip sharks in the western Gulf of Mexico sub-region is 347.2 mt dw (765,392 lb dw) and the eastern Gulf of Mexico sub-region is 37.7 mt dw (83,158 lb dw). As of July 9, 2021, preliminary reported landings for blacktip sharks in the western Gulf of Mexico sub-region were at 60.7 percent (210.7 mt dw) of their 2021 quota levels (347.2 mt dw), and blacktip sharks in the eastern Gulf of Mexico sub-region were at 22.7 percent (8.6 mt dw) of the sub-regional 2021 quota levels (37.7 mt dw). Reported landings in both sub-regions have not exceeded the 2021 quota to date. Pursuant to § 635.27(b)(1)(ii)(C), any underharvest would be divided between the two sub-regions, based on the percentages that are allocated to each sub-region. To date, the overall Gulf of Mexico blacktip shark management group is underharvested by 165.6 mt dw (365,138 lb dw). NMFS proposes to increase the western Gulf of Mexico blacktip shark quota by 115.7 mt dw which is 90.2 percent of the quota adjustment, while the eastern Gulf of Mexico blacktip shark sub-regional quota would increase by 12.6 mt dw, which is 9.8 percent of the quota adjustment (Table 1). Thus, the proposed western sub-regional Gulf of Mexico blacktip shark commercial quota is 347.2 mt dw (765,392 lb dw), and the proposed eastern sub-regional Gulf of Mexico blacktip shark commercial quota is 37.7 mt dw (83,158 lb dw).

The 2022 proposed commercial quota for smoothhound sharks in the Gulf of Mexico region is 504.6 mt dw (1,112,441 lb dw) and in the Atlantic region is 1,802.6 mt dw (3,973,902 lb dw). As of July 9, 2021, there have been no smoothhound shark landings in the Gulf of Mexico region and 10.7 percent (192.8 mt dw) of their 2021 quota (1802.6 mt dw) in the Atlantic region. NMFS proposes to adjust the 2022 Gulf of Mexico and Atlantic smoothhound shark quotas for anticipated underharvests in 2021 to the full extent allowed. The proposed 2022 adjusted base annual quota for Gulf of Mexico smoothhound sharks is 504.6 mt dw (336.4 mt dw annual base quota + 168.2 mt dw 2021 underharvest = 504.6 mt dw 2022 adjusted annual quota) and the proposed 2022 adjusted base annual quota for Atlantic smoothhound sharks is 1,802.6 mt dw (1,201.7 mt dw annual base quota + 600.9 mt dw 2021 underharvest = 1,802.6 mt dw 2022 adjusted annual quota).

2. Proposed 2022 Quotas for Shark Management Groups Where Underharvests Cannot Be Carried Over

Consistent with the current regulations at § 635.27(b)(2)(ii), 2021 underharvests cannot be carried over to the 2022 fishing year for the following stocks or management groups because they are overfished, are experiencing overfishing, or have an unknown status: Sandbar shark, aggregated large coastal shark (LCS), hammerhead shark, non-blacknose small coastal shark (SCS), blacknose shark, blue shark, porbeagle shark, and pelagic shark (other than porbeagle or blue sharks) management groups.

The 2022 proposed commercial quota for aggregated LCS in the western Gulf of Mexico sub-region is 72.0 mt dw (158,724 lb dw), and the eastern Gulf of Mexico sub-region is 85.5 mt dw (188,593 lb dw). The 2022 proposed commercial quota for aggregated LCS in the Atlantic region is 168.9 mt dw (372,552 lb dw). For these stocks, the 2022 proposed commercial quotas reflect the codified annual base quotas, without adjustment for underharvest. At this time, no overharvests have occurred, which would require adjustment downward. As of July 9, 2021, preliminary reported landings for aggregated LCS in the western Gulf of Mexico sub-region were 92.5 percent (66.6 mt dw) of the 2021 quota (72.0 mt dw), the aggregated LCS in the eastern Gulf of Mexico sub-region were 44.6 percent (38.1 mt dw) of the 2021 quota (85.5 mt dw), and the aggregated LCS fishery in the Atlantic were 22.9 percent (38.7 mt dw) of the 2021 quota. Reported landings from both Gulf of Mexico sub-regions and the Atlantic region have not exceeded the 2021 overall aggregated LCS quota to date. Given the unknown status of some species in the aggregated LCS complex, the aggregated LCS quota cannot be adjusted for any underharvests. Based on both preliminary estimates and catch rates from previous years, NMFS proposes that the 2022 quotas for aggregated LCS in the western and eastern Gulf of Mexico sub-regions, and the Atlantic region be equal to their annual base quotas without adjustment.

The 2022 proposed commercial quotas for hammerhead sharks in the eastern Gulf of Mexico sub-region and western Gulf of Mexico sub-region are 11.9 mt dw (26,301 lb dw) and 13.4 mt dw (29,421 lb dw), respectively. For these stocks, the 2022 proposed commercial quotas reflect the codified annual base quotas, without adjustment for underharvest. At this time, no overharvests have occurred, which would require adjustment downward. The 2022 proposed commercial quota for hammerhead sharks in the Atlantic region is 27.1 mt dw (59,736 lb dw). As of July 9, 2021, preliminary reported landings of hammerhead sharks in the western Gulf of Mexico sub-region were

less than 12 percent (<2.3 mt dw) of the 2021 quota (11.9 mt dw), landings of hammerhead sharks in the eastern Gulf of Mexico sub-region were at 42.3 percent (5.7 mt dw) of the 2021 quota (13.4 mt dw), and landings of hammerhead sharks in the Atlantic region were at 37.7 percent (10.2 mt dw) of the 2021 quota. Reported landings from the Gulf of Mexico sub-regions and the Atlantic region have not exceeded the 2021 overall hammerhead quota to date. Given the overfished status of the scalloped hammerhead shark, the hammerhead shark quota cannot be adjusted for any underharvests. Based on both preliminary estimates and catch rates from previous years, NMFS proposes that the 2022 quotas for hammerhead sharks in the western Gulf of Mexico and eastern Gulf of Mexico sub-regions be equal to their annual base quotas without adjustment.

The 2022 proposed commercial quota for blacknose sharks in the Atlantic region is 17.2 mt dw (37,921 lb dw). This quota is available in the Atlantic region only for those vessels operating south of 34 °N latitude. North of 34 °N latitude, retention, landing, or sale of blacknose sharks is prohibited. NMFS is not proposing any adjustments to the blacknose shark quota at this time. For these stocks, the 2022 proposed commercial quotas reflect the codified annual base quotas, without adjustment for underharvest. At this time, no overharvests have occurred, which would require adjustment downward. As of July 9, 2021, preliminary reported landings of blacknose sharks were at 28.0 percent (4.8 mt dw) of the 2021 quota levels in the Atlantic region. Reported landings have not exceeded the 2021 quota to date. NMFS proposes that the 2022 Atlantic blacknose shark quota be equal to the annual base quota without adjustment.

The 2022 proposed commercial quota for non-blacknose SCS in the Gulf of Mexico region is 112.6 mt dw (248,215 lb dw). The 2022 proposed commercial quota for non-blacknose SCS in the Atlantic region is 264.1 mt dw (582,333 lb dw). For these stocks, the 2022 proposed commercial quotas reflect the codified annual base quotas, without adjustment for underharvest. At this time, no overharvests have occurred, which would require adjustment downward. As of July 9, 2021, preliminary reported landings of non-blacknose SCS were at 20.5 percent (23.1 mt dw) of their 2021 quota level (112.6 mt dw) in the Gulf of Mexico region and were at 12.4 percent (32.8 mt dw) of the 2021 quota level in the Atlantic region. Reported landings have not exceeded the 2021 quota to date. Given the unknown status of bonnethead sharks within the Gulf of Mexico and Atlantic non-blacknose SCS management groups, underharvests cannot be carried forward. Based on both preliminary estimates and catch rates from previous years, NMFS proposes that the 2022 quota for non-blacknose SCS in the Gulf of Mexico and Atlantic regions be equal to the annual base quota without adjustment.

The 2022 proposed commercial quotas for blue sharks, porbeagle sharks, and pelagic sharks (other than porbeagle or blue sharks) are 273.0 mt dw (601,856 lb dw), 1.7 mt dw (3,748 lb dw), and 488.0 mt dw (1,075,856 lb dw), respectively. For these stocks, the 2022 proposed commercial quotas reflect the codified annual base quotas, without adjustment for underharvest. At this time, no overharvests have occurred, which would require adjustment downward. As of July 9, 2021, there were no preliminary reported landings of blue sharks or porbeagle sharks, and landings of pelagic sharks (other than porbeagle and blue sharks) were at 5.2 percent (25.2 mt dw) of the 2021 quota level (488.0 mt dw). Given that these pelagic species are overfished, have overfishing occurring, or have an unknown status, underharvests cannot be carried forward. Based on preliminary estimates of catch rates from previous years, NMFS proposes that the 2022 quotas for blue sharks, porbeagle sharks, and pelagic sharks (other than porbeagle and blue sharks) be equal to their annual base quotas without adjustment.

The 2022 proposed commercial quotas within the shark research fishery are 50 mt dw (110,230 lb dw) for research LCS and 90.7 mt dw (199,943 lb dw) for sandbar sharks. Within the shark research fishery, as of July 9, 2021, preliminary reported landings of research LCS were at 10.1 percent (5.0 mt dw) of the 2021 quota, and sandbar shark reported landings were at 39 percent (35.4 mt dw) of their 2021 quota. Because sandbar sharks and scalloped hammerhead sharks within the research LCS management group are either overfished or overfishing is occurring, underharvests for these management groups cannot be carried forward. Based on preliminary estimates, NMFS proposes that the 2022 quota in the shark research fishery be equal to the annual base quota without adjustment.

Proposed Opening Date and Retention Limits for the 2022 Atlantic Commercial Shark Fishing Year

In proposing the commercial shark fishing season opening dates for all regions and sub-regions, NMFS considered the ''Opening Commercial Fishing Season Criteria,'' which are the criteria listed at § 635.27(b)(3): The available annual quotas for the current fishing season, estimated season length and average weekly catch rates from previous years, length of the season and fishery participation in past years, effects of the adjustment on accomplishing objectives of the 2006 Consolidated HMS FMP and its amendments, temporal variation in behavior or biology of target species (*e.g.,* seasonal distribution or abundance), impact of catch rates in one region on another, and effects of delayed openings.

In analyzing the criteria, NMFS examines the underharvests of the different management groups in the 2021 fishing year to determine the likely effects of the proposed commercial quotas for 2022 on shark stocks and fishermen across regional and sub-regional fishing areas. NMFS also examines the potential season length and previous catch rates to ensure, to the extent practicable, that equitable fishing opportunities will be provided to fishermen in all areas. Lastly, NMFS examines the seasonal variation of the different species/management groups and the effects on fishing opportunities. At the start of each fishing year, the default commercial retention limit is 45 LCS other than sandbar sharks per vessel per trip in the eastern and western Gulf of Mexico sub-regions and in the Atlantic region, unless NMFS determines otherwise and files with the Office of the Federal Register for publication notification of an inseason adjustment. NMFS may adjust the retention limit from zero to 55 LCS other than sandbar sharks per vessel per trip if the respective LCS management group is open under § 635.27 and § 635.28, respectively.

NMFS also considered the six ''Inseason Trip Limit Adjustment Criteria'' listed at § 635.24(a)(8). Those criteria are: The amount of remaining shark quota in the relevant area, region, or sub-region, to date, based on dealer reports; the catch rates of the relevant shark species/complexes in the region or sub-region, to date, based on dealer reports; the estimated date of fishery closure based on when the landings are projected to reach 80 percent of the quota given the realized catch rates and whether they are projected to reach 100 percent before the end of the fishing season; effects of the adjustment on accomplishing the objectives of the 2006 Consolidated HMS FMP and its amendments; variations in seasonal distribution, abundance, or migratory

patterns of the relevant shark species based on scientific and fishery-based knowledge; and/or effects of catch rates in one part of a region precluding vessels in another part of that region from having a reasonable opportunity to harvest a portion of the relevant quota.

In analyzing the criteria, NMFS examines landings submitted in dealer reports on a weekly basis and catch rates based upon those dealer reports and have found that, to date, landings and subsequent quotas have not been exceeded. Catch rates in one part of a sub-region reached 80 percent have been closed, and have not reached 100 percent of the available quota. In addition, that closure did not preclude vessels in another part of that region or sub-region from having a reasonable opportunity to harvest a portion of the relevant quota. Given the pattern of landings over the previous years, seasonal distribution of the species and/or management groups has not had an effect on the landings within a region or sub-region.

After considering both sets of criteria in § 635.24 and 635.28, NMFS is proposing to open the 2022 Atlantic commercial shark fishing season for all shark management groups in the northwestern Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea, on January 1, 2022, after the publication of the final rule for this action (Table 2). NMFS proposes to open the season on January 1, 2022, but recognizes that the actual opening date is contingent on publication of the final rule in the **Federal Register**, and may vary accordingly. NMFS is also proposing to start the 2022 commercial shark fishing season with the commercial retention limit of 55 LCS other than sandbar sharks per vessel per trip in both the eastern and western Gulf of Mexico sub-regions, and a commercial retention limit of 55 LCS other than sandbar sharks per vessel per trip in the Atlantic region (Table 2). Proposed retention limits could change (as a result of public comments as well as updated catch rates and landings information submitted in dealer reports) in the final rule.

TABLE 2—QUOTA LINKAGES, SEASON OPENING DATES, AND COMMERCIAL RETENTION LIMIT BY REGIONAL OR SUB-REGIONAL SHARK MANAGEMENT GROUP

Region or sub-region	Management group	Quota linkages *	Season opening date	Commercial retention limits for directed shark limited access permit holders (inseason adjustments are possible)
Western Gulf of Mexico	Blacktip Sharks	Not Linked	January 1, 2022	55 LCS other than sandbar sharks per vessel per trip.
	Aggregated Large Coastal Sharks.	Linked.		
	Hammerhead Sharks.			
Eastern Gulf of Mexico	Blacktip Sharks	Not Linked	January 1, 2022	55 LCS other than sandbar sharks per vessel per trip.
	Aggregated Large Coastal Sharks.	Linked.		
	Hammerhead Sharks.			
Gulf of Mexico	Non-Blacknose Small Coastal Sharks.	Not Linked	January 1, 2022	N/A.
	Smoothhound Sharks	Not Linked	January 1, 2022	N/A.
Atlantic	Aggregated Large Coastal Sharks.	Linked	January 1, 2022	55 LCS other than sandbar sharks per vessel per trip.
	Hammerhead Sharks.			
	Non-Blacknose Small Coastal Sharks.	Linked (South of 34 °N lat. only).	January 1, 2022	N/A.
	Blacknose Sharks (South of 34 °N lat. only).			8 Blacknose sharks per vessel per trip (applies to directed and incidental permit holders).
	Smoothhound Sharks	Not Linked	January 1, 2022	N/A.
No regional quotas	Non-Sandbar LCS Research	Linked	January 1, 2022	N/A.
	Sandbar Shark Research.			
	Blue Sharks	Not Linked	January 1, 2022	N/A.
	Porbeagle Sharks.			
	Pelagic Sharks Other Than Porbeagle or Blue.			

* § 635.28(b)(4) lists species and/or management groups with quotas that are linked. If quotas are linked, when the specified quota threshold for one management group or species is reached and that management group or species is closed, the linked management group or species closes at the same time (§ 635.28(b)(3)).

In the eastern and western Gulf of Mexico sub-regions, NMFS proposes opening the fishing season on January 1, 2022, for the aggregated LCS, blacktip sharks, and hammerhead shark management groups, with the commercial retention limits of 55 LCS other than sandbar sharks per vessel per trip for directed shark permits. This opening date and retention limit combination would provide, to the extent practicable, equitable opportunities across the fisheries management sub-regions. The season opening criteria listed in § 635.27(b)(3) requires NMFS to consider the length of the season for the different species and/or management groups in the previous years (§ 635.27(b)(3)(ii) and (iii)) and whether fishermen were able to participate in the fishery in those years (§ 635.27(b)(3)(v)). In addition, the criteria listed in § 635.24(a)(8) require NMFS to consider the catch rates of the relevant shark species/complexes based on landings submitted in dealer reports to date (§ 635.24(a)(8)(ii)). NMFS may also adjust the retention limit in the Gulf of Mexico region throughout the season to ensure fishermen in all parts of the region have an opportunity to harvest aggregated LCS, blacktip sharks, and hammerhead sharks (see the criteria listed at § 635.27(b)(3)(v) and § 635.24(a)(8)(ii), (v), and (vi)). Given these requirements, NMFS reviewed landings on a weekly basis for all species and/or management groups and determined that fishermen have been able to participate in the fishery, and landings from both Gulf of Mexico sub-regions and the Atlantic region have not exceeded the 2021 overall aggregated LCS quota to date. For both the eastern and western Gulf of Mexico sub-regions combined, landings submitted in dealer reports received through July 9, 2021, indicate that 66 percent (104.7 mt dw), 57 percent (219.3 mt dw), and almost 30 percent (<8 mt dw) of the available aggregated LCS, blacktip, and hammerhead shark quotas, respectively, have been harvested. Therefore, for 2022, NMFS is proposing opening both the western and eastern Gulf of Mexico sub-regions with a commercial retention

limit of 55 sharks other than sandbar sharks per vessel per trip.

In the Atlantic region, NMFS proposes opening the aggregated LCS and hammerhead shark management groups on January 1, 2022. The criteria listed in § 635.27(b)(3) consider the effects of catch rates in one part of a region precluding vessels in another part of that region from having a reasonable opportunity to harvest a portion of the different species and/or management quotas (§ 635.27(b)(3)(v)). The 2021 data indicate that an opening date of January 1, coupled with inseason adjustments to the retention limit if later considered and needed, would provide a reasonable opportunity for fishermen in every part of each region to harvest a portion of the available quotas (§ 635.27(b)(3)(i)), while accounting for variations in seasonal distribution of the different species in the management groups (§ 635.27(b)(3)(iv)). Because the quotas we propose for 2022 are the same as the quotas in 2021, NMFS proposes that the season lengths, and therefore, the participation of various fishermen throughout the region, would be similar in 2022 (§ 635.27(b)(3)(ii) and (iii)). Additionally, the January 1 opening date appears to meet the objectives of the 2006 Consolidated HMS FMP and its amendments (§ 635.27(b)(3)(vi)). In the recent past, NMFS has managed the fishery by opening the aggregated LCS and hammerhead shark management groups on January 1 with a relatively high retention limit. Once a certain percentage threshold was reached, the retention limit was reduced to a low limit, such as 3 LCS other than sandbar sharks per vessel per trip, and then the retention limit was increased again in mid-July. This approach allowed the fishery in the Atlantic region to remain open throughout the year, consistent with conservation and management measures for the stocks and requests from fishermen and states. However, landings data from 2016 to present indicate a decrease in annual landings in the aggregated LCS management group. As a result, in 2021 NMFS opened with a retention limit of 45 LCS other than sandbar sharks per vessel per trip, anticipating that it might later reduce the trip limit when landings reached approximately 40 percent of the quota and after considering appropriate factors. Instead, on March 23, 2021, NMFS increased the retention limit from 36 to the maximum limit of 55 LCS other than sandbar sharks per vessel per trip for all directed permit holders due to low landings (86 FR 16075; March 26, 2021). As of July 9, 2021, landings data indicate that, despite increasing the retention limit to the maximum, only 22.9 percent of the aggregated LCS and 37.7 percent of the hammerhead shark commercial quotas have been landed. Considering this experience and the recent reduced landings compared to past years, NMFS proposes to open on January 1, 2022, with a retention limit of 55 LCS other than sandbar sharks per vessel per trip. Starting with the highest retention limit available could allow fishermen in the Atlantic region to more fully utilize the available science-based quota. As needed, NMFS may adjust the retention limit throughout the year to ensure equitable fishing opportunities throughout the region and ensure the quota is not exceeded (see the criteria at § 635.24(a)(8)). For example, if the quota is harvested too quickly, NMFS could consider reducing the retention limit as appropriate to ensure enough quota remains until later in the year. NMFS would publish in the **Federal Register** notification of any inseason adjustments of the retention limit.

All of the shark management groups would remain open until December 31, 2022, or until NMFS determines that the landings for any shark management group are projected to reach 80 percent of the quota given the realized catch rates, and are projected to reach 100 percent before the end of the fishing season, or until a quota-linked species or management group is closed. If NMFS determines that a non-quota-linked shark species or management group must be closed, then, consistent with § 635.28(b)(2) for non-linked quotas (*e.g.,* eastern Gulf of Mexico blacktip, western Gulf of Mexico blacktip, Gulf of Mexico non-blacknose SCS, pelagic sharks, or the Atlantic or Gulf of Mexico smoothhound sharks), NMFS will publish in the **Federal Register** a notice of closure for that shark species, shark management group, region, and/or sub-region that will be effective no fewer than four days from the date of filing. For the blacktip shark management group, regulations at § 635.28(b)(5)(i) through (v) authorize NMFS to close the management group before landings have reached or are projected to reach 80 percent of applicable available overall, regional, and/or sub-regional quota and are projected to reach 100 percent of the relevant quota by the end of the fishing season, after considering the following criteria and other relevant factors: Season length based on available sub-regional quota and average sub-regional catch rates; variability in regional and/or sub-regional seasonal distribution, abundance, and migratory patterns; effects on accomplishing the objectives of the 2006 Consolidated HMS FMP and its amendments; amount of remaining shark quotas in the relevant sub-region; and regional and/or sub-regional catch rates of the relevant shark species or management groups. The fisheries for the shark species or management group would be closed (even across fishing years) from the effective date and time of the closure until NMFS announces, via the publication of a notice in the **Federal Register**, that additional quota is available and the season is reopened.

If NMFS determines that a quota-linked species and/or management group must be closed, then, consistent with § 635.28(b)(3) for linked quotas, NMFS will publish in the **Federal Register** a notice of closure for all of the species and/or management groups in a linked group that will be effective no fewer than four days from the date of filing. In that event, from the effective date and time of the closure until the season is reopened and additional quota is available (via the publication of another NMFS notice in the **Federal Register**), the fisheries for all quota-linked species and/or management groups will be closed, even across fishing years. The quota-linked species and/or management groups are Atlantic hammerhead sharks and Atlantic aggregated LCS; eastern Gulf of Mexico hammerhead sharks and eastern Gulf of Mexico aggregated LCS; western Gulf of Mexico hammerhead sharks and western Gulf of Mexico aggregated LCS; and Atlantic blacknose and Atlantic non-blacknose SCS south of 34 °N latitude.

Request for Comments

Comments on this proposed rule and on NMFS' determination that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities (as discussed below in the Classification section), may be submitted via *www.regulations.gov.* NMFS solicits comments on this proposed rule by September 7, 2021 (see **DATES** and **ADDRESSES**).

Classification

The NMFS Assistant Administrator has determined that the proposed rule is consistent with the 2006 Consolidated HMS FMP and its amendments, the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

These proposed specifications are exempt from review under Executive Order 12866.

NMFS determined that the final rules to implement Amendment 2 to the 2006 Consolidated HMS FMP (June 24, 2008,

73 FR 35778; corrected on July 15, 2008, 73 FR 40658), Amendment 5a to the 2006 Consolidated HMS FMP (78 FR 40318; July 3, 2013), Amendment 6 to the 2006 Consolidated HMS FMP (80 FR 50073; August 18, 2015), and Amendment 9 to the 2006 Consolidated HMS FMP (80 FR 73128; November 24, 2015) are consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of coastal states on the Atlantic, including the Gulf of Mexico and the Caribbean Sea, as required under the Coastal Zone Management Act. Pursuant to 15 CFR 930.41(a), NMFS provided the Coastal Zone Management Program of each coastal state a 60-day period to review the consistency determination and to advise NMFS of their concurrence. NMFS received concurrence with the consistency determinations from several states and inferred consistency from those states that did not respond within the 60-day time period. This proposed action to establish an opening date and adjust quotas for the 2022 fishing year for the Atlantic commercial shark fisheries does not change the framework previously consulted upon. Therefore, no additional consultation is required.

This rulemaking would implement previously adopted and analyzed measures with adjustments, as specified in the 2006 Consolidated HMSFMP and its amendments, and the Environmental Assessment (EA) that accompanied the 2011 shark quota specifications rule (75 FR 76302; December 8, 2010). Impacts have been evaluated and analyzed in Amendments 2, 3, 5a, 6, and 9 to the 2006 Consolidated HMS FMP, which include Final Environmental Impact Statements (FEISs) for Amendments 2, 3, and 5a, and EAs for Amendments 6 and 9. The final rule for Amendment 2 implemented base quotas and quota adjustment procedures for sandbar shark and non-sandbar LCS species/management groups, and Amendments 3 and 5a implemented base quotas for Gulf of Mexico blacktip shark, aggregated LCS, hammerhead shark, blacknose shark, and non-blacknose SCS management groups and quota transfers for Atlantic sharks. The final rule for Amendment 6 implemented a revised commercial shark retention limit, revised base quotas for sandbar shark and non-blacknose SCS species/management groups, new sub-regional quotas in the Gulf of Mexico region for blacktip sharks, aggregated LCS, and hammerhead sharks, and new management measures for blacknose sharks. The final rule for Amendment 9 implemented management measures, including commercial quotas, for smoothhound sharks in the Atlantic and Gulf of Mexico regions. In 2010, NOAA Fisheries prepared an EA with the 2011 quota specifications rule (75 FR 76302; December 8, 2010) that describes the impact on the human environment that would result from implementation of measures to delay the start date and allow for inseason adjustments. NMFS has determined that the quota adjustments and season opening dates of this proposed rule and the resulting impacts to the human environment are within the scope of the analyses considered in the FEISs and EAs for these amendments, and additional National Environmental Policy Act (NEPA) analysis is not warranted for this proposed rule.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as defined under the Regulatory Flexibility Act (RFA). The factual basis for this determination is as follows.

The proposed rule would adjust quotas and retention limits and establish the opening date for the 2022 fishing year for the Atlantic commercial shark fisheries. NMFS would adjust quotas as required or allowable based on any overharvests and/or underharvests from the 2021 fishing year. NMFS has limited flexibility to otherwise modify the quotas in this proposed rule. In addition, the impacts of the quotas (and any potential modifications) were analyzed in previous regulatory flexibility analyses, including the initial regulatory flexibility analysis and the final regulatory flexibility analysis that accompanied the 2011 shark quota specifications rule. NMFS proposes the opening date and commercial retention limits to provide, to the extent practicable, fishing opportunities for commercial shark fishermen in all regions and areas.

The proposed measures could affect fishing opportunities for commercial shark fishermen in the northwestern Atlantic Ocean, the Gulf of Mexico, and the Caribbean Sea. However, the effects this proposed rule would have on small entities would be minimal. Section 603(b)(3) of the RFA requires agencies to provide an estimate of the number of small entities to which the rule would apply. The Small Business Administration (SBA) has established size criteria for all major industry sectors in the United States, including fish harvesters. SBA's regulations include provisions for an agency to develop its own industry-specific size standards after consultation with SBA and providing an opportunity for public comment (see 13 CFR 121.903(c)). Under this provision, NMFS may establish size standards that differ from those established by the SBA Office of Size Standards, but only for use by NMFS and only for the purpose of conducting an analysis of economic effects in fulfillment of the agency's obligations under the RFA. To utilize this provision, NMFS must publish such size standards in the **Federal Register**, which NMFS did on December 29, 2015 (80 FR 81194; 50 CFR 200.2). In this final rule effective on July 1, 2016, NMFS established a small business size standard of $11 million in annual gross receipts for all businesses in the commercial fishing industry (NAICS 11411) for RFA compliance purposes. NMFS considers all HMS permit holders to be small entities because they had average annual receipts of less than $11 million for commercial fishing.

As of June 13, 2021, this proposed rule would apply to the approximately 207 directed commercial shark permit holders, 253 incidental commercial shark permit holders, 164 smoothhound shark permit holders, and 90 commercial shark dealers. Not all permit holders are active in the fishery in any given year. Active directed commercial shark permit holders are defined as those with valid permits that landed one shark based on HMS electronic dealer reports. Of the 460 directed and incidental commercial shark permit holders, to date, only 10 permit holders landed sharks in the Gulf of Mexico region, and only 65 landed sharks in the Atlantic region. Of the 164 smoothhound shark permit holders, to date, only 63 permit holders landed smoothhound sharks in the Atlantic region, and 1 landed smoothhound sharks in the Gulf of Mexico region. As described below, NMFS has determined that all of these entities are small entities for purposes of the RFA.

Based on the 2020 ex-vessel price (Table 3), fully harvesting the unadjusted 2021 Atlantic shark commercial base quotas could result in total fleet revenues of $8,481,742. For the Gulf of Mexico blacktip shark management group, NMFS is proposing to adjust the base sub-regional quotas upward due to underharvests in 2021. The increase for the western Gulf of Mexico blacktip shark management group could result in a $206,656 gain in total revenues for fishermen in that sub-region, while the increase for the eastern Gulf of Mexico blacktip shark management group could result in a $21,066 gain in total revenues for

fishermen in that sub-region. For the Gulf of Mexico and Atlantic smoothhound shark management groups, NMFS is proposing to increase the base quotas due to the underharvest in 2021. This would cause a potential gain in revenue of $281,819 for the fleet in the Gulf of Mexico region, and a potential gain in revenue of $1,217,953 for the fleet in the Atlantic region. Since a small business is defined as having annual receipts not in excess of $11.0 million, and total Atlantic shark revenue for the entire fishery is $9 million, each individual shark fishing entity would fall within the small business definition. NMFS has also determined that the proposed rule would not likely affect any small governmental jurisdictions.

All of these changes in gross revenues are similar to the gross revenues analyzed in the 2006 Consolidated HMS FMP and Amendments 2, 3 5a, 6, and 9 to the 2006 Consolidated HMS FMP. The final regulatory flexibility analyses for those amendments concluded that the economic impacts on these small entities from adjustments such as those contemplated in this action are expected to be minimal. In accordance with the 2006 Consolidated HMS FMP, as amended, and consistent with NMFS' statements in rules implementing Amendments 2, 3 5a, 6, and 9, and in the EA for the 2011 shark quota specifications rule, NMFS now conducts annual rulemakings in which NMFS considers the potential economic impacts of adjusting the quotas for underharvests and overharvests.

TABLE 3—AVERAGE EX-VESSEL PRICES PER lb dw FOR EACH SHARK MANAGEMENT GROUP, 2020

Region	Species	Average ex-vessel meat price	Average ex-vessel fin price
Western Gulf of Mexico	Blacktip Shark	$0.81	
	Aggregated LCS	0.80	
	Hammerhead Shark	0.74	
Eastern Gulf of Mexico	Blacktip Shark	0.76	
	Aggregated LCS	0.79	
	Hammerhead Shark		
Gulf of Mexico	Non-Blacknose SCS	0.71	
	Smoothhound Shark	0.76	
Atlantic	Aggregated LCS	1.13	
	Hammerhead Shark	0.57	
	Non-Blacknose SCS	1.12	
	Blacknose Shark	1.29	
	Smoothhound Shark	0.92	
No Region	Shark Research Fishery (Aggregated LCS)		
	Shark Research Fishery (Sandbar only)	1.30	
	Blue shark		
	Porbeagle shark		
	Other Pelagic sharks	1.31	
All	Shark Fins		$5.15
Atlantic	Shark Fins		1.58
GOM	Shark Fins		9.44

In conclusion, as discussed above, this proposed rule would adjust quotas and retention limits and establish the opening date for the 2022 fishing year for the Atlantic commercial shark fisheries. Based on available data on commercial catch of sharks in the northwestern Atlantic Ocean, the Gulf of Mexico, and the Caribbean Sea, it appears that shark fishing is conducted by fishermen who already possess Federal permits and are adhering to Federal reporting requirements for all catch as well as other Federal shark regulations, whether they are in Federal or state waters. Given these factors, this action would not have an effect, practically, on the regulations that shark fishermen currently follow. Furthermore, this action is not expected to affect the amount of sharks caught and sold or result in any change in the ex-vessel revenues those fishermen could expect. Therefore, NMFS has determined that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared. NMFS invites comments from the public on the information in this determination that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

Authority: 16 U.S.C. 971 *et seq.;* 16 U.S.C. 1801 *et seq.*

Dated: August 2, 2021.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2021–16770 Filed 8–5–21; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 86, No. 149
Friday, August 6, 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

Submission for OMB Review; Comment Request

August 3, 2021.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding: Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by September 7, 2021 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *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.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Business-Cooperative Service

Title: Rural Energy for America Program.

OMB Control Number: 0570–0067.

Summary of Collection: Rural Development is implementing a new consolidated guaranteed loan regulation, 7 CFR 5001, OneRD Guarantee Loan Program. This final rule created a new guaranteed loan program which combined four existing guaranteed loan programs under one regulatory platform. The four existing programs are: (1) The Community Facilities Program (0575–0137), (2) the Water and Waste Disposal Program (0572–0122), (3) the Business and Industry Program (0570–0014), and (4) the Rural Energy for America Program (formerly known as the Renewable Energy Systems and Energy Efficiency Improvements Program—0570–0050) under Title IX, Section 9007 of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill). The result of this new program removes the Guarantee Loan program from 7 CFR 4280 and thus requires a revision to the existing 7 CFR 4280 regulation.

The Rural Energy for America Program, which supersedes the Renewable Energy Systems and Energy Efficiency Improvements Program under Title IX, Section 9006 of the Farm Security and Rural Investment Act of 2002 (2002 Farm Bill) is designed to help agricultural producers and rural small business reduce energy cost and consumption, develop new income streams, and help meet the nation's critical energy needs by requiring the Secretary of Agriculture to provide grants and/or loan guarantees for several types of projects as follows:

- Grants and grants and loan guarantees (combined funding) to agricultural producers and rural small businesses to purchase renewable energy systems and make energy efficiency improvements.
- Grants to eligible entities to provide energy audits and renewable energy development assistance to enable agricultural producers and rural small businesses to become more energy efficient and to use renewable energy technologies and resources. Entities eligible to receive grants under this program are State, tribal and local governments; land-grant colleges and universities or other institutions of higher learning; rural electric cooperatives; public power entities; Resource Conservation and Development Councils and instrumentalities of local, state, and federal governments. These grant funds may be used to conduct and promote energy audits; provide recommendations and information on how to improve the energy efficiency of the operations of the agricultural producers and rural small businesses; and provide recommendations and information on how to use renewable energy technologies and resources in the operations. No more than five (5) percent of the grant can be used for administrative purposes. Agricultural producers and rural small businesses for which a grantee is conducting an energy audit must pay at least 25 percent of the cost of the energy audit.

Need and Use of the Information: For RES/EEI applications, this information will be used to determine applicant eligibility, to determine project eligibility and technical merit, and to ensure that grantees operate on a sound basis and use funds for authorized purposes. For EA/REDA applications, this information will be used to determine applicant and project eligibility and to ensure that funds are used for authorized purposes.

Description of Respondents: Business or other for-profit; Individuals; State, local government, or Tribal.

Number of Respondents: 1,434.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Monthly; Annually.

Total Burden Hours: 85,191.

Levi S. Harrell,

Departmental Information Collection Clearance Officer.

[FR Doc. 2021–16800 Filed 8–5–21; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

August 3, 2021.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are

required regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by September 7, 2021 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *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.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Farm Service Agency

Title: Assignments of Payments and Joint Payment Authorizations; Request for Waiver.

OMB Control Number: 0560–0183.

Summary of Collection: The Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(g)) authorizes producers to assign, in writing, Farm Service Agency (FSA) conservation program payments. The statute requires that any such assignment be signed and witnessed. The Agricultural Act of 1949, as amended, extends that authority to Commodity Credit Corporation (CCC) programs, including rice, feed grains, cotton, and wheat. When the recipient of an FSA, NRCS, or CCC payment chooses to assign a payment to another party or have the payment made jointly with another party, the other party must be identified. All federal nontax payments must be made by EFT, unless a waiver applies which requires certain criteria to be granted. FSA will collect information using forms CCC–36, CCC 37, CCC–251, CCC–252 and FPAC–FM–12.

Need and Use of the Information: The information collected on the forms will be used by FSA and NRCS employees in order to record the payment or contract being assigned, the amount of the assignment, the date of the assignment, and the name and address of the assignee and the assignor. This is to enable FSA employee to pay the proper party when payments become due. FSA will also use the information to issue program payments jointly at the request of the producer and also terminate joint payments at the request of both the producer and joint payee.

Description of Respondent: Farms.

Number of Respondents: 700,491.

Frequency of Responses: Reporting; On occasion.

Total Burden Hours: 116,687.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2021–16833 Filed 8–5–21; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2020–0030]

State University of New York College of Environmental Science and Forestry; Notice of Intent To Prepare an Environmental Impact Statement for Determination of Nonregulated Status for Blight-Tolerant Darling 58 American Chestnut (Castanea Dentata) Developed Using Genetic Engineering

AGENCY: Animal and Plant Health Inspection Service, Agriculture (USDA).

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: We are announcing to the public that the Animal and Plant Health Inspection Service intends to prepare an environmental impact statement (EIS) evaluating the impacts that may result from the approval of a petition for nonregulated status for blight-tolerant Darling 58 American chestnut (*Castanea dentata*) from the State University of New York College of Environmental Science and Forestry. The trees have been developed using genetic engineering to express an oxalate oxidase enzyme from wheat as a defense against the fungal pathogen *Cryphonectria parasitica,* making Darling 58 American chestnut tolerant to chestnut blight. Issues to be addressed in the EIS include the potential environmental impacts to managed natural and non-agricultural lands, the physical environment, biological resources, human health, socioeconomics, federally listed threatened or endangered species, and cultural or historic resources. We are requesting public comments to further delineate the scope of the alternatives and environmental and interrelated economic issues and impacts to be considered in the EIS.

DATES: APHIS will consider all comments received on or before September 7, 2021.

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

- *Federal eRulemaking Portal:* Go to *www.regulations.gov*. Enter APHIS–2020–0030 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2020–0030, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

The petition and any comments we receive on this docket may be viewed at *www.regulations.gov* or in our reading room, which is located in room 1620 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Eck, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1238; (301) 851–3892, email: *cynthia.a.eck@usda.gov*.

SUPPLEMENTARY INFORMATION:

Purpose and Need for the Proposed Action

Under the authority of the plant pest provisions of the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the regulations in 7 CFR part 340, ''Movement of Organisms Modified or Produced Through Genetic Engineering,'' regulate, among other things, the importation, interstate movement, or release into the environment of organisms modified or produced through genetic engineering that are plant pests or pose a plausible plant pest risk.

The petition for nonregulated status described in this notice is being evaluated under the version of the regulations effective at the time that it was received. The Animal and Plant

Health Inspection Service (APHIS) issued a final rule, published in the **Federal Register** on May 18, 2020 (85 FR 29790–29838, Docket No. APHIS–2018–0034),[1] revising 7 CFR part 340; however, the final rule is being implemented in phases. The new Regulatory Status Review (RSR) process, which replaces the determination of nonregulated status petition process, became effective on April 5, 2021 for corn, soybean, cotton, potato, tomato, and alfalfa. The RSR process is effective for all crops as of October 1, 2021. However, ''[u]ntil RSR is available for a particular crop . . . ., APHIS will continue to receive petitions for determination of nonregulated status for the crop in accordance with the [legacy] regulations at 7 CFR 340.6.'' (85 FR 29815). This petition for a determination of nonregulated status is being evaluated in accordance with the regulations at 7 CFR 340.6 (2020) as it was received by APHIS on January 21, 2020.

APHIS received a petition from the State University of New York College of Environmental Science and Forestry (ESF) (APHIS Petition Number 19–309–01p)[2] seeking a determination of nonregulated status for blight-tolerant Darling 58 American chestnut (*Castanea dentata*). The petition states that Darling 58 American chestnut is unlikely to pose a plant pest risk and, therefore, should not be regulated under APHIS' regulations in 7 CFR part 340.

According to our process[3] for soliciting public comment when considering petitions for determination of nonregulated status of regulated organisms, APHIS accepts written comments regarding a petition once APHIS deems it complete. On August 19, 2020, we announced in the **Federal Register** (85 FR 51008–51009, Docket No. APHIS–2020–0030) the availability of the blight-tolerant chestnut petition for public comment.[4] We solicited comments on the petition for 60 days to help us identify potential environmental and interrelated economic issues and impacts that APHIS should consider in evaluation of the petition. We received 4,320 comments on the petition from the academic sector, farmers, non-governmental organizations, nonprofit organizations, industry, Tribes, and unaffiliated individuals.

Comments in favor of the petition emphasized the positive environmental and socio-economic benefits of restoring American chestnut throughout its pre-blight range. Issues raised in the opposing comments included environmental impacts of the unconfined release of a forest tree developed using genetic engineering, impacts to native communities, human health and safety impacts of using a wheat gene, the need for long term studies, the potential for chestnut to be more susceptible to chestnut blight as well as other diseases, the potential for impacts to organic producers, impacts to trade, and general anti-biotech sentiments. APHIS evaluated all comments received on the petition. A full record of comments received is available online at *www.regulations.gov* (see footnote 4). As part of our evaluation of the petition and consideration of public comments, APHIS has determined that this proposed action has potential to significantly affect the quality of the human environment.[5] As such, APHIS is deciding to prepare an environmental impact statement (EIS) in order to conduct the level of detailed and rigorous environmental analysis required to make an informed decision about the proposed deregulation of Darling 58 American chestnut.

The EIS is being prepared in accordance with: (1) National Environmental Policy Act (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) the Council on Environmental Quality's (CEQ) NEPA-implementing regulations (40 CFR parts 1500–1508), (3) USDA's NEPA-implementing regulations (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Proposed Action and Alternative the EIS Will Consider

The EIS will analyze the preferred alternative, approval of ESF's petition for a determination of nonregulated status for Darling 58 American chestnut, as well as the no action alternative, denial of the petition for nonregulated status. Both alternatives will receive APHIS' full consideration. APHIS has developed a list of topics for consideration in the EIS based on public comments on the petition, prior environmental assessments (EAs)/EISs for plants developed using genetic engineering, public comments submitted for other EAs/EISs evaluating petitions for nonregulated status, scientific literature on biotechnology, and issues identified by APHIS specific to American chestnut and other *Castanea* species. The following topics were identified as relevant to the scope of analysis: Action Area (Historic, Present, and Potential Future Range of American Chestnut); Physical Environment (Soil Quality, Water Resources, Air Quality and Climate Change); Biological Resources (Animal Communities, Plant Communities, Gene Flow and Weediness, Microorganisms, and Biodiversity); Human Health Considerations; Animal Health and Welfare; and Socioeconomic Considerations (Domestic Economic Environment, International Trade). In addition, potential impacts on threatened and endangered species, as well as adherence of the Agency's decision to Executive Orders, and environmental laws and regulations to which the action may be subject will also be examined.

Summary of Potential Impacts

APHIS anticipates the potential impacts of the proposed action could include impacts on the physical environment, biological resources, and socioeconomic impacts.

Anticipated Permits and Authorizations

Darling 58 American chestnut, if deregulated, could be cultivated to produce food or animal feed, subject to any Environmental Protection Agency's (EPA) and/or U.S. Food and Drug Administration (FDA) requirements under the Coordinated Framework.[6] For example, any human food or animal feed derived from Darling 58 American chestnut would be subject to the Federal Food, Drug, and Cosmetic Act (FFDCA; 21 U.S.C. 301 *et seq.*) and FDA requirements. ESF may voluntarily consult with the FDA to ensure compliance with the FFDCA.

[1] To view the final rule, go to *www.regulations.gov* and enter APHIS–2018–0034 in the Search field.

[2] To view the petition, go to *https://www.aphis.usda.gov/aphis/ourfocus/biotechnology/permits-notifications-petitions/petitions/petition-status.*

[3] On March 6, 2012, APHIS published in the **Federal Register** (77 FR 13258–13260, Docket No. APHIS–2011–0129) a notice describing our public review process for soliciting public comments and information when considering petitions for determinations of nonregulated status for organisms developed using genetic engineering. To view the notice, go to *www.regulations.gov* and enter APHIS–2011–0129 in the Search field.

[4] To view the notice, supporting documents, and the comments that we received, go to *www.regulations.gov* and enter APHIS–2020–0030 in the Search field.

[5] Human environment means comprehensively the natural and physical environment and the relationship of present and future generations of Americans with that environment. Impacts/effects include ecological (such as effects on natural resources, and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic (such as the effects on employment), social, or health effects (see 40 CFR 1508.1).

[6] See Coordinated Framework. U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Biotechnology Regulatory Services, *https://usbiotechnologyregulation.mrp.usda.gov/biotechnologygov/home/.*

Public Scoping Process

As previously discussed, APHIS seeks public comment on petitions deemed complete through notices published in the **Federal Register**. In accordance with our process, on August 19, 2020, APHIS solicited comments on the petition for 60 days and received 4,320 comments from the academic sector, farmers, non-governmental organizations, nonprofit organizations, industry, Tribes, and unaffiliated individuals.

APHIS is seeking additional public comment on this notice of intent to prepare an EIS to help identify potential alternatives, as well as relevant information, studies, and/or analyses that we should consider in evaluating the potential impacts of the proposed action on the quality of the human environment. Those who have already submitted comments on the ESF petition need not resubmit—we will consider these comments in development of the EIS. To promote informed NEPA analysis and decisionmaking, comments should be as specific as possible and explain why the issues raised are important for consideration in the EIS. Comments should include, where possible, references and data sources supporting the information provided in the comment. We encourage the submission of data, studies, or research to support your comments.

APHIS will accept written comments for a period of 30 days from the date of this notice. The petition is available for public review, and copies are available as indicated under **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** above.

Schedule for the Decision-Making Process

As part of the decision-making process regarding the petition, we are preparing a plant pest risk assessment (PPRA) and the EIS that is the subject of this notice. We plan to complete the PPRA within 6 months, and the EIS and record of decision (ROD) within 2 years of the date of this notice. This schedule is tentative and subject to extension.

Once we have reviewed the comments received in response to this notice, we will prepare and make available a draft EIS for a review and comment for a period of 45 days. A notice for public comment on the draft EIS will be provided in the **Federal Register**, and the draft EIS and associated documents will be made available on *www.regulations.gov*.

The commenting and review process on the draft EIS will be conducted in accordance with CEQ's NEPA regulations. Comments will be invited from State, Tribal, and local governments and agencies, industry, environmental organizations, academia, and the public. APHIS will review all comments received on the draft EIS, provide responses to substantive comments, and incorporate relevant issues raised in the comments into development of a final EIS.

We will announce the availability of the final EIS in the **Federal Register** and file the final EIS together with comments and responses with the EPA, Office of Federal Activities, consistent with EPA's procedures and CEQ's filing requirements. The EPA will publish a notice in the **Federal Register** announcing the final EIS. APHIS will issue a ROD on the final EIS and petition 30 days after the EPA notifies the public that the final EIS has been completed and submitted. If necessary, APHIS may extend these timeframes.

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 2nd day of August 2021.

Michael Watson,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2021–16771 Filed 8–5–21; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

U.S. Codex Office

Codex Alimentarius Commission: Meeting of the Codex Committee on Fats and Oils

AGENCY: U.S. Codex Office, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The U.S. Codex Office is sponsoring a public meeting on September 20, 2021. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States (U.S.) positions to be discussed at the 27th Session of the Codex Committee on Fats and Oils (CCFO) of the Codex Alimentarius Commission, which will convene virtually, October 18–26, 2021. The U.S. Manager for Codex Alimentarius and the Acting Deputy Under Secretary for Trade and Foreign Agricultural Affairs recognize the importance of providing interested parties the opportunity to obtain background information on the 27th Session of the CCFO and to address items on the agenda.

DATES: The public meeting is scheduled for September 20, 2021, from 2:00–4:00 p.m. EDT.

ADDRESSES: The public meeting will take place via Video Teleconference only. Documents related to the 27th Session of the CCFO will be accessible via the internet at the following address: *http://www.fao.org/fao-who-codexalimentarius/meetings/detail/en/?meeting=CCFO&session=27.* Dr. Paul South, U.S. Delegate to the 27th Session of the CCFO, invites U.S. interested parties to submit their comments electronically to the following email address: *paul.south@fda.hhs.gov.*

REGISTRATION: Attendees must register to attend the public meeting here: *https://www.zoomgov.com/meeting/register/vJItdeCspjoiE_dPA0lHBseYMWHn9ŪDDhdY.* After registering, you will receive a confirmation email containing information about joining the meeting.

FOR FURTHER INFORMATION CONTACT:

For further information about the 27th Session of the CCFO, contact U.S. Delegate, Dr. Paul South, *paul.south@fda.hhs.gov,* +1 (240) 402–1640.

For further information about the public meeting contact: U.S. Codex Office, 1400 Independence Avenue SW, Room 4861, South Agriculture Building, Washington, DC 20250. Phone (202) 720–7760, Fax: (202) 720–3157, Email: *uscodex@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

Codex was established in 1963 by two United Nations organizations, the Food and Agriculture Organization and the World Health Organization. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure fair practices in the food trade.

The Terms of Reference of the Codex Committee on Fats and Oils (CCFO) are:

(a) To elaborate worldwide standards for fats and oils of animal, vegetable and marine origin including margarine and olive oil.

The CCFO is hosted by Malaysia. The United States attends the CCFO as a member country of Codex.

Issues To Be Discussed at the Public Meeting

The following items on the Agenda for the 27th Session of the CCFO will be discussed during the public meeting:

- Adoption of the Agenda.

• Matters referred to the Committee by the CAC and other Codex Subsidiary Bodies.

• Matters of Interest arising from FAO/WHO and from the 90th and 91st Meeting of the Joint FAO/WHO Expert Committee on Food Additives (JECFA).

• Proposed draft revision to the Standard for Named Vegetable Oils (CXS 210–1999):

○ Sunflower seed oil—Revision of composition: Section 3.1—GLC ranges of fatty acid composition—ranges of oleic and linoleic acid.

○ Sunflower seed oil—Revision to composition—Physical and chemical parameters (refractive index, saponification value, iodine values and relative density).

○ Inclusion of avocado oil in the Standard for Named Vegetable Oils (CXS 210–1999).

• Proposed draft revision to the Standard for Olive Oils and Olive Pomace Oils (CXS 33–1981): Revision of Sections 3, 8 and Appendix.

• Review of the List of Acceptable Previous Cargoes (Appendix II to CXC 36–1987).

• Consideration of the proposals for new work and or amendments to existing Codex Standards—Replies to CL 2019/54–FO, including a proposal from the United States to revise the Codex Standard for Named Vegetable Oils (CSX 210–1999) to include high oleic acid soya bean oil.

Public Meeting

At the September 20, 2021, public meeting, draft U.S. positions on the agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to Dr. Paul South, U.S. Delegate for the 27th Session of the CCFO (see **ADDRESSES**). Written comments should state that they relate to activities of the 27th Session of the CCFO.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, the U.S. Codex Office will announce this **Federal Register** publication on-line through the USDA web page located at: *http://www.usda.gov/*codex, a link that also offers an email subscription service providing access to information related to Codex. Customers can add or delete their subscription themselves and have the option to password protect their accounts.

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How To File a Complaint of Discrimination

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at *https://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf,* or write a letter signed by you or your authorized representative. Send your completed complaint form or letter to USDA by mail, fax, or email.

Mail: U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250–9410.

Fax: (202) 690–7442, Email: *program.intake@usda.gov.*

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Done at Washington DC, on August 3, 2021.

Mary Frances Lowe,

U.S. Manager for Codex Alimentarius.

[FR Doc. 2021–16794 Filed 8–5–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Forest Products Removal Permits and Contracts

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the renewal with revisions of a currently approved information collection, *Forest Products Removal Permits and Contracts.* The revision pertains to the inclusion of the sale of Christmas trees through *Rec.gov.* The agency began providing that option in calendar year 2020, and the public may now buy—and print—a Christmas tree permit online versus traveling to a Forest Service office. The option to purchase a permit in-person is still available.

DATES: Comments must be received in writing on or before October 5, 2021 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

• *Email: glen.vanzandt@usda.gov.*

• *Mail:* Director, Forest Management, USDA, P.O. Box 96090, Washington, DC 20090–6090.

• *Hand Delivery/Courier:* Forest Service, USDA, 1400 Independence Avenue SW, Mailstop 1103, Washington, DC 20250.

Comments submitted in response to this notice may be made available to the public through relevant websites and upon request. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public notwithstanding the inclusion of the routine notice.

The public may request an electronic copy of the draft supporting statement and/or any comments received be sent via return email. Requests should be emailed to *glen.vanzandt@usda.gov.*

FOR FURTHER INFORMATION CONTACT: Glen Van Zandt, Forest Management Staff, by phone 202–617–1095 or by email at *glen.vanzandt@usda.gov.* Individuals who use telecommunication devices for the hearing-impaired (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Forest Products Removal Permits and Contracts.

OMB Number: 0596–0085.

Expiration Date of Approval: December 31, 2021.

Type of Request: Renewal with revisions of a currently approved information collection.

Abstract: Under 16 U.S.C. 551 *Protection of National Forests; Rules*

and Regulations, individuals and businesses wishing to remove forest products from National Forest System lands must request a permit. To obtain a permit, applicants must meet the criteria at 36 CFR 223.1, 223.2, and 223.5–223.13, which authorizes free use or sale of timber or forest products.

Under the *Food, Conservation, and Energy Act of 2008* (Pub. L. 110–246, 122 Stat. 1651) section 8105 *Forest Products for Traditional and Cultural Purposes* [hereinafter referred to as ''section 8105''], federally recognized Indian tribes may make a request for free use of trees, portions of trees, or forest products for traditional and cultural purposes, provided the use will not be for commercial purposes. Section 8105 has been codified in 25 U.S.C. chapter 32A *Cultural and Heritage Cooperation Authority,* section 3055 *Forest Products for Traditional and Cultural Purposes* (25 U.S.C. 3055). Additionally, Forest Service issued final implementation regulations, for section 8105, at 36 CFR 223.15 *Provision of Trees, Portions of Trees, or Forest Products to Indian Tribes for Traditional and Cultural Purposes.*

Indian tribes seeking products, under section 8105 authority, must make a request for free use, following the criteria at 36 CFR 223.15, which includes: ''Requests for trees, portions of trees, or forest products . . . must be submitted to the local Forest Service District Ranger's Office(s) in writing. Requests may be made: (1) Directly by a tribal official(s) who has been authorized by the Indian tribe to make such requests; or (2) By providing a copy of a formal resolution approved by the tribal council or other governing body of the Indian tribe.'' Note: There is no stated maximum free use limitation for products requested by Indian tribes, and there is no limitation to the number of requests that each federally recognized Indian tribe may make, under section 8105 authority. Should federally recognized Indian tribes seeking such use wish to obtain proof of possession, as may be required in some States, they could be issued a FS–2400–8 permit which allows use of timber or forest products at no charge (36 CFR 223.5–223.13).

Upon receiving a permit, the permittee must comply with the terms of the permit (36 CFR 261.6), which designates the forest products that can be harvested and under what conditions, such as limiting harvest to a designated area or permitting harvest of only specifically designated material. The collected information will help the Forest Service and the Bureau of Land Management (for form FS–2400–1) oversee the approval and use of forest products by the public.

When applying for forest product removal permits, applicants (depending on the products requested) would provide information needed to complete one of the following:

- FS–2400–1, *Forest Products Removal Permit and Cash Receipt,* is used to sell timber or forest products such as, but not limited to, fuelwood, Christmas trees, or pine cones (36 CFR 223.1, 223.2). The Bureau of Land Management identifies the FS–2400–1 as BLM–5450–24 (43 U.S.C. 1201, 43 CFR 5420). This form would *not* be used to issue products requested by federally recognized Indian tribes under section 8105 authority. In addition, beginning in calendar year 2020, the agency has made the option available to the public to use *Recreation.gov* to secure a permit online for Christmas trees at many forests and print it out at home instead of traveling to a Forest Service office to get the permit there.
- FS–2400–4/FS–2400–4ANF, *Forest Products Contract and Cash Receipt,* are used to sell timber products such as sawtimber or forest products such as, but not limited to, fuelwood, or posts and poles. These forms would *not* be used to issue products requested by federally recognized Indian tribes under section 8105 authority.
- FS–2400–8, *Forest Products Free Use Permit,* allows use of timber or forest products at no charge to the permittee (36 CFR 223.5–223.13). This form could be used to issue products requested by federally recognized Indian tribes under section 8105 authority.

Each form listed above implements different regulations and has different provisions for compliance but collects similar information from the applicant for related purposes.

The Forest Service and the Bureau of Land Management will use the information collected on form FS–2400–1 to ensure identification of permittees in the field by agency personnel. The Forest Service will use the information collected on forms FS–2400–4/FS–2400–4ANF and/or FS–2400–8 to:

- Ensure that permittees obtaining free use of timber or forest products qualify for the free-use program.
- Ensure that permittees obtaining free use of timber or forest products, under 36 CFR 223.8, do not receive product value in excess of that allowed by regulations. However, as noted above for federally recognized Indian Tribe requests made under section 8105 authority, there is no stated maximum free use limitation (25 U.S.C. 3055).
- Ensure that applicants purchasing timber harvest or forest products permits non-competitively do not exceed the authorized limit in a fiscal year (16 U.S.C. 472(a)).
- Ensure identification of permittees, in the field, by Forest Service personnel.

Applicants may apply for more than one forest product permit or contract per year. For example, an applicant may obtain a free use permit for a timber product such as, but not limited to, pine cones (FS–2400–8) and still purchase fuelwood (FS–2400–1, and/or FS–2400–4/2400–4ANF). Additionally, as noted above, there is no limitation to the number of requests that each federally recognized Indian tribe may make under section 8105 authority (25 U.S.C. 3055).

Individuals and small business representatives usually request and apply for permits and contracts in person at the office issuing the permit. As noted above, Indian tribes seeking products under section 8105 authority must make a written request for free use, following the criteria at 36 CFR 223.15.

Applicants provide the following information, as applicable:

- Name,
- Address, and
- Personal identification number such as tax identification number, driver's license number, or other unique number identifying the applicant.

Agency personnel enter the information into a computerized database to use for subsequent requests by applicants for a forest product permit or contract. The information is printed on paper, which the applicant signs and dates. Agency personnel discuss the terms and conditions of the permit or contract with the applicant.

For Christmas tree permits purchased through the *Recreation.gov* website, a user is required to have an account which requires first name, last name, email address and mobile phone number.

The data gathered is not available from other sources. The collected data is used to ensure:

- Applicants for free use permits meet the criteria for free use of timber or forest products authorized by regulations at 36 CFR 223.5–223.13; and, for federally recognized Indian tribes under section 8105 authority, the criteria at 36 CFR 223.15;
- Applicants seeking to purchase and remove timber or forest products from Agency lands meet the criteria under which sale of timber or forest products is authorized by regulations at 36 CFR 223.80; and
- Permittees comply with regulations and terms of the permit at 36 CFR 261.6.

The collection of this information is necessary to ensure that applicants meet the requirements of the forest products program; that those obtaining free-use permits for forest products qualify for the program; that applicants purchasing non-competitive permits to harvest forest products do not exceed authorized limits; and that Federal Agency employees can identify permittees when in the field.

Estimate of Annual Burden: 5 minutes.

Type of Respondents: Individuals, small businesses, and, for requests made under section 8105 of *the Food, Conservation, and Energy Act of* 2008 (Pub. L. 110–246, 122 Stat. 1651), federally recognized Indian tribes.

Estimated Annual Number of Respondents: 192,224.

Estimated Annual Number of Responses per Respondent: 2.

Estimated Total Annual Burden on Respondents (hours): 32,037.

Comment is Invited: Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request for Office of Management and Budget approval.

Dated: August 3, 2021.

Barnie Gyant,

Associate Deputy Chief, National Forest System.

[FR Doc. 2021–16829 Filed 8–5–21; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Request Revision and Extension of a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, Agriculture (USDA).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, this notice announces the intention of the National Agricultural Statistics Service (NASS) to request revision and extension of a currently approved information collection, the Floriculture Survey. Revision to burden hours will be needed due to changes in the size of the target population, sampling design, and/or questionnaire length.

DATES: Comments on this notice must be received by October 5, 2021 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number 0535–0093, by any of the following methods:

- *Email: ombofficer@nass.usda.gov.* Include docket number above in the subject line of the message.
- *efax:* (855) 838–6382.
- *Mail:* Mail any paper, disk, or CD–ROM submissions to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW, Washington, DC 20250–2024.
- *Hand Delivery/Courier:* Hand deliver to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW, Washington, DC 20250–2024.

FOR FURTHER INFORMATION CONTACT: Kevin L. Barnes, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–2707. Copies of this information collection and related instructions can be obtained without charge from David Hancock, NASS—OMB Clearance Officer, at (202) 690–2388 or at *ombofficer@nass.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Floriculture Survey.

OMB Control Number: 0535–0093.

Expiration Date of Approval: November 30, 2021.

Type of Request: Intent to Seek Approval to Revise and Extend an Information Collection for 3 years.

Abstract: The primary objective of the National Agricultural Statistics Service is to prepare and issue State and national estimates of crop and livestock production, prices, and disposition. The Floriculture Survey was previously conducted in 17 States (Alaska, California, Colorado, Connecticut, Florida, Illinois, Michigan, Ohio, Oregon, New Jersey, New York, North Carolina, Pennsylvania, Texas, Virginia, Washington, and Wisconsin) and obtained basic agricultural statistics on production and value of floriculture products. All states are included in this renewal. The target population for this survey is all operations with production and sales of at least $10,000 of floriculture products. New floriculture operations that are discovered during the 2022 Census of Agriculture will be added to the list of potential respondents. The retail and wholesale quantity and value of sales are collected for fresh cut flowers, potted flowering plants, foliage plants, annual bedding/garden plants, herbaceous perennials, cut cultivated florist greens, propagative floriculture material, and unfinished plants. Additional detail on area in production, operation value of sales, and agricultural workers is included. Content changes are minimal year to year, with the goal of avoiding significant changes to the survey length and respondent burden associated with each questionnaire. The only program change currently being considered involves expanding the survey to allow publishing a U.S. total, in addition to state-level totals for 28 States (Alaska, Alabama, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, Wisconsin). These statistics are used by the U.S. Department of Agriculture to help administer programs and by growers and marketers in making production and marketing decisions.

Authority: These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985 as amended, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This Notice is submitted in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501, *et seq.*), and Office of Management and Budget regulations at 5 CFR part 1320.

NASS also complies with OMB Implementation Guidance,

''Implementation Guidance for Title V of the E-Government Act, Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA),'' **Federal Register**, Vol. 72, No. 115, June 15, 2007, p. 33362.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average between 10 and 60 minutes per respondent. In all states except Hawaii, operations with less than $100,000 in sales of floriculture products respond to a reduced number of questions related to operation characteristics while operations with sales greater than $100,000 complete the entire questionnaire. In Hawaii, all operations with sales of at least $10,000 will complete the full questionnaire. The proposed increase in burden reflects the additional respondents from the program change.

Respondents: Farms and businesses.

Estimated Number of Respondents: 12,200.

Estimated Total Annual Burden on Respondents: 6,400 hours.

Comments: 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 will 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 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, through the use of appropriate automated, electronic, mechanical, technological, or other forms of information technology collection techniques.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, July 29, 2021.

Kevin L. Barnes,

Associate Administrator.

[FR Doc. 2021–16783 Filed 8–5–21; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–423–812]

Certain Carbon and Alloy Steel Cut-To-Length Plate From Belgium: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2019–2020

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that the producers/exporters subject to this administrative review made sales of subject merchandise at less than normal value (NV) during the period of review (POR) May 1, 2019, through April 30, 2020. Additionally, Commerce preliminarily determines that two companies for which we initiated reviews had no shipments during the POR. Interested parties are invited to comment on these preliminary results.

DATES: Applicable August 6, 2021.

FOR FURTHER INFORMATION CONTACT: Alex Wood, 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) 482–1959.

SUPPLEMENTARY INFORMATION:

Background

On July 10, 2020, based on timely requests for review in accordance with 19 CFR 351.221(c)(1)(i), we initiated an administrative review of the antidumping duty (AD) order on certain carbon and alloy steel cut-to-length plate from Belgium.[1] This review covers 22 producers and/or exporters of the subject merchandise.[2] Commerce selected two companies, Industeel Belgium S.A. (Industeel) and NLMK Belgium, for individual examination. The producers and/or exporters not selected for individual examination are listed in the ''Preliminary Results of the Review'' section of this notice.

On July 21, 2020, Commerce tolled deadlines for all preliminary and final results in administrative reviews by 60 days, thereby extending the deadline for these results until April 1, 2021.[3] On February 24, 2021, Commerce extended the preliminary results of this review by 120 days, until July 30, 2021.[4] For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[5]

Scope of the Order

The products covered by the order are certain carbon and alloy steel hot-rolled or forged flat plate products not in coils, whether or not painted, varnished, or coated with plastics or other non-metallic substances from Belgium. Products subject to the order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7225.40.1110, 7225.40.1180, 7225.40.3005, 7225.40.3050, 7226.20.0000, and 7226.91.5000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this scope is dispositive.[6]

Methodology

Commerce is conducting this review in accordance with sections 751(a)(1)(B) and (2) of the Tariff Act of 1930, as amended (the Act). Export price and constructed export price are calculated in accordance with section 772 of the Act. NV 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. 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

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 85 FR 41540 (July 10, 2020).

[2] Commerce collapsed NLMK Clabecq S.A., NLMK Plate Sales S.A., NLMK Sales Europe S.A., NLMK Manage Steel Center S.A., and NLMK La Louviere S.A. as a single entity (collectively, NLMK Belgium) in the less-than-fair-value investigation. *See Certain Carbon and Alloy Steel Cut-To-Length Plate from Belgium: Final Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances, in Part,* 82 FR 16378 (April 4, 2017).

[3] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews,'' dated July 21, 2020.

[4] *See* Memorandum, ''Extension of Deadline for Preliminary Results of 2019–2020 Antidumping Duty Administrative Review,'' dated February 24, 2021.

[5] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the 2019–2020 Administrative Review of the Antidumping Duty Order on Certain Carbon and Alloy Steel Cut-To-Length Plate from Belgium,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[6] For a full description of the scope of the order, *see* Preliminary Decision Memorandum.

at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://enforcement.trade.gov/frn/summary.* A list of the topics discussed in the Preliminary Decision Memorandum is attached as an appendix to this notice.

Preliminary Determination of No Shipments

Two companies under review, AG der Dillinger Huttenwerke (Dillinger) and Industeel France S.A.S. (Industeel France), filed statements reporting that they made no shipments of subject merchandise to the United States during the POR.[7] U.S. Customs and Border Protection (CBP) provided no information to contradict these claims of no shipments during the POR.[8] Therefore, we preliminarily determine that Dillinger and Industeel France had no shipments during the POR. Consistent with our practice, we find that it is not appropriate to preliminarily rescind the review with respect to Dillinger or Industeel France, and we will instead complete the review for these companies and issue appropriate instructions to CBP based on the final results of this review.[9]

Preliminary Results of the Review

We preliminarily determine that the following weighted-average dumping margins exist for the respondents for the period May 1, 2019, through April 30, 2020:

Producers/exporters	Weighted-average dumping margin (percent)
Industeel Belgium S.A	0.51
NLMK Clabecq S.A./NLMK Plate Sales S.A./NLMK Sales Europe S.A./NLMK Manage Steel Center S.A./NLMK La Louviere S.A	6.40
C.A. Picard GmbH	3.46
Doerrenberg Edelstahl GmbH	3.46
Edgen Murray	3.46
EEW Steel Trading LLC	3.46
Fike Europe B.A	3.46
Macsteel International	3.46
NLMK Dansteel A.S	3.46
NLMK Verona SpA	3.46
NobelClad Europe GmbH & Co. KG	3.46
RP Technik GmbH Profilsysteme	3.46
Salzgitter Mannesmann International GmbH	3.46
Stahlo Stahl Service GmbH & Co. KG	3.46
Stemcor USA	3.46
Thyssenkrupp Steel Europe	3.46
TWF Treuhandgesellschaft Werbefilm mbH	3.46
Tranter Service Centers	3.46
Válcovny Trub Chomutov A.S	3.46
Voestalpine Grobblech GmbH	3.46

Rate for Non-Examined Companies

The Act and Commerce's regulations do not address the establishment of a weighted-average dumping margin 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 less-than-fair-value (LTFV) investigation, for guidance when calculating the weighted-average dumping margin 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 rates that are zero, *de minimis* (*i.e.,* less than 0.5 percent), or determined entirely on the basis of facts available.

Consistent with section 735(c)(5)(A) of the Act, we determined the weighted-average dumping margin for each of the non-selected companies by using the weighted-average dumping margins calculated for Industeel France and NLMK Belgium in this administrative review.

Disclosure and Public Comment

Commerce intends to disclose the calculations performed in connection with these preliminary results to interested parties within five days after the date of publication of this notice.[10] Interested parties may submit case briefs to Commerce no later than 30 days after the date of publication of this notice.[11] Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than seven days after the time limit for filing case briefs.[12] 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.[13] Case and rebuttal briefs should be filed using ACCESS.[14]

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, U.S. Department of Commerce, filed electronically via ACCESS within 30 days after the date of publication of this notice.[15] Hearing requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Oral presentations at the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a date and time to be determined.[16] Parties should confirm the date, time, and location of the hearing two days before the scheduled date.

An electronically-filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time on the established deadline. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[17]

Commerce intends to issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the date of publication of this notice, unless otherwise extended.[18]

Assessment Rates

Upon completion of the administrative review, Commerce shall determine, and CBP shall assess,

[7] *See* Dillinger's Letter, ''Certain Carbon and Alloy Steel Cut-To-Length Plate from Belgium—No Sales Certification,'' dated July 21, 2020; and Industeel France's Letter, ''Certain Carbon and Alloy Steel Cut-To-Length Plate from Belgium: Industeel France No Shipment Letter,'' dated August 4, 2020.

[8] *See* Memorandum, ''Certain Carbon and Alloy Steel Cut-to-Length Plate from Belgium (A–423–812),'' dated August 20, 2020.

[9] *See, e.g., Certain Frozen Warmwater Shrimp from Thailand; Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Review, Preliminary Determination of No Shipments; 2012–2013,* 79 FR 15951, 15952 (March 24, 2014), unchanged in *Certain Frozen Warmwater Shrimp from Thailand: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Partial Rescission of Review;* 2012–2013, 79 FR 51306 (August 28, 2014).

[10] *See* 19 CFR 351.224(b).

[11] *See* 19 CFR 351.309(c).

[12] Commerce is exercising its discretion, under 19 CFR 351.309(d)(1), to alter the time limit for filing of rebuttal briefs.

[13] *See* 19 CFR 351.309(c)(2) and (d)(2).

[14] *See* 19 CFR 351.303.

[15] *See* 19 CFR 351.310(c).

[16] *See* 19 CFR 351.310(d).

[17] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[18] *See* section 751(a)(3)(A) of the Act.

antidumping duties on all appropriate entries.[19]

Pursuant to 19 CFR 351.212(b)(1), we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the examined sales to the total entered value of the sales. 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 rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

For the companies that were not selected for individual review, we will assign an assessment rate based on the average of the cash deposit rates calculated for Industeel and NLMK Belgium, excluding any rates that are zero, *de minimis,* or determined entirely based on adverse facts available. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

Commerce's ''automatic assessment'' will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know that the merchandise they sold to the intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[20]

Further, if we continue to find, in the final results, that Dillinger and Industeel France had no shipments of subject merchandise during the POR, we will instruct CBP to liquidate any suspended entries that entered under their AD case number (*i.e.,* at that exporter's rate) at the all-others rate, if there is no rate for the intermediate company(ies) involved in the transaction.

Consistent with its recent notice,[21] 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 the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the exporters listed above will be equal to the weighted-average dumping margin established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for companies not participating in this review, the cash deposit rate will continue to be the company-specific cash deposit rate published for the most recently completed segment; (3) if the exporter is not a firm covered in this review, or the original LTFV investigation, but the producer is, then the cash deposit rate will be the cash deposit rate established for the most recently completed segment for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 5.40 percent, the all-others rate established in the LTFV investigation.[22] These 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 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)(1) of the Act.

Dated: July 30, 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. Preliminary Determination of No Shipments
V. Companies Not Selected for Individual Examination
VI. Discussion of the Methodology
VII. Currency Conversion
VIII. Recommendation

[FR Doc. 2021–16835 Filed 8–5–21; 8:45 am]

BILLING CODE 3510–DS–P

[19] *See* 19 CFR 351.212(b).

[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 Notice of Discontinuation of Policy to Issue Liquidation Instructions After 15 Days in Applicable Antidumping and Countervailing Duty Administrative Proceedings,* 86 FR 3995 (January 15, 2021).

[22] *See Certain Carbon and Alloy Steel Cut-To-Length Plate from Austria, Belgium, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, and Taiwan: Amended Final Affirmative Antidumping Determinations for France, the Federal Republic of Germany, the Republic of Korea and Taiwan, and Antidumping Duty Orders,* 82 FR 24096, 24098 (May 25, 2017).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–967]

Aluminum Extrusions From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Rescission of Review in Part; 2019–2020

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

SUMMARY: The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on aluminum extrusions from the People's Republic of China (China). The period of review (POR) is May 1, 2019, through April 30, 2020. Commerce preliminarily determines that, because Kingtom Aluminio S.R.L. (Kingtom) exported merchandise from the Dominican Republic that is Chinese in origin, Kingtom is a third-country exporter and is not eligible for a separate rate and that, because Kingtom did not identify a Chinese exporter, we are unable to use the information provided by Kingtom to apply our non-market economy (NME) calculation methodology. Additionally, we preliminarily determine that none of the companies for which an administrative review was requested, and the request was not withdrawn, have demonstrated their eligibility for a separate rate and are, therefore, part of the China-wide entity, unless they have submitted a valid statement of no shipments. Interested parties are invited

to comment on these preliminary results.

DATES: Applicable August 6, 2021.

FOR FURTHER INFORMATION CONTACT: Mark Flessner, 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) 482–6312.

SUPPLEMENTARY INFORMATION:

Background

On July 15, 2020, Commerce published the notice of initiation of the administrative review of the AD order on aluminum extrusions from China [1] for the period May 1, 2019, through April 30, 2020, covering 98 companies.[2] All requests for administrative review were timely withdrawn with regard to 11 companies (listed in Appendix II to this notice), leaving 87 companies subject to this administrative review.[3] For a complete description of the events that followed the initiation of this administrative review, *see* the Preliminary Decision Memorandum.[4]

The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's AD 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 on the internet at *http://enforcement.trade.gov/frn/.* A list of topics included in the Preliminary Decision Memorandum is included as Appendix I to this notice.

Scope of the Order

The merchandise covered by the *Order* is aluminum extrusions which are shapes and forms, produced by an extrusion process, made from aluminum alloys having metallic elements corresponding to the alloy series designations published by The Aluminum Association commencing with the numbers 1, 3, and 6 (or proprietary equivalents or other certifying body equivalents). For a full description of the scope, *see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act). For a full description of the methodology underlying our preliminary results of review, *see* the Preliminary Decision Memorandum.

Rescission of Administrative Review, in Part

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the party or parties that requested a review withdraws the request within 90 days of the publication date of the notice of initiation of the requested review. As noted above, all requests for an administrative review were timely withdrawn for certain companies. Therefore, in accordance with 19 CFR 351.213(d)(1), we are rescinding this administrative review with respect to 11 of the 98 companies named in the *Initiation Notice.*[5] *See* Appendix II for a list of these companies.[6]

Separate Rates

In the *Initiation Notice,* we informed parties of the opportunity to request a separate rate.[7] In proceedings involving NME countries, Commerce begins with a rebuttable presumption that all companies within the NME country are subject to government control, and thus should be assigned a single weighted-average dumping margin. It is Commerce's policy to assign all exporters of merchandise subject to an administrative review involving an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Companies that wanted to qualify for separate rate status in this administrative review were required to timely file, as appropriate, a separate rate application (SRA) or a separate rate certification (SRC) to demonstrate their eligibility for a separate rate. SRAs and SRCs were due to Commerce within 30 calendar days of the publication of the *Initiation Notice.*[8]

Of the companies for which an administrative review was requested, and not withdrawn, only Kingtom submitted an SRA or SRC. Additionally, Anderson International, Kingtom, and Sunvast Trade Shanghai submitted certifications of no shipments. On November 2, 2020, U.S. Customs and Border Protection (CBP) issued a Notice of Determination as to Evasion, in which CBP concluded that ''substantial evidence'' demonstrated that the aluminum extrusions imported from ''the claimed manufacturer, Kingtom Aluminio SRL (Kingtom)'' were of Chinese-origin and ''were transshipped'' with the ''country of origin claimed as the Dominican Republic.'' [9] CBP ''further'' determined that ''substantial evidence indicates that the Importers imports were entered through evasion, resulting in the avoidance of applicable AD/CVD deposits or other security.'' [10] Accordingly, CBP determined that it would ''rate adjust and change'' type 01 entries of the merchandise at issue to ''type 03 and continue suspension until instructed to liquidate these entries.'' [11]

Kingtom was therefore a third-country exporter of Chinese-origin merchandise from the Dominican Republic during the POR, and as a third-country exporter, Kingtom was not eligible for a separate rate. Furthermore, Kingtom reported no exporter of the subject merchandise from China on the record; therefore, Commerce was unable to apply its separate rate analysis to any exporter of the merchandise re-exported by Kingtom to the United States in this review.

For a full description of the methodology underlying our preliminary denial of a separate rate to Kingtom and our rejection of its no shipments claim, *see* the Preliminary Decision Memorandum. We therefore preliminarily determine that the 85 companies listed in Appendix III to this notice are not eligible for a separate rate in this administrative review.[12]

[1] *See Aluminum Extrusions from the People's Republic of China: Antidumping Duty Order,* 76 FR 30650 (May 26, 2011) (*Order*).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 85 FR 41540, 41544–41545 (July 10, 2020) (*Initiation Notice*). Several parties, including Kingtom itself, had used the name ''Kingtom S.L.R.'' instead of ''Kingtom S.R.L.'' in their submissions, as did Commerce in the *Initiation Notice.* The Aluminum Extrusions Fair Trade Committee (the petitioner), clarified the name. *See* Petitioner's Letter, ''Aluminum Extrusions from the People's Republic of China: Clarification of Mandatory Respondent,'' dated April 30, 2021. Because ''S.R.L.'' stands for *Sociedad de Responsibilidad Limitada* and is the proper business form, we corrected the error in the *Initiation Notice. See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 86 FR 31282 (June 11, 2021).

[3] *See* Petitioner's Letter, ''Aluminum Extrusions from the People's Republic of China: Partial Withdrawal of Request for Administrative Review,'' dated September 4, 2020.

[4] *See* Memorandum, ''Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Aluminum Extrusions from the People's Republic of China; 2019–2020,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[5] *See Initiation Notice,* 85 FR at 41544–41545.

[6] *See* Preliminary Decision Memorandum for further details.

[7] *See Initiation Notice,* 85 FR at 41542.

[8] *Id.*

[9] *See* Petitioner's Letter, ''Aluminum Extrusions from the People's Republic of China: Comments on Kingtom's Section A Questionnaire Response,'' dated January 7, 2021, at Attachment 1, page 1.

[10] *Id.* at Attachment 1, pages 2 and 5.

[11] *Id.* at Attachment 1, page 18.

[12] *See* Preliminary Decision Memorandum at 13–16.

China-Wide Entity

We preliminarily find that the 85 companies subject to this review and identified in Appendix III to this notice are part of the China-wide entity in this administrative review because they failed to submit an SRA, SRC, or certification of no shipments.

Commerce's policy regarding conditional review of the China-wide entity applies to this administrative review.[13] 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 the instant review, and because Commerce did not self-initiate such a review, the entity is not under review, and the entity's current rate (*i.e.,* 86.01 percent)[14] is not subject to change.

Adjustments for Countervailable Subsidies

Because no company established eligibility for an adjustment under section 777A(f) of the Act for countervailable domestic subsidies, for these preliminary results, Commerce did not make an adjustment pursuant to section 777A(f) of the Act for countervailable domestic subsidies for any companies under review. Furthermore, because the China-wide entity is not under review, we made no adjustment for countervailable export subsidies for the China-wide entity pursuant to section 772(c)(1)(C) of the Act.

Disclosure and Public Comment

Normally, Commerce discloses to interested parties the calculations performed in connection with the preliminary results within five days of the public announcement, or if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). However, because Commerce did not calculate weighted-average dumping margins for any companies in this review, nor for the China-wide entity, there is nothing further to disclose. This satisfies our regulatory obligation.

Interested parties may submit case briefs no later than 30 days after the date of publication of this notice.[15] Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than seven days after the case briefs are filed.[16] Parties who submit case or rebuttal briefs in this review are requested to submit with each argument: (1) A statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities.[17]

Any interested party may request a hearing within 30 days of publication of this notice.[18] 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 at the hearing will be limited to issues raised in the case and rebuttal briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held.[19]

An electronically-filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time on the established deadline. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information.[20]

Unless otherwise extended, Commerce intends to issue the final results of this administrative review, which will include the results of our analysis of all issues raised in any briefs received, within 120 days of publication of these preliminary results in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuing the final results, Commerce will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.[21] If a respondent's weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.50 percent) in the final results of this review, we intend to calculate importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for each importer's examined sales and the total entered value of the importer's sales in accordance with 19 CFR 351.212(b)(1). If the respondent's 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,* then we will instruct CBP to liquidate the appropriate entries without regards to antidumping duties.

Consistent with its recent notice,[22] 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). The final results of this administrative review shall be the basis for the assessment of antidumping duties on entries of merchandise under review and for future deposits of estimated duties, where applicable.

We intend to instruct CBP to liquidate entries containing subject merchandise exported by the China-wide entity at the China-wide rate. Additionally, 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 will be liquidated at the China-wide rate.[23]

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)(1)(i). Commerce intends to issue assessment instructions to CBP for those companies 35 days after publication of this notice.

Cash Deposit Requirements

The following cash deposit requirements for estimated antidumping duties, when imposed, will apply to all shipments of subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) If the companies preliminarily determined to be eligible for a separate rate receive a separate rate in the final results of this administrative review, their cash deposit rate will be equal to the

[13] *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, 65970 (November 4, 2013).

[14] *See Aluminum Extrusions from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2018–2019,* 85 FR 19726, 19728 (April 8, 2020).

[15] *See* 19 CFR 351.309(c)(1)(ii).

[16] *See* 19 CFR 351.309(d); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020) (*Temporary Rule*).

[17] *See* 19 CFR 351.309(c)(2) and (d)(2).

[18] *See* 19 CFR 351.310(c).

[19] *See* 19 CFR 351.310(d).

[20] *See Temporary Rule.*

[21] *See* 19 CFR 351.212(b)(1).

[22] *See Notice of Discontinuation of Policy to Issue Liquidation Instructions After 15 Days in Applicable Antidumping and Countervailing Duty Administrative Proceedings,* 86 FR 3995 (January 15, 2021).

[23] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

weighted-average dumping margin established in the final results of this review, as adjusted for domestic and export subsidies (except that if that rate is *de minimis,* then the cash deposit rate will be zero); (2) for any previously investigated or reviewed Chinese and non-Chinese exporters that are not under review in this segment of the proceeding but that received a separate rate in the most recently completed segment of this proceeding, the cash deposit rate will continue to be the exporter-specific rate published for the most recently completed segment of this proceeding; (3) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be that of the China-wide entity; (4) for the China-wide entity, the cash deposit rate will be 86.01 percent; and (5) 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 (or, if unidentified, that of the China-wide entity).

These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing notice of these preliminary results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

Dated: July 30, 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. Respondent Selection
V. Statements of No Shipments
VI. Rescission of Administrative Review, in Part
VII. Non-Market Economy Country
VIII. Separate Rates
IX. The China-Wide Entity
X. Adjustments for Countervailable Subsidies
XI. Cash Deposit Rate Applicable to Kingtom
XII. Assessment Rate Applicable to Kingtom
XIII. Section 232 Duties
XIV. Kingtom Scope Inquiry
XV. Recommendation

Appendix II

Companies for Which This Administrative Review Is Being Rescinded

1. Asia-Pacific Light Alloy (Nantong) Technology Co., Ltd.
2. Jiangsu Asia-Pacific Light Alloy Technology Co Ltd.
3. Modular Assembly Technology
4. Ningbo Xiangshan Import & Export Corporation
5. Rollease Acmeda Pty
6. Suzhou Mingde Aluminum
7. Tai-Ao Aluminum (Taishan) Co., Ltd.
8. Taizhou Puan Lighting Technology
9. Uniton Investment Ltd.
10. Wellste Material
11. Zhejiang Shiner Import and Export

Appendix III

Companies Preliminarily Not Entitled to a Separate Rate

1. Allpower Display Co., Ltd
2. Amidi Zhuhai
3. Beauty Sky Technology Co. Ltd
4. Changshu Changsheng Aluminum Products Co., Ltd
5. Chenming Industry and Commerce Shouguang Co., Ltd.
6. China International Freight Co. Ltd
7. China State Decoration Group Co., Ltd.
8. CRRC Changzhou Auto Parts Co. Ltd*
9. Custom Accessories Asia Ltd.
10. Everfoison Industry Ltd.
11. Foshan City Fangyuan Ceramic
12. Foshan City Nanhai Yongfeng Aluminum
13. Foshan City Top Deal Import and Export Co., Ltd.
14. Foshan Gold Bridge Import and Export Co. Ltd.
15. Foshan Golden Promise Import and Export Co., Ltd.
16. Foshan Guangshou Import and Export Co., Ltd.
17. Foshan Xingtao Aluminum Profile Co., Ltd.
18. Fujian Minfa Aluminum Inc.
19. Fujian Minfa Aluminum Co., Ltd.
20. Fuzhou Ruifuchang Trading Co., Ltd.
21. Fuzhou Sunmodo New Energy Equipment Co., Ltd.
22. Gebruder Weiss
23. Gold Bridge International
24. Grupo Emb
25. Grupo Europeo La Optica
26. Grupo Pe No Mato In
27. Guangdong Gaoming Guangtai Shicai
28. Guangdong Gaoxin Communication Equipment Industrial Co., Ltd.
29. Guangdong Golden China Economy
30. Guangdong Maoming Foreign Trade Enterprise Development Co.
31. Guangdong Taiming Metal Products Co., LTD.
32. Guangdong Victor Aluminum Co., Ltd.
33. Guangzhou Jintao Trade Company
34. Hangzhou Evernew Machinery & Equipment Co., Ltd.
35. Hangzhou Tonny Electric and Tools Co., Ltd.
36. Hefei Sylux Imp. & Exp. Co., Ltd.
37. Hong Kong Dayo Company, Ltd.
38. Huazhijie Plastic Products
39. Huiqiao International Shanghai
40. Ilshim Almax
41. Jer Education Technology
42. Jiangsu Weatherford Hongda Petroleum Equipment Co., Ltd.
43. Jiangsu Yizheng Haitian Aluminum Industrial
44. Jiang Yin Ming Ding Aluminum & Plastic Products Co., Ltd
45. Jilin Qixing Aluminum Industries Co., Ltd.
46. Jin Lingfeng Plastic Electrical Appliance
47. Kanal Precision Aluminum Product Co. Ltd.
48. Kingtom Aluminio SRL
49. Larkcop International Co Ltd
50. Ledluz Co Ltd
51. Liansu Group Co. Ltd
52. Links Relocations Beijing
53. Marshell International
54. Ningbo Deye Inverter Technology
55. Ningbo Hightech Development
56. Ningbo Winjoy International Trading
57. Orient Express Container
58. Ou Chuang Plastic Building Material (Zhejiang) Co., Ltd.
59. Pentagon Freight Service
60. Pro Fixture Hong Kong
61. Qingdao Sea Nova Building
62. Qingdao Yahe Imports and Exports
63. Sewon
64. Shandong Huajian Aluminum Industry
65. Shanghai EverSkill M&E Co., Ltd.
66. Shanghai Jingxin Logistics
67. Shanghai Ouma Crafts Co, Ltd.
68. Shanghai Phidix Trading
69. Sinogar Aluminum
70. Transwell Logistics Co., Ltd.
71. United Aluminum
72. Wanhui Industrial China
73. Wenzhou Yongtai Electric Co., Ltd.
74. Winstar Power Technology Limited
75. Wisechain Trading Ltd.
76. Wuxi Lotus Essence
77. Wuxi Rapid Scaffolding Engineering
78. Wuxi Zontai Int'l Corporation Ltd.
79. Xuancheng Huilv Aluminum Industry Co., Ltd.
80. Yekalon Industry Inc
81. Yonn Yuu Enterprise Co., Ltd.
82. Yuyao Royal Industrial
83. Zhejiang Guoyao Aluminum Co., Ltd.
84. Zhongshan Broad Windows and Doors and Curtain
85. ZL Trade Shanghai

[FR Doc. 2021–16843 Filed 8–5–21; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–484–803]

Large Diameter Welded Pipe From Greece: Preliminary Results of Antidumping Duty Administrative Review; 2019–2020

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that the sole producer/exporter subject to this administrative review did not make sales of subject merchandise at less than normal value (NV) during the period of review (POR), April 19, 2019, through April 30, 2020. Interested parties are invited to comment on these preliminary results.

DATES: Applicable August 6, 2021.

FOR FURTHER INFORMATION CONTACT: Jacob Garten, 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) 482–3342.

SUPPLEMENTARY INFORMATION:

Background

On July 10, 2020, based on a timely request for review, in accordance with 19 CFR 351.221(c)(1)(i), we initiated an administrative review on large diameter welded carbon and alloy steel line pipe (large diameter welded pipe) from Greece.[1] This review covers one producer and exporter of the subject merchandise, Corinth Pipeworks Pipe Industry S.A. (Corinth).

On July 21, 2020, Commerce tolled deadlines in administrative reviews by 60 days, thereby extending the deadline for these results until April 1, 2021.[2] On March 10, 2021, we extended the deadline for these preliminary results by 120 days, until July 30, 2021.[3] For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[4]

Scope of the Order

The product covered by the order is large diameter welded carbon and alloy steel line pipe from Greece. Products subject to the order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7305.11.1030, 7305.11.1060, 7305.11.5000, 7305.12.1030, 7305.12.1060, 7305.12.5000, 7305.19.1030, 7305.19.1060, and 7305.19.5000. Merchandise currently classifiable under subheadings 7305.31.4000, 7305.31.6090, 7305.39.1000 and 7305.39.5000 and that otherwise meets the above scope language is also covered. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this scope is dispositive.[5]

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) and (2) of the Tariff Act of 1930, as amended (the Act). Constructed export price is calculated in accordance with section 772 of the Act. NV 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. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://enforcement.trade.gov/frn/.* A list of the topics discussed in the Preliminary Decision Memorandum is attached as an appendix to this notice.

Preliminary Results of the Review

We preliminarily determine that the following estimated weighted-average dumping margin exists for Corinth for the period April 19, 2019, through April 30, 2020:

Exporter/producer	Estimated weighted-average dumping margin (percent)
Corinth Pipeworks Pipe Industry S.A	0.00

Disclosure and Public Comment

Commerce intends to disclose the calculations performed in connection with these preliminary results to interested parties within five days after the date of publication of this notice.[6] Interested parties may submit case briefs to Commerce no later than 30 days after the date of publication of this notice.[7] Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than seven days after the deadline for filing case briefs.[8] 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.[9] Case and rebuttal briefs should be filed using ACCESS.[10]

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, U.S. Department of Commerce, filed electronically via ACCESS within 30 days after the date of publication of this notice.[11] Hearing requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a date and time to be determined.[12] Parties should confirm the date, time, and location of the hearing two days before the scheduled date.

An electronically filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time on the established deadline. Note that Commerce has temporarily modified certain of its requirements for serving documents

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 85 FR 41540 (July 10, 2020).

[2] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews,'' dated July 21, 2020.

[3] *See* Memorandum, ''Large Diameter Welded Pipe from Greece: Extension of Time Limit for Preliminary Results of the 2019–2020 Antidumping Duty Administrative Review,'' dated March 10, 2021.

[4] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the 2019–2020 Administrative Review of the Antidumping Duty Order on Large Diameter Welded Carbon and Alloy Steel Line Pipe from Greece,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[5] For a full description of the scope of the order, *see* the Preliminary Decision Memorandum.

[6] *See* 19 CFR 351.224(b).

[7] *See* 19 CFR 351.309(c).

[8] Commerce is exercising its discretion, under 19 CFR 351.309(d)(1), to alter the time limit for filing of rebuttal briefs.

[9] *See* 19 CFR 351.309(c)(2) and (d)(2).

[10] *See* 19 CFR 351.303.

[11] *See* 19 CFR 351.310(c).

[12] *See* 19 CFR 351.310(d).

containing business proprietary information.[13]

Commerce intends to issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the date of publication of this notice, unless otherwise extended.[14]

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.[15]

Where the respondent did not report entered value, we calculated the entered value in order to calculate the assessment rate. Where Corinth's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an import-specific rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Commerce's ''automatic assessment'' will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know that the merchandise they sold to the intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[16]

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 the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the exporter listed above will be equal to the weighted-average dumping margin established in the final results of this review, except if the rate is less than 0.50 percent and therefore *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for companies not participating in this review, the cash deposit rate will continue to be the company-specific cash deposit rate published for the most recently completed segment; (3) if the exporter is not a firm covered in this review or the original less-than-fair-value (LTFV) investigation, but the producer is, then the cash deposit rate will be the cash deposit rate established for the most recently completed segment for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 10.26 percent, the all-others rate established in the LTFV investigation.[17] These 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 review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 29, 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 the Methodology
V. Currency Conversion
VI. Recommendation

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[13] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[14] *See* section 751(a)(3)(A) of the Act.

[15] *See* 19 CFR 351.212(b).

[16] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[17] *See Large Diameter Welded Pipe from Greece: Amended Final Affirmative Antidumping Determination and Antidumping Duty Order,* 84 FR 18769, 18771 (May 2, 2019).

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–968]

Aluminum Extrusions From the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review and Intent To Rescind, in Part; 2019

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that countervailable subsidies have been provided to producers and exporters of aluminum extrusions from the People's Republic of China (China) for the period of review (POR) January 1, 2019, through December 31, 2019. Interested parties are invited to comment on these preliminary results.

DATES: Applicable August 6, 2021.

FOR FURTHER INFORMATION CONTACT: Davina Friedmann, 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) 482–0698.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the notice of initiation of this administrative review on July 10, 2020, covering 97 companies.[1] On October 8, 2020, requests for review were withdrawn for all but the following six companies: CRRC Changzhou Auto Parts Co. Ltd. (CRRC); Jiangsu Asia-Pacific Light Alloy Technology Co Ltd. (Jiangsu Asia-Pacific); (3) Kanal Precision Aluminum Product Co. Ltd (Kanal Precision); (4) Uniton Investment Ltd. (Uniton); (5) Wellste Material (Wellste); and (6) Kingtom Aluminio SRL (Kingtom).[2]

For a complete description of the events that followed the initiation of this review, *see* the Preliminary

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 85 FR 41540, 41541 (July 10, 2020) (*Initiation Notice*).

[2] In the *Initiation Notice,* Commerce inadvertently misspelled the company name listed above. *See Initiation Notice,* 85 FR 41545. The correct spelling of this company is identified herein. *See, e.g.,* Kingtom's Letter, ''Aluminum Extrusions from the People's Republic of China: Certification of No Sales, Shipments, or Entries,'' dated August 20, 2020.

Decision Memorandum, which is dated concurrently with and hereby adopted by this notice.[3] A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix I 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

The merchandise covered by the order is aluminum extrusions which are shapes and forms, produced by an extrusion process, made from aluminum alloys having metallic elements corresponding to the alloy series designations published by The Aluminum Association commencing with the numbers 1, 3, and 6 (or proprietary equivalents or other certifying body equivalents). For a full description of the scope, see the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For purposes of this review, Commerce preliminarily finds that all programs previously countervailed in prior segments of this proceeding remain countervailable—that is, they provide a financial contribution within the meaning of sections 771(5)(B)(i) and (D) of the Act, confer a benefit within the meaning of section 771(5)(B) of the Act, and are specific within the meaning of 771(5A) of the Act.

For a full description of the methodology underlying our preliminary conclusions, including our reliance on adverse facts available (AFA) pursuant to sections 776(a) and (b) of the Act, *see* the Preliminary Decision Memorandum. As explained in the Preliminary Decision Memorandum, Commerce relied on AFA for three companies (*i.e.,* Jiangsu Asia-Pacific, Wellste, and Kingtom) because these companies did not act to the best of their ability in responding to Commerce's requests for information; therefore, we have drawn an adverse inference, where appropriate, in selecting from among the facts otherwise available.[4] For further information, *see* ''Use of Facts Otherwise Available and Adverse Inferences'' in the Preliminary Decision Memorandum.

Intent To Rescind Review, In Part

For those companies named in the *Initiation Notice* for which all review requests have been timely withdrawn,[5] we intend to rescind this administrative review in accordance with 19 CFR 351.213(d)(1). These companies are listed at Appendix II to this notice. For these companies, Commerce intends to assess duties at rates equal to the rates of the cash deposits for estimated countervailing duties required at the time of entry, or withdrawn from warehouse, for consumption, during the POR, in accordance with 19 CFR 351.212(c)(2).

Preliminary Rate for Non-Selected Companies Under Review

There are three companies for which a review was requested and the request not withdrawn, that were not selected for individual examination as a mandatory respondent or found to be cross-owned with a mandatory respondent, and to which we are not applying AFA (non-selected companies). Because we did not have information on the record that permitted selection of a mandatory respondent in this review, we have not calculated a rate for any mandatory respondent that can be used for determining the rate applicable to non-selected companies. Therefore, for these preliminary results, we based the non-selected companies' rate on the subsidy rate calculated for a mandatory respondent in the 2014 administrative review of this countervailing duty order, which is the most recent administrative review of this proceeding in which we calculated a non-AFA subsidy rate that was above *de minimis* for a mandatory respondent. This is consistent with the approach followed by Commerce in other proceedings under similar circumstances.[6] For further information, refer to the section in the Preliminary Decision Memorandum titled, ''Non-Selected Companies.''

Preliminary Results

Commerce preliminarily determines that the following estimated countervailable subsidy rates exist:[7]

Company	Ad valorem rate (percent)
CRRC Changzhou Auto Parts Co. Ltd	16.08
Jiangsu Asia-Pacific Light Alloy Technology Co Ltd	242.15
Kanal Precision Aluminum Product Co. Ltd	16.08
Kingtom Aluminio SRL	242.15
Uniton Investment Ltd	16.08
Wellste Material Co Ltd	242.15

Disclosure

Normally, Commerce discloses to interested parties the calculations performed in connection with the preliminary results of review within five days of its public announcement, or if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). In this case, the only calculation to disclose is the calculation of the AFA rate assigned to certain respondents. For information detailing the derivation of the AFA rate applied, *see* AFA Calculation Memorandum.[8]

Public Comment

Interested parties may submit written case briefs no later than 30 days after the date of publication of the preliminary results. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs and rebuttal comments must be limited to comments raised in 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

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of Countervailing Duty Administrative Review and Intent to Rescind, in Part; 2018,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See* sections 776(a) and (b) of the Act.

[5] *See* Petitioner's Letter, ''Aluminum Extrusions from the People's Republic of China: Partial Withdrawal of Request for Administrative Review,'' dated October 8, 2020'.

[6] *See, e.g., Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2018,* 86 FR 21275, 21276 (April 22, 2021).

[7] *See* Preliminary Decision Memorandum at ''Use of Facts Otherwise Available and Adverse Inferences'' and ''*Ad Valorem* Rate for Non-Cooperative Companies Under Review.''

[8] *See* Memorandum ''Administrative Review of Countervailing Duty Order on Aluminum Extrusions from the People's Republic of China: AFA Calculation Memorandum for the 2019 Preliminary Results of Review,'' dated concurrently with this notice.

[9] *See* 19 CFR 351.309; 19 CFR 351.303 (for general filing requirements); and *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 29615 (May 18, 2020); and *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020) (collectively, *Temporary Rule*).

summary of the argument; and (3) a table of authorities.[10] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information until further notice.[11]

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 of the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing U.S. at a time and date to be determined. Parties should confirm by telephone the date and time of the hearing two days before the scheduled date. Issues addressed at the hearing will be limited to those raised in the briefs.[12] All case and rebuttal briefs and hearing requests must be filed electronically and received successfully in their entirety through ACCESS by 5:00 p.m. Eastern Time on the due date.

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, we intend 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, within 120 days after issuance of these preliminary results.

Assessment Rates

In accordance with 19 CFR 351.221(b)(4)(i), we preliminarily assigned subsidy rates in the amounts shown above for the producer/exporters shown above. Upon completion of the administrative review, consistent with section 751(a)(1) of the Act and 19 CFR 351.212(b)(2), Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries covered by this review. For the companies for which this review is rescinded, Commerce will instruct CBP to assess countervailing duties on all appropriate entries at a rate equal to the cash deposit of estimated countervailing duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period January 1, 2019, through December 31, 2019, in accordance with 19 CFR 351.212(c)(l)(i). 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)(2)(C) of the Act, Commerce also intends, upon publication of the final results, to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts indicated above for each company listed on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. For all non-reviewed firms, we intend to instruct CBP to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Interested Parties

These preliminary results are issued and published pursuant to sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: July 30, 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. Intent to Rescind the Review, In Part
V. Non-Selected Companies
VI. Use of Facts Otherwise Available and Adverse Inferences
VII. Subsidy Programs Subject to Countervailing Duties
VIII. *Ad Valorem* Rate for Non-Cooperative Companies Under Review
IX. Kingtom Scope Inquiry
X. Recommendation

Appendix II

List of Companies for Which We Intend To Rescind This Administrative Review

1. Acro Import and Export Co.
2. Activa Leisure Inc.
3. Agilent Technologies Co. Ltd (China)
4. Allied Maker Limited
5. Alnan Aluminum Co., Ltd.
6. Alnan Aluminum Ltd.
7. Aluminicaste Fundicion de Mexico
8. AMC Ltd.
9. AMC Limited
10. Anji Chang Hong Chain Manufacturing
11. Anshan Zhongjda Industry Co., Ltd
12. Aoda Aluminium (Hong Kong) Co., Limited
13. Atlas Integrated Manufacturing Ltd.
14. Bath Fitter
15. Behr-Hella Thermocontrol (Shanghai) Co. Ltd.
16. Belton (Asia) Development Ltd.
17. Belton (Asia) Development Limited
18. Birchwoods (Lin'an) Leisure Products Co., Ltd.
19. Bolnar Hong Kong Ltd.
20. Bracalente Metal Products (Suzhou) Co., Ltd.
21. Brilliance General Equipment Co., Ltd.
22. AsiaAlum Group
23. Changshu Changshen Aluminum Products Co., Ltd.
24. Changshu Changsheng Aluminum Products Co., Ltd.
25. Changzhou Changzhen Evaporator Co., Ltd.
26. Changzhou Changzheng Evaporator Co., Ltd.
27. Changzhou Tenglong Auto Accessories Manufacturing Co. Ltd
28. Changzhou Tenglong Auto Parts Co Ltd
29. China Square
30. China Square Industrial Co.
31. China Square Industrial Ltd
32. China Zhongwang Holdings, Ltd.
33. Chiping One Stop Industrial & Trade Co., Ltd.
34. Classic & Contemporary Inc.
35. Clear Sky Inc.
36. Coclisa S.A. de C.V.
37. Cosco (J.M.) Aluminum Co., Ltd.
38. Cosco (JM) Aluminum Development Co. Ltd
39. Dalian Huacheng Aquatic Products
40. Dalian Liwang Trade Co., Ltd.
41. Danfoss Micro Channel Heat Exchanger (Jia Xing) Co., Ltd.
42. Daya Hardware Co Ltd
43. Dongguan Dazhan Metal Co., Ltd.
44. Dongguan Golden Tiger Hardware Industrial Co., Ltd.
45. Dongguang Aoda Aluminum Co., Ltd.
46. Dragonluxe Limited
47. Dynabright International Group (HK) Ltd.
48. Dynamic Technologies China
49. ETLA Technology (Wuxi) Co. Ltd
50. Ever Extend Ent. Ltd.
51. Fenghua Metal Product Factory
52. First Union Property Limited
53. FookShing Metal & Plastic Co. Ltd.
54. Foreign Trade Co. of Suzhou New & High-Tech Industrial Development Zone
55. Foshan City Nanhai Hongjia Aluminum Alloy Co., Ltd.
56. Foshan Golden Source Aluminum Products Co., Ltd.
57. Foshan Guangcheng Aluminium Co., Ltd
58. Foshan Jinlan Aluminum Co. Ltd.
59. Foshan JinLan Aluminum Co., Ltd.
60. Foshan JMA Aluminum Company Limited
61. Foshan Nanhai Niu Yuan Hardware Product Co., Ltd.
62. Foshan Shanshui Fenglu Aluminum Co., Ltd.
63. Foshan Shunde Aoneng Electrical Appliances Co., Ltd

[10] *See* 19 CFR 351.309(c)(2) and (d)(2).

[11] *See Temporary Rule.*

[12] *See* 19 CFR 351.310(c).

64. Foshan Yong Li Jian Aluminum Co., Ltd.
65. Fujian Sanchuan Aluminum Co., Ltd.
66. Fukang Aluminum & Plastic Import and Export Co., Ltd.
67. Fuzhou Sunmodo New Energy Equipment
68. Gaotang Xinhai Economy & Trade Co., Ltd.
69. Genimex Shanghai, Ltd.
70. Global Hi-Tek Precision Co. Ltd
71. Global PMX Dongguan Co., Ltd.
72. Global Point Technology (Far East) Limited
73. Gold Mountain International Development, Ltd.
74. Golden Dragon Precise Copper Tube Group, Inc.
75. Gran Cabrio Capital Pte. Ltd.
76. Gree Electric Appliances
77. Green Line Hose & Fittings
78. GT88 Capital Pte. Ltd.
79. Guang Ya Aluminium Industries (HK) Ltd.
80. Guang Ya Aluminium Industries Co. Ltd.
81. Guang Ya Aluminum Industries Company Ltd
82. Guangcheng Aluminum Co., Ltd
83. Guangdong Hao Mei Aluminum Co., Ltd.
84. Guangdong Jianmei Aluminum Profile Company Limited
85. Guangdong JMA Aluminum Profile Factory (Group) Co., Ltd.
86. Guangdong Midea
87. Guangdong Midea Microwave and Electrical Appliances
88. Guangdong Nanhai Foodstuffs Imp. & Exp. Co., Ltd.
89. Guangdong Weiye Aluminum Factory Co., Ltd.
90. Guangdong Whirlpool Electrical Appliances Co., Ltd.
91. Guangdong Xin Wei Aluminum Products Co., Ltd.
92. Guangdong Yonglijian Aluminum Co., Ltd.
93. Guangdong Zhongya Aluminum Company Ltd.
94. Guangzhou Jangho Curtain Wall System Engineering Co., Ltd.
95. Guangzhou Mingcan Die-Casting Hardware Products Co., Ltd.
96. Hangzhou Xingyi Metal Products Co., Ltd.
97. Hanwood Enterprises Limited
98. Hanyung Alcoba Co., Ltd.
99. Hanyung Alcobis Co., Ltd.
100. Hanyung Metal (Suzhou) Co., Ltd.
101. Hao Mei Aluminum Co., Ltd.
102. Hao Mei Aluminum International Co., Ltd.
103. Hebei Xusen Wire Mesh Products Co., Ltd.
104. Henan New Kelong Electrical Appliances Co., Ltd.
105. Henan Zhongduo Aluminum Magnesium New Material Co, Ltd.
106. Hitachi High-Technologies (Shanghai) Co., Ltd.
107. Hong Kong Gree Electric Appliances Sales Limited
108. Hong Kong Modern Non-Ferrous Metal
109. Honsense Development Company
110. Hui Mei Gao Aluminum Foshan Co., Ltd.
111. Huixin Aluminum
112. IDEX Dinglee Technology (Tianjin) Co., Ltd.
113. IDEX Health
114. IDEX Technology Suzhou Co., Ltd.
115. Innovative Aluminum (Hong Kong) Limited
116. iSource Asia
117. Jackson Travel Products Co., Ltd.
118. Jangho Curtain Wall Hong Kong Ltd.
119. Jiangmen Jianghai Foreign Ent. Gen.
120. Jiangmen Jianghai District Foreign Economic Enterprise Corp. Ltd.
121. Jiangmen Qunxing Hardware Diecasting Co., Ltd.
122. Jiangsu Changfa Refrigeration Co.
123. Jiangyin Suncitygaylin
124. Jiangyin Trust International Inc.
125. Jiangyin Xinhong Doors and Windows Co., Ltd.
126. Jiaxing Jackson Travel Products Co., Ltd.
127. Jiaxing Taixin Metal Products Co., Ltd.
128. Jiuyan Co., Ltd.
129. JMA (HK) Company Limited
130. Johnson Precision Engineering (Suzhou) Co., Ltd.
131. Justhere Co., Ltd.
132. Kam Kiu Aluminum Products Sdn Bhd
133. Kanal Precision Aluminum Product Co., Ltd
134. Karlton Aluminum Company Ltd.
135. Kong Ah International Company Limited
136. Kromet International Inc.
137. Kromet Intl Inc
138. Kromet International
139. Kunshan Giant Light Metal Technology Co., Ltd.
140. Liaoning Zhong Da Industrial Aluminum Co., Ltd.
141. Liaoning Zhongwang Group Co., Ltd.
142. Liaoyang Zhongwang Aluminum Profile Co. Ltd.
143. Longkou Donghai Trade Co., Ltd.
144. MAAX Bath Inc.
145. MAHLE Holding (China) Co., Ltd
146. Metal Tech Co Ltd
147. Metaltek Group Co., Ltd.
148. Metaltek Metal Industry Co., Ltd.
149. Midea Air Conditioning Equipment Co., Ltd.
150. Midea Electric Trading Co., Pte Ltd
151. Midea International Training Co., Ltd.
152. Midea International Trading Co., Ltd.
153. Miland Luck Limited
154. Nanhai Textiles Import & Export Co., Ltd.
155. New Asia Aluminum & Stainless Steel Product Co., Ltd.
156. New Zhongya Aluminum Factory
157. Nidec Sankyo (Zhejang) Corporation
158. Nidec Sankyo Zhejiang Corporation
159. Nidec Sankyo Singapore Pte. Ltd.
160. Ningbo Coaster International Co., Ltd.
161. Ningbo Hi Tech Reliable Manufacturing Company
162. Ningbo Innopower Tengda Machinery
163. Ningbo Ivy Daily Commodity Co., Ltd.
164. Ningbo Yili Import and Export Co., Ltd.
165. North China Aluminum Co., Ltd.
166. North Fenghua Aluminum Ltd.
167. Northern States Metals
168. PanAsia Aluminum (China) Limited
169. PENCOM Dongguan China
170. Pengcheng Aluminum Enterprise Inc.
171. Permasteelisa Hong Kong Limited
172. Permasteelisa South China Factory
173. Pingguo Aluminum Company Limited
174. Pingguo Asia Aluminum Co., Ltd.
175. Popular Plastics Company Limited
176. Press Metal International Ltd.
177. Qingdao Sea Nova Building
178. Samuel, Son & Co., Ltd.
179. Sanchuan Aluminum Co., Ltd.
180. Sanhua (Hangzhou) Micro Channel Heat Exchanger Co., Ltd
181. Shandong Fukang Aluminum & Plastic Co. LTD
182. Shandong Huajian Aluminum Group
183. Shangdong Huasheng Pesticide Machinery Co.
184. Shangdong Nanshan Aluminum Co., Ltd.
185. Shanghai Automobile Air Conditioner Accessories Ltd.
186. Shanghai Automobile Air-Conditioner Accessories Co Ltd
187. Shanghai Canghai Aluminum Tube Packaging Co., Ltd
188. Shanghai Dofiberone Composites Co. Ltd.
189. Shanghai Dongsheng Metal
190. Shanghai Shen Hang Imp & Exp Co., Ltd.
191. Shanghai Tongtai Precise Aluminum Alloy Manufacturing Co. Ltd.
192. Shanghai Top-Ranking Aluminum Products Co., LTD
193. Shanghai Top-Ranking New Materials Co., Ltd.
194. Shenzhen Hudson Technology Development Co.
195. Shenzhen Jiuyuan Co., Ltd.
196. Sihui Shi Guo Yao Aluminum Co., Ltd.
197. Sincere Profit Limited
198. Skyline Exhibit Systems (Shanghai) Co. Ltd.
199. Southwest Aluminum (Group) Co., Ltd.
200. Springs Window Fashions De Victoria
201. Summit Plastics Nanjing Co. Ltd
202. Suzhou JRP Import & Export Co., Ltd.
203. Suzhou New Hongji Precision Part Co.
204. Tai-Ao Aluminum (Taishan) Co. Ltd.
205. Taishan City Kam Kiu Aluminium Extrusion Co., Ltd.
206. Taitoh Machinery Shanghai Co Ltd
207. Taizhou United Imp. & Exp. Co., Ltd.
208. tenKsolar (Shanghai) Co., Ltd.
209. Tianjin Ganglv Nonferrous Metal Materials Co., Ltd.
210. Tianjin Jinmao Import & Export Corp., Ltd.
211. Tianjin Ruxin Electric Heat Transmission Technology Co., Ltd.
212. Tianjin Xiandai Plastic & Aluminum Products Co., Ltd.
213. Tiazhou Lifeng Manufacturing Corporation
214. Taizhou Lifeng Manufacturing Co., Ltd.
215. Top-Wok Metal Co., Ltd.
216. Traffic Brick Network, LLC
217. Union Aluminum (SIP) Co.
218. Union Industry (Asia) Co., Ltd.
219. USA Worldwide Door Components (Pinghu) Co., Ltd.
220. Wenzhou Shengbo Decoration & Hardware
221. Whirlpool (Guangdong)
222. Whirlpool Canada L.P.
223. Whirlpool Microwave Products Development Ltd.
224. Wonjin Autoparts
225. Worldwide Door Components, Inc.
226. WTI Building Products, Ltd.

227. Wuxi Lutong Fiberglass Doors Co., Ltd,
228. Xin Wei Aluminum Co.
229. Xin Wei Aluminum Company Limited
230. Xinchang Yongqiang Air Conditioning Accessories Co., Ltd.
231. Xinya Aluminum & Stainless Steel Product Co., Ltd.
232. Yuyao Haoshen Import & Export
233. Yuyao Fanshun Import & Export Co., Ltd.
234. Zahoqing China Square Industry Limited
235. Zhaoqing China Square Industry Limited
236. Zhaoqing Asia Aluminum Factory Company Ltd.
237. Zhaoqing China Square Industrial Ltd.
238. Zhaoqing New Zhongya Aluminum Co., Ltd.
239. Zhejiang Anji Xinxiang Aluminum Co., Ltd.
240. Zhejiang Lilies Industrial and Commercial Co
241. Zhejiang Yili Automobile Air Condition Co., Ltd
242. Zhejiang Yongkang Listar Aluminum Industry Co., Ltd.
243. Zhejiang Zhengte Group Co., Ltd.
244. Zhenjiang Xinlong Group Co., Ltd.
245. Zhongshan Daya Hardware Co., Ltd.
246. Zhongshan Gold Mountain Aluminum Factory Ltd.
247. Zhongya Shaped Aluminum (HK) Holding Limited
248. Zhuhai Runxingtai Electrical Equipment Co., Ltd

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–520–804]

Certain Steel Nails From the United Arab Emirates: Preliminary Results of Antidumping Duty Administrative Review; 2019–2020

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

SUMMARY: The Department of Commerce (Commerce) preliminarily finds that sales of certain steel nails (steel nails) from the United Arab Emirates (UAE) were made at less than normal value during the period of review (POR) May 1, 2019, through April 30, 2020. We invite interested parties to comment on these preliminary results.

DATES: Applicable August 6, 2021.

FOR FURTHER INFORMATION CONTACT: Brittany Bauer or Kelsie Hohenberger, 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) 482–3860 or (202) 482–2517.

SUPPLEMENTARY INFORMATION:

Background

On July 10, 2020, Commerce initiated an administrative review of the antidumping duty order on steel nails from the UAE in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).[1] This review covers two producers/exporters of the subject merchandise: Middle East Manufacturing Steel LLC (MEM) and Rich Well Steel Industries LLC (Rich Well).[2] For details regarding the events that occurred subsequent to the initiation of the review, *see* the Preliminary Decision Memorandum.[3]

On July 22, 2020, Commerce tolled all deadlines for all preliminary and final results in administrative reviews by 60 days.[4] On March 18, 2021, Commerce extended the deadline for the preliminary results of this administrative review until July 30, 2021.[5]

Scope of the Order

The products covered by this order are steel nails from the UAE. For a full description of the scope, *see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with section 751(a) of the Act. 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 these preliminary results, *see* the Preliminary Decision Memorandum. A list of topics discussed in the Preliminary Decision Memorandum is included as an appendix to this notice. The Preliminary Decision Memorandum is a public document and is made available to the public 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 is available at *http://enforcement.trade.gov/frn/.*

Preliminary Results of the Review

We preliminarily determine that the following weighted-average dumping margins exist for the respondents for the period May 1, 2019, through April 30, 2020:

Exporter/producer	Weighted-average dumping margin (percent)
Middle East Manufacturing Steel LLC	3.56
Rich Well Steel Industries LLC	1.91

Assessment Rates

Upon completion of this administrative review, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries.[6] If a respondent's weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 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 sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1). We intend to instruct CBP to assess antidumping duties on all appropriate entries covered by this review where the importer-specific assessment rate calculated in the final results of this review is not zero or *de minimis.* If either respondent's weighted-average dumping margin is zero or *de minimis,* we intend to instruct CBP to liquidate the appropriate entries without regard to antidumping duties. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review and for future deposits of estimated duties, where applicable.[7]

In accordance with Commerce's ''automatic assessment'' practice, for entries of subject merchandise during the POR produced by either respondent where the respondent did not know that the merchandise was destined for the United States, we intend to instruct CBP to liquidate those entries at the all-others rate if there is no rate for the

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 85 FR 41540 (July 10, 2020) (*Initiation Notice*).

[2] Rich Well is referred to as ''Richwell Steel Industries'' in the *Initiation Notice,* 85 FR at 41548.

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the Administrative Review of the Antidumping Duty Order: Certain Steel Nails from the United Arab Emirates; 2019–2020,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews,'' dated July 22, 2020.

[5] *See* Memorandum, ''Extension of Deadline for Preliminary Results of 2019–2020 Antidumping Duty Administrative Review,'' dated March 18, 2021.

[6] *See* 19 CFR 351.212(b)(1).

[7] *See* section 751(a)(2)(C) of the Act.

intermediate company(ies) involved in the transaction.[8]

Consistent with its recent notice,[9] 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 cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the finals results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for each specific company listed above will be equal to the weighted-average dumping margin established in the final results of this administrative review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not participating in this review, the cash deposit rate will continue to be the company-specific rates published for the most recently-completed segment of this proceeding in which they were reviewed; (3) if the exporter is not a firm covered by this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the producer is, then the cash deposit rate will be the rate established for the most recently-completed segment of this proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 4.30 percent,[10] the all-others rate established in the LTFV investigation. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure and Public Comment

We intend to disclose the calculations performed to parties within five days after public announcement of the preliminary results.[11] Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs no 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.[12] 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.[13] Case and rebuttal briefs should be filed using ACCESS [14] and must be served on interested parties.[15] Executive summaries should be limited to five pages total, including footnotes. Note that Commerce has modified certain of its requirements for serving documents containing business proprietary information, until further notice.[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 Commerce's electronic records system, ACCESS, by 5:00 p.m. Eastern Time 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 issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. Unless otherwise extended, Commerce intends to issue the final results of this administrative 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 and 19 CFR 351.213(h)(1).

Notification to Importers

This notice also serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

Dated: July 30, 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 the Methodology
V. Currency Conversion
VI. Recommendation

[FR Doc. 2021–16841 Filed 8–5–21; 8:45 am]

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[8] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[9] *See Notice of Discontinuation of Policy to Issue Liquidation Instructions After 15 Days in Applicable Antidumping and Countervailing Duty Administrative Proceedings,* 86 FR 3995 (January 15, 2021).

[10] *See Certain Steel Nails from the United Arab Emirates: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order,* 77 FR 27421 (May 10, 2012).

[11] *See* 19 CFR 351.224(b).

[12] *See* 19 CFR 351.309(d); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020) (*Temporary Rule*).

[13] *See* 19 CFR 351.309(c)(2) and (d)(2).

[14] *See generally* 19 CFR 351.303.

[15] *See* 19 CFR 351.303(f).

[16] *See Temporary Rule.*

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–887]

Carbon and Alloy Steel Cut-to-Length Plate From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2019–2020

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

SUMMARY: The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty order on carbon and alloy steel cut-to-length plate from the Republic of Korea. The period of review (POR) is May 1, 2019, through April 30, 2020. The review covers one producer/exporter of the subject merchandise, POSCO, POSCO International Corporation and its affiliated companies (collectively, the POSCO single entity). We preliminarily determine that sales of subject merchandise by the POSCO single entity were not made at prices below normal value (NV). Interested parties are invited to comment on these preliminary results.

DATES: Applicable August 6, 2021.

FOR FURTHER INFORMATION CONTACT: William Horn or Janaé Martin, 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) 482–4868 or (202) 482–0238, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 10, 2020, based on timely requests for review, in accordance with 19 CFR 351.221(c)(1)(i), we initiated an administrative review on certain carbon and alloy steel cut-to-length plate from the Republic of Korea produced and/or exported by POSCO.[1]

On July 21, 2020, Commerce tolled all preliminary and final results deadlines in administrative reviews by 60 days, thereby extending the deadline for these preliminary results until April 1, 2021.[2]

On March 22, 2021, we extended the preliminary results of this review to no later than July 30, 2021.[3] For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[4]

Scope of the Order

The merchandise subject to the *Order*[5] is carbon and alloy steel cut-to-length plate. The product is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7225.40.1110, 7225.40.1180, 7225.40.3005, 7225.40.3050, 7226.20.0000, and 7226.91.5000.

The products subject to the *Order* may also enter under the following HTSUS subheadings: 7208.40.6060, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.19.1500, 7211.19.2000, 7211.19.4500, 7211.19.6000, 7211.19.7590, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7214.10.000, 7214.30.0010, 7214.30.0080, 7214.91.0015, 7214.91.0060, 7214.91.0090, 7225.11.0000, 7225.19.0000, 7225.40.5110, 7225.40.5130, 7225.40.5160, 7225.40.7000, 7225.99.0010, 7225.99.0090, 7206.11.1000, 7226.11.9060, 7229.19.1000, 7226.19.9000, 7226.91.0500, 7226.91.1530, 7226.91.1560, 7226.91.2530, 7226.91.2560, 7226.91.7000, 7226.91.8000, and 7226.99.0180. The HTSUS subheadings are provided for convenience and customs purposes only; the written product description of the scope of the *Order* is dispositive.

For a complete description of the merchandise subject to the *Order, see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) and (2) of the Tariff Act of 1930, as amended (the Act). Export price and constructed export price are calculated in accordance with section 772 of the Act. NV 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. 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 at *http://enforcement.trade.gov/frn/index.html.* A list of the topics discussed in the Preliminary Decision Memorandum is attached as an Appendix to this notice.

Preliminary Results of the Review

As a result of our analysis of the record information, we preliminarily determine a weighted-average dumping margin of zero percent for the POSCO single entity[6] for the period May 1, 2019, through April 30, 2020.[7] Therefore, Commerce preliminarily determines that the POSCO single entity did not make sales of subject merchandise at prices below NV.

Verification

On October 19, 2020, the petitioners requested, pursuant to 19 CFR 351.307(b)(1)(v), that Commerce conduct verification of the questionnaire responses submitted in this administrative review by POSCO.[8] Commerce is currently unable to conduct on-site verification of the information relied upon in making its final results of this administrative review. Accordingly, we intend to take additional steps in lieu of on-site verification to verify the information. Commerce will notify interested parties of any additional documentation or information required.

Disclosure and Public Comment

Commerce intends to disclose the calculations performed in connection with these preliminary results to interested parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

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 the case briefs, may be filed not later than seven days after the date for filing case briefs.[9] 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 summary of the argument; and (3) a table of authorities.

All submissions to Commerce must be filed electronically using ACCESS and must also be served on interested parties.[10] An electronically filed

[1] *See Initiation of Antidumping and Countervailing Duty Administration Reviews,* 85 FR 41540 (July 20, 2020) (*Initiation Notice*).

[2] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews,'' dated July 21, 2020.

[3] *See* Memorandum, ''Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Extension of Deadline for the Preliminary Results of the 2019–2020 Antidumping Duty Administrative Review,'' dated March 22, 2021.

[4] *See* Memorandum, ''Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Certain Carbon and Alloy Steel Cut-To-Length Plate from the Republic of Korea,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[5] *See Certain Carbon and Alloy Steel Cut-to-Length Plate from Austria, Belgium, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, and Taiwan: Amended Final Affirmative Antidumping Determinations for France, the Federal Republic of Germany, the Republic of Korea and Taiwan, and Antidumping Duty Orders,* 82 FR 24096 (May 25, 2017) (*Order*).

[6] Commerce is preliminarily determining that POSCO, POSCO International Corporation, POSCO SPS, and certain distributors and service centers (Taechang Steel Co., Ltd., Winsteel Co., Ltd., and Shinjin Esco Co., Ltd.) are affiliated pursuant to section 771(33)(E) of the Act, and further that these companies should be treated as a single entity (collectively, the POSCO single entity) pursuant to 19 CFR 351.401(f). Note that Shinjin Esco Co., Ltd. is only considered part of the POSCO single entity until February 10, 2020, after which its affiliation with POSCO ceased. *See* Preliminary Decision Memorandum.

[7] *See* Preliminary Decision Memorandum.

[8] *See* Petitioner's Letter, ''3rd Administrative Review of the Antidumping Duty Order on Carbon and Alloy Steel Cut-To-Length Plate from the Republic of Korea—Petitioner's Request for Verification,'' dated October 19, 2020.

[9] *See* 19 CFR 351.309(d); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006 (March 26, 2020); and *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020) (collectively, *Temporary Rule*).

[10] *See* 19 CFR 351.303(b) and 19 CFR 351.303(f).

document must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5:00 p.m. Eastern Time on the date that the document is due. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[11]

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance within 30 days of publication of this notice.[12] Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), Commerce intends to issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the date of publication of this notice.[13]

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b)(1), Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by 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 administrative 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).

Commerce will calculate importer-specific antidumping duty assessment rates when a respondent's weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.5 percent). Pursuant to 19 CFR 351.212(b)(1), where the respondent reported the entered value of its U.S. sales, we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the examined sales to the total entered value of such sales. Where the respondent did not report entered value, we will calculate importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for the importer's examined sales to the total quantity of those sales, in accordance with 19 CFR 351.212(b)(1).[14] We will also calculate an estimated *ad valorem* importer-specific assessment rate with which to assess whether the per-unit assessment rate is *de minimis.* We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific *ad valorem* assessment rate calculated in the final results of this review is not zero or *de minimis.* Where either the respondent's *ad valorem* weighted-average dumping margin is zero or *de minimis,* or an importer-specific *ad valorem* assessment rate is zero or *de minimis,*[15] we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Commerce's ''reseller policy'' will apply to entries of subject merchandise during the POR produced by the POSCO single entity for which the POSCO single entity did not know that the merchandise it sold to the intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[16]

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the POSCO single entity will be equal to the weighted-average dumping margin established in the final results of this review, except if the rate is *de minimis* within the meaning of 19 CFR 351.106(c)(1) (*i.e.,* less than 0.50 percent), in which case the cash deposit rate will be zero; (2) for merchandise exported by a company not covered in this review but covered in a prior completed segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently-completed segment; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the producer is, the cash deposit rate will be the rate established for the most recently-completed segment for the producer of the merchandise; and (4) the cash deposit rate for all other producers and exporters will continue to be 7.10 percent, the all-others rate established in the less-than-fair-value investigation.[17]

These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

Dated: July 30, 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. Affiliation and Collapsing
V. Discussion of the Methodology
VI. Recommendation

[FR Doc. 2021–16836 Filed 8–5–21; 8:45 am]

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[11] *See Temporary Rule.*

[12] *See* 19 CFR 351.310(c).

[13] *See* section 751(a)(3)(A) of the Act and 19 CFR 351.213(h).

[14] In these preliminary results, Commerce applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012).

[15] *See* 19 CFR 351.106(c)(2).

[16] For a full discussion of this clarification, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[17] *See Order.*

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–829]

Steel Concrete Reinforcing Bar From the Republic of Turkey: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2019–2020

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that producers or exporters of steel concrete reinforcing bar (rebar) from the Republic of Turkey (Turkey) subject to this review made sales of subject merchandise at less than normal value during the period of review (POR) July 1, 2019, through June 30, 2020. Additionally, we preliminarily find that one producer/exporter, Colakoglu Metalurji A. S. (Colakoglu Metal), did not make sales of subject merchandise at less than normal value during the POR and one company, Habas Sinai ve Tibbi Gazlar Istihsal Endüstrisi A.S (Habas), made no shipments during the POR.

DATES: Applicable August 6, 2021.

FOR FURTHER INFORMATION CONTACT: Robert Copyak or Thomas Dunne, 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 or (202) 482–2328, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 14, 2017, Commerce published the antidumping duty order on rebar from Turkey.[1] On September 3, 2020, in accordance with 19 CFR 351.221(c)(1)(i), Commerce initiated an administrative review of the *Order,* covering nine companies.[2] On October 6, 2020, Commerce selected Colakoglu Metal and Kaptan Demir Celik Endüstrisi ve Ticaret A.S. (Kaptan Demir) as the mandatory respondents for this review.[3] On March 15, 2021, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(h)(2), Commerce extended the time limit for issuing the preliminary results of this administrative review to July 30, 2021.[4]

Scope of the Order

The product covered by the *Order* is steel concrete reinforcing bar from Turkey. For a full description of the scope, *see* the Preliminary Decision Memorandum.[5]

Methodology

Commerce is conducting this review in accordance with section 751(a) of the Act. Export price and constructed export price are 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 these preliminary results, *see* the Preliminary Decision Memorandum. A list of topics discussed in the Preliminary Decision Memorandum is attached as an 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/.*

Preliminary Determination of No Shipments

On September 6, 2020, Habas submitted a letter certifying that it had no exports or sales of subject merchandise into the United States during the POR.[6] U.S. Customs and Border Protection (CBP) did not have any information to contradict this claim of no shipments during the POR.[7] Therefore, we preliminarily determine that Habas did not have any shipments of subject merchandise during the POR. Consistent with Commerce's practice, we will not rescind the review with respect to Habas but will complete the review and issue instructions to CBP based on the final results.[8]

Rates for Non-Examined 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}.''

We calculated a preliminary weighted-average dumping margin of 0.00 percent for Colakoglu Metal and 1.05 percent for Kaptan Demir the POR. For the four companies not selected for individual examination, Commerce assigned the rate of 1.05 percent, which is the weighted-average dumping margin calculated for Kaptan Demir, because it is the only dumping margin calculated for a mandatory respondent in this administrative review that is not zero or *de minimis.*

Preliminary Results of This Review

As a result of this review, we preliminarily determine the following estimated weighted-average dumping margins for the period July 1, 2019, through June 30, 2020:

[1] *See Steel Concrete Reinforcing Bar from the Republic of Turkey and Japan: Amended Final Affirmative Antidumping Duty Determination for the Republic of Turkey and Antidumping Duty Orders,* 82 FR 32532 (July 14, 2017) (*Order*).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 85 FR 54983 (September 3, 2020).

[3] *See* Memorandum, ''Respondent Selection Memorandum for Administrative Review of Antidumping Duty Order on Steel Concrete Reinforcing Bar from the Republic of Turkey; 2019–2020,'' dated October 6, 2020.

[4] *See* Memorandum, ''Steel Concrete Reinforcing Bar from the Republic of Turkey: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,'' dated March 15, 2021.

[5] *See* Memorandum, ''Decision Memorandum for Preliminary Results of the Antidumping Duty Administrative Review: Steel Concrete Reinforcing Bar from the Republic of Turkey; 2019–2020,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[6] *See* Habas' Letter, ''Steel Concrete Reinforcing Bar from Turkey; Habas No Shipment Letter,'' dated September 6, 2020.

[7] *See* Memorandum, ''Administrative Review of the Antidumping Duty Order on Steel Concrete Reinforcing Bar from Turkey: Release of U.S. Customs and Border Protection Entry Data for Respondent Selection,'' dated September 16, 2020.

[8] *See, e.g., Certain Frozen Warmwater Shrimp from Thailand; Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Review, Preliminary Determination of No Shipments; 2012–2013,* 79 FR 15951, 15952 (March 24, 2014), unchanged in *Certain Frozen Warmwater Shrimp from Thailand: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Partial Rescission of Review; 2012–2013,* 79 FR 51306, 51307 (August 28, 2014).

[9] For the purposes of these preliminary results, we are collapsing Colakoglu Metalurji A.S. and Colakoglu Dis Ticaret A.S. and treating them as a single entity; *see* Preliminary Decision Memorandum.

Continued

Producers/exporters	Estimated weighted-average dumping margin (percent)
Colakoglu Metalurji A.S./Colakoglu Dis Ticaret A.S. [9]	0.00
Kaptan Demir Celik Endüstrisi ve Ticaret A.S./Kaptan Metal Dis Ticaret Ve Nakliyat A.S.[10]	1.05
Review-Specific Average Rate Applicable to the Following Companies: [11]	
Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S	1.05
Kroman Celik Sanayi A.S	1.05
Yücel Boru Ithalat-Ihracat ve Pazarlama A.S	1.05
Diler Dis Ticaret A.S	1.05

Disclosure and Public Comment

Commerce intends to disclose its calculations performed within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Commerce will announce the briefing schedule to interested parties at a later date. Interested parties may submit case briefs on the deadline that Commerce will announce. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.[12] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this review 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. Executive summaries should be limited to five pages total, including footnotes. Case and rebuttal briefs should be filed using ACCESS [13] and must be served on interested parties.[14] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[15]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. An electronically-filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time 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; (3) whether any participant is a foreign national; and (4) a list of issues parties intend to discuss. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs.[16] If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined.[17] Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Assessment Rates

Upon completion of the administrative review, Commerce shall determine, and U.S. CBP shall assess, antidumping duties on all appropriate entries covered by this review.

For any individually examined respondents whose weighted-average dumping margin is above *de minimis* (*i.e.,* 0.50 percent), we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1).[18] For entries of subject merchandise during the POR produced by each respondent for which it did not know its merchandise was destined for the United States, we will instruct CBP to liquidate such entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[19] Where either the individually-selected respondent's weighted-average dumping margin is zero or *de minimis,* 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 the companies which were not selected for individual review, we intend to assign an assessment rate based on the methodology described in the ''Rates for Non-Examined Companies'' section.

The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review where applicable.

Consistent with its recent notice, 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 the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the companies under review will be the rate established in the final results of this review (except, if the *ad valorem* rate is *de minimis,* then the cash deposit rate will be zero); (2) for previously reviewed or investigated companies not covered in this review, the cash deposit rate will continue to be the company-specific rate published for the most

[10] For the purposes of these preliminary results, we are collapsing Kaptan Demir and Kaptan Metal Dis Ticaret Ve Nakliyat A.S. and treating them as a single entity; *see* Preliminary Decision Memorandum.

[11] This rate is 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. *See* section 735(c)(5)(A) of the Act.

[12] *See* 19 CFR 351.309(c)(1)(ii) and 351.309(d)(1).

[13] *See* 19 CFR 351.303 (for general filing requirements).

[14] *See* 19 CFR 351.303(f).

[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 351.310(c).

[17] *See* 19 CFR 351.310(c).

[18] In these preliminary results, Commerce applied the assessment rate calculation methodology adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012).

[19] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

recently-completed segment of this proceeding in which the company was reviewed; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the producer is, the cash deposit rate will be the rate established for the most recently-completed segment of this proceeding for the producer of subject merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 7.26 percent, the all-others rate established in the investigation.[20] 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, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

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 and/or countervailing 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 and/or countervailing duties occurred and the subsequent assessment of doubled antidumping duties.

Notification to Interested Parties

The preliminary results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

Dated: July 30, 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. Companies Not Selected for Individual Examination
V. Preliminary Determination of No Shipments
VI. Affiliation and Single Entity
VII. Discussion of the Methodology
VIII. Currency Conversion
IX. Recommendation

[20] *See Order,* 82 FR at 32533.

[FR Doc. 2021–16842 Filed 8–5–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–844]

Certain Carbon and Alloy Steel Cut-To-Length Plate From Germany: Preliminary Results of Antidumping Duty Administrative Review; 2019–2020

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that certain carbon and alloy steel cut-to-length plate (CTL plate) from Germany is not being, or is not likely to be, sold in the United States at less than normal value (NV) during the period of review (POR) May 1, 2019, through April 30, 2020.

DATES: Applicable August 6, 2021.

FOR FURTHER INFORMATION CONTACT: David Goldberger, 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) 482–4136.

SUPPLEMENTARY INFORMATION:

Background

On July 10, 2020, based on a timely request for review, in accordance with 19 CFR 351.221(c)(1)(i), we initiated an administrative review on CTL plate from Germany.[1] This review covers one producer/exporter of the subject merchandise, AG der Dillinger Hüttenwerke (Dillinger).

On July 21, 2020, Commerce tolled all deadlines in administrative reviews by 60 days.[2] In February 2021, Commerce extended the preliminary results of this review to no later than July 30, 2021.[3] For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[4]

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 85 FR 41540 (July 10, 2020).

[2] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews,'' dated July 21, 2020.

[3] *See* Memorandum, ''Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,'' dated February 19, 2021.

[4] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the 2019–2020 Administrative Review of the Antidumping Duty Order on Certain Carbon and Alloy Steel Cut-To-Length Plate from Germany,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

Scope of the Order

The products covered by the order are certain carbon and alloy steel hot-rolled or forged flat plate products not in coils, whether or not painted, varnished, or coated with plastics or other non-metallic substances from Germany. Products subject to the order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7225.40.1110, 7225.40.1180, 7225.40.3005, 7225.40.3050, 7226.20.0000, and 7226.91.5000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this scope is dispositive.[5]

Methodology

Commerce is conducting this review in accordance with sections 751(a)(1)(B) and (2) of the Tariff Act of 1930, as amended (the Act). Export price is calculated in accordance with section 772 of the Act. NV 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. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://enforcement.trade.gov/frn/summary.* A list of the topics discussed in the Preliminary Decision Memorandum is attached as an appendix to this notice.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the following weighted-average dumping margin exists for the respondent for the period May 1, 2019, through April 30, 2020:

[5] For a complete description of the scope of the order, *see* Preliminary Decision Memorandum.

Producer/exporter	Weighted-average dumping margin (percent)
AG der Dillinger Hüttenwerke	0.00

Disclosure and Public Comment

Commerce intends to disclose the calculations performed in connection with these preliminary results to interested parties within five days after the date of publication of this notice.[6] Interested parties may submit case briefs to Commerce no later than 30 days after the date of publication of this notice.[7] Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than seven days after the time limit for filing case briefs.[8] 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.[9] Case and rebuttal briefs should be filed using ACCESS.[10]

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, U.S. Department of Commerce, filed electronically via ACCESS within 30 days after the date of publication of this notice.[11] Hearing requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Oral presentations at the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing.[12]

An electronically-filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time on the established deadline.

Commerce intends to issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the date of publication of this notice, unless otherwise extended.[13]

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.[14]

If the weighted average dumping margin for Dillinger is not zero or *de minimis* (*i.e.,* less than 0.5 percent), we 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).[15] If the weighted-average dumping margin for Dillinger is zero or *de minimis* in the final results, or an importer-specific assessment rate is zero or *de minimis* in the final results, we will instruct CBP not to assess antidumping duties on any such entries in accordance with the *Final Modification for Reviews.*[16]

Commerce's ''automatic assessment'' will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know that the merchandise they sold to the intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[17]

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 the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the exporter listed above will be equal to the weighted-average dumping margin established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for companies not participating in this review, the cash deposit rate will continue to be the company-specific cash deposit rate published for the most recently completed segment; (3) if the exporter is not a firm covered in this review, or the original less-than-fair-value (LTFV) investigation, but the producer is, then the cash deposit rate will be the cash deposit rate established for the most recently completed segment for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 21.04 percent, the all-others rate established in the LTFV investigation.[18] These 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 review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and

Dated: July 30, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary

[6] *See* 19 CFR 351.224(b).

[7] *See* 19 CFR 351.309(c).

[8] Commerce is exercising its discretion, under 19 CFR 351.309(d)(1), to alter the time limit for filing of rebuttal briefs.

[9] *See* 19 CFR 351.309(c)(2) and (d)(2).

[10] *See* 19 CFR 351.303.

[11] *See* 19 CFR 351.310(c).

[12] *See* 19 CFR 351.310(d).

[13] *See* section 751(a)(3)(A) of the Act.

[14] *See* 19 CFR 351.212(b).

[15] In these preliminary results, Commerce applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012) (*Final Modification for Reviews*).

[16] *Id.* at 8102.

[17] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[18] *See Certain Carbon and Alloy Steel Cut-To-Length Plate from Austria, Belgium, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, and Taiwan: Amended Final Affirmative Antidumping Determinations for France, the Federal Republic of Germany, the Republic of Korea, and Taiwan, and Antidumping Duty Orders,* 82 FR 24096, 24098 (May 25, 2017).

II. Background
III. Scope of the Order
IV. Discussion of the Methodology
V. Currency Conversion
VI. Recommendation

[FR Doc. 2021–16840 Filed 8–5–21; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–856]

Certain Corrosion-Resistant Steel Products From Taiwan: Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2019–2020

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that producers/exporters subject to this review made sales of subject merchandise at less than normal value during the period of review (POR) July 1, 2019, through June 30, 2020. We further preliminarily determine that Synn Industrial Co., Ltd. (Synn) had no shipments during the POR. We are also rescinding this review for three companies. We invite interested parties to comment on these preliminary results.

DATES: Applicable August 6, 2021.

FOR FURTHER INFORMATION CONTACT: Charles Doss or Kate Sliney, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4474 and (202) 482–2437, respectively.

SUPPLEMENTARY INFORMATION:

Background

Commerce is conducting an administrative review of the antidumping duty (AD) order on certain corrosion-resistant steel products (CORE) from Taiwan,[1] covering the following two respondents: (1) Prosperity Tieh Enterprise Co., Ltd. (Prosperity); and (2) the previously collapsed Yieh Phui Enterprise Co., Ltd. (YP) and Synn entity (collectively, YP/Synn).[2] On March 25, 2021, we extended the preliminary results of this review to no later than July 30, 2021.[3] For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[4] A list of topics included in the Preliminary Decision Memorandum is included as an 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 *https://access.trade.gov.* In addition, the complete Preliminary Decision Memorandum can be accessed directly at *https://enforcement.trade.gov/frn/index.html.*

Scope of the Order[5]

The products covered by the *Order* are flat-rolled steel products, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished, laminated, or coated with plastics or other non-metallic substances in addition to the metallic coating. The subject merchandise is currently classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0040, 7210.49.0045, 7210.49.0091, 7210.49.0095, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, and 7212.60.0000. The products subject to the orders may also enter under the following HTSUS item numbers: 7210.90.1000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.91.0000, 7225.92.0000, 7225.99.0090, 7226.99.0110, 7226.99.0130, 7226.99.0180, 7228.60.6000, 7228.60.8000, and 7229.90.1000. The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the *Order* is dispositive.

Partial Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if a party who requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. On November 30, 2020, Great Grandeul Steel Co., Ltd., Great Fortune Steel Co., Ltd., and Great Grandeul Steel Company Limited (*a.k.a.* Great Grandeul Steel Company Limited Somoa and Great Grandeul Steel Company Limited (Somoa)) timely withdrew their self-request for an administrative review. No other party requested a review of these companies. Accordingly, we are rescinding this review, in part, with respect to these companies, pursuant to 19 CFR 351.213(d)(1).

Preliminary Determination of No Shipments

On September 30, 2020, Synn submitted a letter certifying that it had no exports or sales of subject merchandise into the United States

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 85 FR 54983 (September 3, 2020).

[2] In the less-than-fair-value (LTFV) investigation of the AD order, we collapsed Prosperity, YP, and Synn and treated them as a single entity. *See Certain Corrosion-Resistant Steel Products from Taiwan: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part,* 81 FR 35313 (June 2, 2016), and accompanying Issues and Decision Memorandum at Comment 3 (*Taiwan CORE LTFV Final*), unchanged in *Certain Corrosion-Resistant Steel Products from India, Italy, the People's Republic of China, the Republic of Korea and Taiwan: Amended Final Affirmative Antidumping Determination for India and Taiwan, and Antidumping Duty Orders,* 82 FR 48390 (July 25, 2016) (*Order*). The determination to collapse Prosperity with Synn was challenged by respondent parties in the investigation and was subject to pending litigation in *Taiwan CORE LTFV Final.* In the first antidumping duty administrative review, we determined to no longer collapse Prosperity with YP and Synn, but we continued to collapse YP and Synn and treated them as a single entity. *See Certain Corrosion-Resistant Steel Products From Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review; 2016–2017,* 83 FR 39679 (August 10, 2018); unchanged in *Certain Corrosion-Resistant Steel Products From Taiwan: Final Results of Antidumping Duty Administrative Review; 2016–2017,* 83 FR 64527 (December 17, 2018); amended by *Certain Corrosion-Resistant Steel Products From Taiwan: Amended Final Results of Antidumping Duty Administrative Review; 2016–2017,* 84 FR 5991 (February 25, 2019).

[3] *See* Memorandum, ''Certain Corrosion-Resistant Steel Products from Taiwan: Extension of Time Limit for Preliminary Results of the 2019–2020 Antidumping Duty Administrative Review,'' dated March 25, 2021.

[4] *See* Memorandum, ''Decision Memorandum for the Preliminary Results and Partial Rescission of the 2019–2020 Antidumping Duty Administrative Review: Certain Corrosion-Resistant Steel Products from Taiwan,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[5] For the full text of the scope of the *Order, see* the Preliminary Decision Memorandum.

during the POR.[6] Currently, the record contains no information which contradicts Synn's claim, and we will revisit this issue following these preliminary results if we receive additional information from U.S. Customs and Border Protection (CBP). Therefore, pursuant to our preliminarily determination to treat YP and Synn as distinct respondents for the purposes of this administrative review, as discussed immediately below, we preliminarily determine that Synn did not have any reviewable transactions during the POR. Consistent with Commerce's practice, we will not rescind the review with respect to Synn, but rather will complete the review and issue instructions to CBP based on the final results.[7]

Affiliation and Collapsing

As noted above, YP and Synn were collapsed and treated as a single entity for the purposes of the LTFV investigation and prior administrative reviews of this antidumping order. As a result, we selected the YP/Synn entity as a single combined respondent and treated it as such in the pre-preliminary phase of this review. Subsequently, in the immediately preceding administrative review of this case, we determined that YP and Synn should no longer be collapsed.[8] As the instant record mirrors that of the preceding review with respect to this issue, and we have received no comments contesting the determination not to collapse the YP/Synn entity, we preliminarily determine that YP and Synn should not be collapsed in this review.[9]

Methodology

Commerce is conducting this review in accordance with section 751(a)(1) and (2) of Tariff Act of 1930, as amended (the Act). Export price and constructed export price were 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.

Preliminary Results of the Review

Commerce preliminarily determines the following weighted-average dumping margins exist for the period July 1, 2019, through June 30, 2020:

Exporter/producer	Estimated weighted-average dumping margin (percent)
Prosperity Tieh Enterprise Co., Ltd.	3.63
Sheng Yu Steel Co., Ltd.	3.08
Yieh Phui Enterprise Co., Ltd.	1.97

Assessment Rates

Upon issuance of the final results, Commerce shall determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.

For any individually examined respondents whose weighted-average dumping margin is above *de minimis* (*i.e.,* 0.50 percent), we will calculate importer-specific *ad valorem* AD assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1).[10] 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 above *de minimis* (*i.e.,* 0.50 percent). Where either the respondent's weighted-average dumping margin is zero or *de minimis,* 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. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review where applicable.

For the company which was not selected for individual review (*i.e.,* Sheng Yu Steel Co., Ltd.), we will assign an assessment rate based on the weighted-average of the cash deposit rates calculated for the companies selected for mandatory review (*i.e.,* Prosperity and YP), excluding any which are *de minimis* or determined entirely on adverse facts available. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.[11]

In accordance with Commerce's ''automatic assessment'' practice, for entries of subject merchandise during the POR produced by each respondent for which they did not know that their merchandise was destined for the United States, we will instruct CBP to liquidate entries not reviewed at the all-others rate of 3.66 percent established in the LTFV investigation[12] if there is no rate for the intermediate company(ies) involved in the transaction.[13] We intend to issue assessment instructions to CBP no earlier than 35 days after 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 of the notice of final results of administrative review for all shipments of CORE from Taiwan entered, or withdrawn from warehouse, for consumption on or after the date of publication provided by section 751(a)(2) of the Act: (1) The cash deposit rate for each company listed above will be equal to the dumping margins established in the final results of this review except if the ultimate rates are *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rates will be zero; (2)

[6] *See* Synn's Letter, ''Corrosion-Resistant Steel Products from Taiwan; No Shipment Certification,'' dated September 30, 2020.

[7] *See, e.g., Certain Frozen Warmwater Shrimp from Thailand; Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Review, Preliminary Determination of No Shipments; 2012–2013,* 79 FR 15951, 15952 (March 24, 2014), unchanged in *Certain Frozen Warmwater Shrimp from Thailand: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Partial Rescission of Review; 2012–2013,* 79 FR 51306, 51307 (August 28, 2014).

[8] *See Certain Corrosion-Resistant Steel Products from Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2018–2019,* 85 FR 74669 (November 23, 2020), unchanged in *Certain Corrosion-Resistant Steel Products from Taiwan: Final Results of the Antidumping Duty Administrative Review and Final Determination of No Shipments; 2018–2019,* 86 FR 28554 (May 27, 2021).

[9] *See* Preliminary Decision Memorandum at Section V, ''Affiliation and Collapsing.''

[10] In these preliminary results, Commerce applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

[11] *See* section 751(a)(2)(C) of the Act.

[12] *See Corrosion-Resistant Steel Products from Taiwan: Notice of Court Decision Not in Harmony with Final Determination of Antidumping Duty Investigation and Notice of Amended Final Determination of Investigation,* 84 FR 6129 (February 26, 2019) (*Amended Final Determination*).

[13] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

for merchandise exported by producers or exporters not covered in this administrative 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 recently completed segment of this proceeding in which the producer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation but the producer is, the cash deposit rate will be the rate established for the most recently completed segment of the proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 3.66 percent, the all-others rate established in *Amended Final Determination.*[14] These deposit requirements, when imposed, shall remain in effect until further notice.

Verification

On December 3, 2020, AK Steel Corporation (AK Steel), a domestic interested party, requested, pursuant to 19 CFR 351.307(b)(1)(v) that Commerce conduct verification of the questionnaire responses of Prosperity and YP.[15] Commerce is currently unable to conduct on-site verification of the information relied upon in making its final results of this administrative review. Accordingly, we intend to take additional steps in lieu of on-site verification to verify the information. Commerce will notify interested parties of any additional documentation or information required.

Disclosure and Public Comment

Commerce will disclose to parties to this proceeding the calculations performed in reaching the preliminary results within five days of the date of publication of these preliminary results.[16] Case briefs 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 the case briefs, may be filed no later than seven days after the date for filing case briefs.[17] Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with the argument: (1) A statement of the issue, (2) a summary of the argument, and (3) a table of authorities.[18] All briefs must be filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety by Commerce's electronic records system, ACCESS. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[19]

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, using Enforcement and Compliance's ACCESS system within 30 days of publication of this notice.[20] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, we will inform parties of the scheduled date for the hearing at a time and location to be determined.[21] Parties should confirm by telephone the date, time, and location of the hearing.

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), Commerce will issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their case briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

These preliminary results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: July 30, 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. Partial Rescission of Administrative Review
V. Affiliation and Collapsing
VI. Preliminary Determination of No Shipments
VII. Duty Absorption
VIII. Rate for Respondent Not Selected for Individual Examination
IX. Discussion of the Methodology
X. Currency Conversion
XI. Recommendation

[FR Doc. 2021–16838 Filed 8–5–21; 8:45 am]

BILLING CODE 3510–DS–P

[14] *See Amended Final Determination.*

[15] *See* AK Steel's Letter, ''Petitioner's Request for Verification,'' dated December 3, 2020.

[16] *See* 19 CFR 351.224(b).

[17] *See* 19 CFR 351.309(d); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006 (March 26, 2020); and *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020) (collectively, *Temporary Rule*).

[18] *See* 19 CFR 351.309(c)(2) and (d)(2).

[19] *See Temporary Rule.*

[20] *See* 19 CFR 351.310(c).

[21] *See* 19 CFR 351.310.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–051, C–570–052]

Certain Hardwood Plywood Products From the People's Republic of China: Notice of Court Decision Not in Harmony With Final Circumvention Determination and Notice of Amended Final Circumvention Determination Pursuant to Court Decision

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

SUMMARY: On July 21, 2021, the U.S. Court of International Trade (CIT) issued its final judgment in *Shelter Forest International Acquisition Inc., et al.* v. *United States,* Consol. Court no. 19–00212, sustaining the Department of Commerce (Commerce)'s first remand redetermination pertaining to the anti-circumvention determination for the antidumping and countervailing duty orders on certain hardwood plywood products (plywood) from the People's Republic of China. In the underlying inquiry, Commerce originally found that plywood with face and back veneers of radiata and/or agathis pine that: (1) Has a Toxic Substances Control Act (TSCA) or California Air Resources Board (CARB) label certifying that it is compliant with TSCA/CARB requirements; and (2) is made with a resin, the majority of which is comprised of one or more of the following three product types—urea formaldehyde, polyvinyl acetate, and/or soy (inquiry merchandise) was circumventing the orders, and was, therefore, included in the scope of the orders. Commerce is notifying the

public that the CIT's final judgment is not in harmony with Commerce's original anti-circumvention determination, and that Commerce is amending the anti-circumvention determination to find that inquiry merchandise is not circumventing the orders, and, therefore, is not included in the scope of the orders.

DATES: Applicable July 31, 2021.

FOR FURTHER INFORMATION CONTACT: Rachel Greenberg, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1110.

Background

On November 29, 2019, Commerce found inquiry merchandise to be circumventing the scope of the *Orders,* and that, therefore, such merchandise should be included in the scope of those *Orders.*[1] A number of foreign producers/exporters and U.S. importers, including Shelter Forest International Acquisition, Inc. (Shelter Forest) *et al.,* IKEA Supply AG, Shanghai Futuwood Trading Co., Ltd. *et al.,* and Taraca Pacific, Inc. *et al.,* appealed Commerce's *Final Anti-Circumvention Determination.* On February 18, 2021, the CIT remanded the *Final Anti-Circumvention Determination* to Commerce and directed that Commerce: (1) Explain why it is reasonable to require evidence of the actual TSCA or CARB label adhered to the product; (2) address a variety of evidentiary issues related to the composition of the glue used to produce the inquiry merchandise; and (3) accept, and consider, three submissions which either contained a translation error, was received late in the process, or contained new legal argument.[2] Commerce complied with the Court's remand and accepted the identified submissions.

In its final remand redetermination, issued on May 10, 2021, Commerce found that additional information submitted pursuant to the CIT's *Remand Opinion and Order* demonstrated that Shelter Forest sold inquiry merchandise prior to December 8, 2016, and thus inquiry merchandise was commercially available prior to the initiation of the investigation (*i.e.,* was not later-developed merchandise). Therefore, on remand, Commerce determined inquiry merchandise was not circumventing the *Orders,* and is not included in the scope of the *Orders.*[3] In light of this finding, Commerce found it unnecessary to address the remaining directives by the CIT. The CIT sustained Commerce's final redetermination.[4]

Timken Notice

In its decision in *Timken,*[5] as clarified by *Diamond Sawblades,*[6] the Court of Appeals for the Federal Circuit held that, pursuant to section 516A(c) and (e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of court decision that is not ''in harmony'' with a Commerce determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's July 21, 2021, judgment constitutes a final decision of the CIT that is not in harmony with Commerce's *Final Anti-Circumvention Determination.* Thus, this notice is published in fulfillment of the publication requirements of *Timken.*

Amended Final Anti-Circumvention Determinations

In accordance with the CIT's July 21, 2021, final judgment, Commerce is amending its *Final Anti-Circumvention Determination* and finds that inquiry merchandise is not circumventing the *Orders,* and that the scope of the *Orders* does not include the products addressed in the *Final Anti-Circumvention Determination.*

Liquidation of Suspended Entries

Commerce will instruct U.S. Customs and Border Protection (CBP) that, pending any appeals, the cash deposit rate will be zero percent for the inquiry merchandise. In the event that the CIT's final judgment is not appealed or is upheld on appeal, Commerce will instruct CBP to liquidate any unliquidated entries of inquiry merchandise entered for consumption on or after September 18, 2018, without regard to antidumping and countervailing duties and to lift suspension of liquidation of such entries.

At this time, Commerce remains enjoined by CIT order from liquidating entries that were entered, or withdrawn from warehouse, for consumption during the period September 18, 2018, through December 31, 2020, for the following:

(1) Imported by MJB Wood Group, Inc. (also known as MJB Wood Group, LLC) and:

- Exported and produced by Lian Yungang Hong Yang Wood Industry Co. Ltd.;
- exported by Suqian Yaorun Trade Co., Ltd. and produced by Pizhou Jiangshan Wood Co., Ltd.;
- exported and produced by Foothill LVL and Plywood (Linyi) Co., Ltd.;
- exported by China Link International (Huai'an) Co., Ltd. and produced by Lianyungang Ruixiang Wood Industry Co., Ltd.; or
- exported and produced by Linyi Welling Wood Industry Hi-Tech. Co., Ltd.;

(2) imported by Taraca Pacific, Inc. and:

- exported by Linyi Chengen Import and Export Co., Ltd. and produced by Linyi Dongfangjuxin Wood Co., Ltd.;
- exported by Lianyungang Yuantai International Trade Co., LTD. and produced by Linyi City Lanshan District Fuerda Wood Factory;
- exported and produced by Linyi Linhai Wood Co., Ltd.;
- exported and produced by Linyi Glary Plywood Co., Ltd.; or
- exported by Shandong Qishan International Trading Co., Ltd. and produced by Linyi Tuopu Zhixin Wooden Industry Co., Ltd.;

(3) produced and/or exported by Xuzhou Shelter Import & Export Co. and Shandong Shelter Forest Products Co., Ltd.

These entries will remain enjoined pursuant to the terms of the injunction during the pendency of any appeals process.

[1] *See Certain Hardwood Plywood Products from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order,* 83 FR 504 (January 4, 2018); and *Certain Hardwood Plywood Products from the People's Republic of China: Countervailing Duty Order,* 82 FR 513 (January 4, 2018) (collectively, *Orders*); *see also Certain Hardwood Plywood Products from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping and Countervailing Duty Orders,* 84 FR 65783 (November 29, 2019) (*Final Anti-Circumvention Determination*).

[2] *See Shelter Forest International Acquisition Inc., et al.* v. *United States,* Consol. Court No. 19–00212, Slip Op. 21–19 (CIT February 18, 2021) (*Remand Opinion and Order*). The CIT further ruled that if, on remand, Commerce continues to reach an affirmative determination, Commerce must reconsider or further explain the cash deposit rates of the plaintiffs, amend the effective date of the affirmative determination, and notify the International Trade Commission of its determination.

[3] *See* Final Results of Redetermination Pursuant to Court Remand*: Shelter Forest International Acquisition Inc., et al.* v. *United States,* Consol. Court No. 19–00212, Slip Op. 21–19 (CIT February 18, 2021) dated May 10, 2021 at 31. The CIT made additional findings, but Commerce was not required to address these other findings because they became moot as a result of the Shelter Forest determination.

[4] *See Shelter Forest International Acquisition Inc., et al.* v. *United States,* Consol. Court No. 19–00212, Slip Op. 21–90 (CIT July 21, 2021).

[5] *See Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

[6] *See Diamond Sawblades Manufacturers Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c) and (e) and 777(i)(1) of the Act.

Dated: July 22, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2021–16081 Filed 8–5–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–858]

Certain Softwood Lumber Products From Canada: Notice of Final Results of Countervailing Duty Changed Circumstances Review

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

SUMMARY: On June 25, 2021, the Department of Commerce (Commerce) published the initiation and preliminary results of a changed circumstances review (CCR) of the countervailing duty (CVD) order on certain softwood lumber products (softwood lumber) from Canada. For these final results, Commerce continues to find that Chaleur Forest Products LP (CFP LP) and Chaleur Forest Products Inc. (CFP Inc.) are the successors-in-interest (SIIs) to Chaleur Sawmills LP (Chaleur LP) and Fornebu Lumber Co. Inc. (Fornebu Inc.), respectively, in the context of the CVD order on softwood lumber from Canada.

DATES: Applicable August 6, 2021.

FOR FURTHER INFORMATION CONTACT: Kristen Johnson, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4793.

SUPPLEMENTARY INFORMATION:

Background

On March 11, 2021, CFP LP and CFP Inc. (collectively, the Chaleur Companies) requested that, pursuant to section 751(b) of the Tariff Act of 1930, as amended (the Act), 19 CFR 351.216, and 19 CFR 351.221(c)(3), Commerce conduct a CCR of the *Order*[1] to confirm that CFP LP and CFP Inc. are the SIIs to Chaleur LP and Fornebu Inc., respectively, and accordingly, to assign them the cash deposit rates of Chaleur LP and Fornebu Inc.[2] In their submission, the Chaleur Companies state that Chaleur LP and Fornebu Inc. undertook name changes to CFP LP and CFP Inc., respectively, but are otherwise unchanged.[3]

On June 25, 2021, Commerce initiated a CCR and preliminarily determined that CFP LP and CFP Inc. are the SIIs to Chaleur LP and Fornebu Inc., respectively.[4] In the *Initiation and Preliminary Results CCR,* we provided all interested parties with an opportunity to comment on the results. However, we received no comments.

Scope of the Order

The merchandise subject to the *Order* is certain softwood lumber products.[5] The products are currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) item numbers: 4406.11.0000; 4406.91.0000; 4407.10.01.01; 4407.10.01.02; 4407.10.01.15; 4407.10.01.16; 4407.10.01.17; 4407.10.01.18; 4407.10.01.19; 4407.10.01.20; 4407.10.01.42; 4407.10.01.43; 4407.10.01.44; 4407.10.01.45; 4407.10.01.46; 4407.10.01.47; 4407.10.01.48; 4407.10.01.49; 4407.10.01.52; 4407.10.01.53; 4407.10.01.54; 4407.10.01.55; 4407.10.01.56; 4407.10.01.57; 4407.10.01.58; 4407.10.01.59; 4407.10.01.64; 4407.10.01.65; 4407.10.01.66; 4407.10.01.67; 4407.10.01.68; 4407.10.01.69; 4407.10.01.74; 4407.10.01.75; 4407.10.01.76; 4407.10.01.77; 4407.10.01.82; 4407.10.01.83; 4407.10.01.92; 4407.10.01.93; 4407.11.00.01; 4407.11.00.02; 4407.11.00.42; 4407.11.00.43; 4407.11.00.44; 4407.11.00.45; 4407.11.00.46; 4407.11.00.47; 4407.11.00.48; 4407.11.00.49; 4407.11.00.52; 4407.11.00.53; 4407.12.00.01; 4407.12.00.02; 4407.12.00.17; 4407.12.00.18; 4407.12.00.19; 4407.12.00.20; 4407.12.00.58; 4407.12.00.59; 4407.19.05.00; 4407.19.06.00; 4407.19.10.01; 4407.19.10.02; 4407.19.10.54; 4407.19.10.55; 4407.19.10.56; 4407.19.10.57; 4407.19.10.64; 4407.19.10.65; 4407.19.10.66; 4407.19.10.67; 4407.19.10.68; 4407.19.10.69; 4407.19.10.74; 4407.19.10.75; 4407.19.10.76; 4407.19.10.77; 4407.19.10.82; 4407.19.10.83; 4407.19.10.92; 4407.19.10.93; 4409.10.05.00; 4409.10.10.20; 4409.10.10.40; 4409.10.10.60; 4409.10.10.80; 4409.10.20.00; 4409.10.90.20; 4409.10.90.40; 4418.50.0010; 4418.50.0030; 4418.50.0050 and 4418.99.10.00. Although the HTSUS numbers are provided for convenience and customs purposes, the written product description remains dispositive.

Final Results of CCR

For the reasons stated in the *Initiation and Preliminary Results CCR,* Commerce continues to find that CFP LP and CFP Inc. are the SIIs to Chaleur LP and Fornebu Inc., respectively. As a result of this determination and consistent with established practice, we find that CFP LP and CFP Inc. should receive the cash deposit rates previously assigned to Chaleur LP and Fornebu Inc., respectively. Consequently, Commerce will instruct U.S. Customs and Border Protection to suspend liquidation of all shipments of subject merchandise produced and/or exported by CFP LP and CFP Inc. and entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice in the **Federal Register** at the cash deposit rate in effect for Chaleur LP and Fornebu Inc., respectively. This cash deposit requirement shall remain in effect until further notice.

Notification to Interested Parties

We are issuing this determination and publishing these final results and notice in accordance with sections 751(b)(1) and 777(i)(1) and (2) of the Act, and 19 CFR 351.216(e), 351.221(b), and 351.221(c)(3).

Dated: August 2, 2021.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations.

[FR Doc. 2021–16839 Filed 8–5–21; 8:45 am]

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[1] *See Certain Softwood Lumber Products from Canada: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order,* 83 FR 347 (January 3, 2018) (*Order*).

[2] *See* Chaleur Companies' Letter, ''Certain Softwood Lumber Products from Canada: Chaleur's Request for Changed Circumstances Reviews,'' dated March 11, 2021 (CCR Request).

[3] *Id.* at 2–3.

[4] *See Certain Softwood Lumber Products from Canada: Notice of Initiation and Preliminarily Results of Countervailing Duty Changed Circumstances Review,* 86 FR 33660 (June 25, 2021) (*Initiation and Preliminary Results CCR*).

[5] For a complete description of the *Order, see* Memorandum, ''Initiation and Preliminary Results of Changed Circumstances Review: Preliminary Decision Memorandum,'' dated June 14, 2021.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB272]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

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

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Greater Atlantic Region, NMFS, has made a preliminary determination that an Exempted Fishing Permit application submitted by the Coonamessett Farm Foundation contains all of the required information and warrants further consideration. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed Exempted Fishing Permits.

DATES: Comments must be received on or before August 23, 2021.

ADDRESSES: You may submit written comments by the following method:

- *Email: nmfs.gar.efp@noaa.gov.* Include in the subject line ''CFF Seasonal Scallop Survey EFP.''

FOR FURTHER INFORMATION CONTACT: Shannah Jaburek, Fishery Management Specialist; *shannah.jaburek@noaa.gov,* (978) 281–9135.

SUPPLEMENTARY INFORMATION: The Coonamessett Farm Foundation (CFF) submitted a complete application for an Exempted Fishing Permit (EFP) to conduct commercial fishing activities that the Atlantic Sea Scallop Fishery Management Plan regulations would otherwise restrict. This EFP would exempt the participating vessels from: Atlantic sea scallop days-at-sea (DAS) allocations at 50 CFR 648.53(b); crew size restrictions at § 648.51(c); observer program requirements at § 648.11(g); minimum mesh size restrictions at § 648.51(b)(2); minimum ring size restrictions at § 648.51(b)(3); dredge obstruction restriction at § 648.51(b)(4)(iii); Closed Area II restrictions in § 648.59 and 648.60; dredge or net obstructions at § 648.51(b)(4)(iii); size and possession limits at § 648 subsections B and D through O for biological sampling only, and § 697.20 for lobster sampling and tagging only.

CFF applied for an EFP on April 5, 2021, to conduct a scallop survey in Georges Bank. This EFP would allow CFF to conduct the survey over four, 7-day survey trips on commercial scallop vessels from August 17, 2021, through July 30, 2022, at 50 fixed stations. The survey stations would be located in Closed Area II Southeast, Closed Area II Southwest, Closed Area II extension, and the eastern edge of the Southern Flank Scallop Management Simulator areas. The survey stations were chosen to provide data about scallop spawning, scallop meat quality, and seasonal patterns of habitat use by bycatch species caught in the scallop fishery.

Participating vessels would use two, 15-foot (4.6 m) turtle deflector dredges with 10-inch (25.4 cm) twine tops, 4-inch (10.2 cm) ring bags, 7-row aprons, and 2:1 twine top hanging ratios. One dredge would have a 50-mm cover net attached to catch juvenile scallops and other bycatch species that escape from normal scallop dredges. The dredge with the cover net would be towed for 10 minutes at 4.8 knots (8.9 km/hr). The dredge without the cover net would be towed for 30 minutes at 4.8 knots (8.9 km/hr). Dredges would be fished alternatively.

CFF researchers would be participating vessels at all times and would direct sampling activities. Scallop catch would be sorted into baskets and weighed. A subsample of catch would be measured and have meat quality and other biological metrics recorded. Flatfish bycatch would be weighed and measured for length, and reproductive data would be recorded for windowpane, winter, and yellowtail flounder. Crabs, moon snails, whelks, and other scallop predators would be weighed and counted. Sea stars would be sampled using the same protocols as scallops. Lobsters would have biological measurements taken and will be assessed for dredge damage. Lobsters would also be tagged in collaboration with the Atlantic Offshore Lobstermen's Association. No catch will be landed for sale.

If approved, the applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 2, 2021.

Jennifer M. Wallace,

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

[FR Doc. 2021–16787 Filed 8–5–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB234]

Taking of Marine Mammals Incidental to Specific Activities; Taking of Marine Mammals Incidental to Pile Driving and Removal Activities During the Metlakatla Seaplane Facility Refurbishment Project, Metlakatla, Alaska

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to the Alaska Department of Transportation and Public Facilities (AKDOT&PF) to incidentally harass, by Level B harassment only, marine mammals during pile driving/removal and down-the-hole drilling (DTH) activities for maintenance improvements to the existing Metlakatla Seaplane Facility (MSF) in Southeast Alaska.

DATES: This Authorization is effective for one year from issuance.

FOR FURTHER INFORMATION CONTACT: Stephanie Egger, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-alaska-department-transportation-metlakatla-seaplane-facility.* In case of problems accessing these documents, or for anyone who is unable to comment via electronic mail, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et*

seq.) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

Summary of Request

On August 10, 2020, NMFS received a request from the AKDOT&PF for an IHA to take marine mammals incidental to pile driving/removal and DTH activities during maintenance improvements to the existing MSF in Southeast Alaska. The application was deemed adequate and complete on November 23, 2020. The applicant also provided an addendum to their application on February 23, 2021 for the addition of eight piles, some changes to their shutdown zones, and minor changes to their take estimates due to the increase of in-water work days from the eight additional piles. The applicant's request is for take of eight species of marine mammals by Level B harassment only. Neither the AKDOT&PF nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

Description of Planned Activity

The purpose of this project is to make repairs to the MSF. The existing facility has experienced deterioration in recent years and AKDOT&PF has conducted several repair projects. The facility is near the end of its useful life, and replacement of all the existing float structures is required to continue safe operation in the future. The planned project in Metlakatla is located approximately 24 kilometers (km) (15 miles (mi)) south of Ketchikan, in Southeast Alaska. Metlakatla, is on Annette Island, in the Prince of Whales-Hyder Census Area of Southeast Alaska. The Metlakatla Seaplane Facility is centrally located in the village of Metlakatla on the south shore of Port Chester.

The planned project includes pile driving/removal and DTH over 2 months (approximately 26 working days) beginning in August 2021. Pile installation and removal will be intermittent during this period, depending on weather, construction and mechanical delays, protected species shutdowns, and other potential delays and logistical constraints. Pile installation will occur intermittently during the work period, for durations of minutes to hours at a time. Approximately 18 days of pile installation and 8 days of pile removal will occur using vibratory and impact pile driving and some DTH to stabilize the piles. These are discussed in further detail below. The total construction duration accounts for the time required to mobilize materials and resources and construct the project.

Planned activities included as part of the project with potential to affect marine mammals include the noise generated by vibratory removal of steel pipe piles, vibratory and impact installation of steel pipe piles, and DTH to stabilize piles. Pile removal will be conducted using a vibratory hammer. Pile installation will be conducted using both a vibratory and impact hammer and DTH pile installation methods. Piles will be advanced to refusal using a vibratory hammer. After DTH pile installation, the final approximate 3.048 m (10 ft) of driving will be conducted using an impact hammer so that the structural capacity of the pile embedment can be verified. The pile installation methods used will depend on sediment depth and conditions at each pile location. Pile installation and removal will occur in waters approximately 6–7 m (20–23 ft) in depth.

The project will involve the removal of 11 existing steel pipe piles (16-inch (in) diameter) that support the existing multiple-float structure. The multiple-float timber structure, which covers 8,600 square ft, will also be removed. A new 4,800-square-ft single-float timber structure will be installed in the same general location. Six 24-in diameter steel pipe piles will be installed to act as restraints for the new seaplane float. In addition, 12 temporary 24-in steel piles will be installed to support pile installation and removed following completion of construction.

DTH pile installation involves drilling rock sockets into the bedrock to support installation of the 6 permanent piles and 12 temporary piles. Rock sockets consist of inserting the pile in a drilled hole into the underlying bedrock after the pile has been driven through the overlying softer sediments to refusal by vibratory or impact methods. The pile is advanced farther into this drilled hole to properly secure the bottom portion of the pile into the rock. The depth of the rock socket varies, but 3.048–4.572 m (10–15 ft) is commonly required. The diameter of the rock socket is slightly larger than the pile being driven. Rock sockets are constructed using a DTH device with both rotary and percussion-type actions. Each device consists of a drill bit that drills through the bedrock using both rotary and pulse impact mechanisms. This breaks up the rock to allow removal of the fragments and insertion of the pile. The pile is usually advanced at the same time that drilling occurs. Drill cuttings are expelled from the top of the pile using compressed air. It is estimated that drilling rock sockets into the bedrock will take about 1–3 hours (hrs) per pile.

Tension anchors will be installed in each of the six permanent piles. Tension anchors are installed within piles that are drilled into the bedrock below the elevation of the pile tip after the pile has been driven through the sediment layer to refusal. A 6- or 8-in diameter steel pipe casing will be inserted inside the larger diameter production pile. A rock drill will be inserted into the casing, and a 6- to 8-in diameter hole will be drilled into bedrock with rotary and percussion drilling methods. The drilling work is contained within the steel pile casing and the steel pipe pile. The typical depth of the drilled hole varies, but 20–30 ft is common. Rock fragments will be removed through the top of the casing with compressed air. A steel rod will then be grouted into the drilled hole and affixed to the top of the pile. The purpose of a tension anchor is to secure the pile to the bedrock to withstand uplift forces. It is estimated that tension anchor installation will take about 1–2 hrs per pile.

No concurrent pile driving is anticipated for this project.

Please see Table 1 below for the specific amount of time required to install and remove piles.

TABLE 1—PILE DRIVING AND REMOVAL ACTIVITIES

Pile diameter and type	Number of piles	Rock sockets	Tension anchors	Impact strikes per pile (duration in minutes)	Vibratory duration per pile (minutes)	DTH pile installation (rock socket) duration per pile (minutes)	DTH pile installation (tension anchor) duration per pile (minutes)	Total duration of activity per pile (hours)	Piles per day (range)	Total days
Pile Installation										
24-in Steel Plumb Piles (Permanent)	4	4	4	20 (15)	15	180	120	5.5	0.5 (0–1)	8
24-in Steel Batter Piles (Permanent)	2	2	2	20 (15)	15	90	120	4	0.5 (0–1)	4
24-in Steel Piles (Temporary)	12	12	0	20 (15)	15	60	N/A	1.5	2 (1–3)	6
Pile Removal										
16-in Steel Piles	11	N/A	N/A	N/A	30	N/A	N/A	0.5	3 (2–4)	4
24-in Steel Piles (Temporary)	12	N/A	N/A	N/A	30	N/A	N/A	0.5	3 (2–4)	4
Totals	29	18	6	N/A	N/A	N/A	N/A	N/A	N/A	26

Note: DTH = down-the-hole; N/A = not applicable.

A detailed description of the planned MSF project is provided in the **Federal Register** notice for the proposed IHA (86 FR 34203; June 29, 2021).

Comments and Responses

A notice of NMFS' proposal to issue and IHA to AKDOT&PF was published in the **Federal Register** on June 29, 2021 (86 FR 34203). That notice described, in detail, AKDOT&PF's activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals. During the 30-day public comment period, NMFS received no public comments on this action.

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*https://www.fisheries.noaa.gov/find-species*).

Table 2 lists all species or stocks for which take is expected and authorized for this action, and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2020). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' U.S. Pacific and Alaska SARs (Carretta *et al.,* 2020; Muto *et al.,* 2020). All MMPA stock information presented in Table 2 is the most recent available at the time of publication and is available in the 2019 SARs (Caretta *et al.,* 2020; Muto *et al.,* 2020) and draft 2020 SARs (available online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports*).

TABLE 2—MARINE MAMMAL OCCURRENCE IN THE PROJECT AREA

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Balaenopteridae (rorquals):						
Minke Whale	*Balaenoptera acutorostrata*	Alaska	-, -, N	N/A (see SAR, N/A, see SAR).	UND	0
Humpback Whale	*Megaptera novaeangliae*	Central N Pacific	-, -, Y	10,103 (0.3, 7,891, 2006)	83	26
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae:						
Killer Whale	*Orcinus orca*	Alaska Resident	-, -, N	2,347 (N/A, 2347, 2012)	24	1
		Northern Resident	-, -, N	302 (N/A, 302, 2018)	2.2	0.2

TABLE 2—MARINE MAMMAL OCCURRENCE IN THE PROJECT AREA—Continued

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
		West Coast Transient	-, -, N	349 (N/A, 349; 2018)	3.5	0.4
Pacific White-Sided Dolphin.	*Lagenorhynchus obliquidens*	N Pacific	-, -, N	26,880 (N/A, N/A, 1990)	UND	0
Family Phocoenidae (porpoises):						
Dall's Porpoise	*Phocoenoides dalli*	AK	-, -, N	83,400 (0.097, N/A, 1991)	UND	38
Harbor Porpoise	*Phocoena phocoena*	Southeast Alaska Inland waters.	-, -, Y	see SAR (see SAR, see SAR, 2012).	see SAR	34
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):						
Steller sea lion	*Eumetopias jubatus*	Eastern DPS	T, D, Y	43,201 a (see SAR, 43,201, 2017).	2592	112
Family Phocidae (earless seals):						
Harbor Seal	*Phoca vitulina*	Clarence Strait	-, -, N	27,659 (see SAR, 24,854, 2015).	746	40

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable [explain if this is the case].

[3] These values, found in NMFS' SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

A detailed description of the of the species likely to be affected by the project, including brief introductions to the species and relevant stocks as well as available information regarding population trends and threats, and information regarding local occurrence, were provided in the **Federal Register** notice for the proposed IHA (86 FR 34203; June 29, 2021) since that time, we are not aware of any changes in the status of these species and stocks; therefore, detailed descriptions are not provided here. Please refer to that **Federal Register** notice for these descriptions. Please also refer to NMFS' website (*https://www.fisheries.noaa.gov/find-species*) for generalized species accounts.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

Acoustic effects on marine mammals during the specified activity can occur from vibratory and impact pile driving as well as during DTH of the piles. The effects of underwater noise from the AKDOT&PF's planned activities have the potential to result in Level B behavioral harassment of marine mammals in the vicinity of the action area. The effects of pile driving on marine mammals are dependent on several factors, including the size, type, and depth of the animal; the depth, intensity, and duration of the pile driving sound; the depth of the water column; the substrate of the habitat; the standoff distance between the pile and the animal; and the sound propagation properties of the environment. With both types, it is likely that the pile driving could result in temporary, short-term changes in an animal's typical behavioral patterns and/or avoidance of the affected area. The **Federal Register** notice for the proposed IHA (86 FR 34203; June 29, 2021) included a discussion of the effects of anthropogenic noise on marine mammals, therefore that information is not repeated here; please refer to the **Federal Register** notice (86 FR 34203; June 29, 2021).

Anticipated Effects on Marine Mammal Habitat

The main impact issue associated with the planned activity would be temporarily elevated sound levels and the associated direct effects on marine mammals. The most likely impact to marine mammal habitat occurs from pile driving effects on likely marine mammal prey (*i.e.,* fish) near where the piles are installed. Impacts to the immediate substrate during installation and removal of piles are anticipated, but these would be limited to minor, temporary suspension of sediments, which could impact water quality and visibility for a short amount of time, but which would not be expected to have any effects on individual marine mammals. Impacts to substrate are therefore not discussed further. These potential effects are discussed in detail in the **Federal Register** notice for the proposed IHA (86 FR 34203; June 29, 2021) therefore that information is not repeated here; please refer to that **Federal Register** notice for that information.

Estimated Take

This section provides an estimate of the number of incidental takes authorization through this IHA, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determination.

Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Take of marine mammals incidental to the AKDOT&PF's pile driving and removal activities (as well as during DTH) could occur as a result of Level B harassment only. Below we describe how the potential take is estimated. As described previously, no mortality is anticipated or authorized for this

activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the planned take estimate.

Acoustic Thresholds

Using the best available science, NMFS has developed acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur permanent threshold shift (PTS) of some degree (equated to Level A harassment).

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB reference pressure micro Pascal (re 1 μPa (rms)) for continuous (*e.g.,* vibratory pile driving and DTH) and above 160 dB re 1 μPa (rms) for impulsive sources (*e.g.,* impact pile driving). The AKDOT&PF's planned activity includes the use of continuous (vibratory pile driving, DTH) and impulsive (impact pile driving) sources, and therefore the 120 and 160 dB re 1 μPa (rms) are applicable.

Level A Harassment—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise. The technical guidance identifies the received levels, or thresholds, above which individual marine mammals are predicted to experience changes in their hearing sensitivity for all underwater anthropogenic sound sources, and reflects the best available science on the potential for noise to affect auditory sensitivity by:

- Dividing sound sources into two groups (*i.e.,* impulsive and non-impulsive) based on their potential to affect hearing sensitivity;
- Choosing metrics that best address the impacts of noise on hearing sensitivity, *i.e.,* sound pressure level (peak SPL) and sound exposure level (SEL) (also accounts for duration of exposure); and
- Dividing marine mammals into hearing groups and developing auditory weighting functions based on the science supporting that not all marine mammals hear and use sound in the same manner.

These thresholds were developed by compiling and synthesizing the best available science, and are provided in Table 3 below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2018 Technical Guidance, which may be accessed at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

DTH pile installation includes drilling (non-impulsive sound) and hammering (impulsive sound) to penetrate rocky substrates (Denes *et al.* 2016; Denes *et al.* 2019; Reyff and Heyvaert 2019). DTH pile installation was initially thought be a primarily non-impulsive noise source. However, Denes *et al.* (2019) concluded from a study conducted in Virginia, nearby the location for this project, that DTH should be characterized as impulsive based on Southall *et al.* (2007), who stated that signals with a >3 dB difference in sound pressure level in a 0.035-second window compared to a 1-second window can be considered impulsive. Therefore, DTH pile installation is treated as both an impulsive and non-impulsive noise source. In order to evaluate Level A harassment, DTH pile installation activities are evaluated according to the impulsive criteria and using 160 dB rms. Level B harassment isopleths are determined by applying non-impulsive criteria and using the 120 dB rms threshold which is also used for vibratory driving. This approach ensures that the largest ranges to effect for both Level A and Level B harassment are accounted for in the take estimation process.

TABLE 3—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

[Auditory injury]

Hearing group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	*Cell 2:* $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	*Cell 4:* $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	*Cell 6:* $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	*Cell 8:* $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	*Cell 10:* $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μPa, and cumulative sound exposure level (L_E) has a reference value of 1μPa^{2}s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript "flat" is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds, which include source levels and transmission loss coefficient.

Sound Propagation

Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

$TL = B * \log_{10}(R_1/R_2)$, where

B = transmission loss coefficient (assumed to be 15)

R_1 = the distance of the modeled SPL from the driven pile, and

R_2 = the distance from the driven pile of the initial measurement.

This formula neglects loss due to scattering and absorption, which is assumed to be zero here. The degree to which underwater sound propagates away from a sound source is dependent on a variety of factors, most notably the water bathymetry and presence or absence of reflective or absorptive conditions including in-water structures and sediments. Spherical spreading occurs in a perfectly unobstructed (free-field) environment not limited by depth or water surface, resulting in a 6 dB reduction in sound level for each doubling of distance from the source (20*log(range)). Cylindrical spreading occurs in an environment in which sound propagation is bounded by the water surface and sea bottom, resulting in a reduction of 3 dB in sound level for each doubling of distance from the source (10*log(range)). As is common practice in coastal waters, here we assume practical spreading loss (4.5 dB reduction in sound level for each doubling of distance). Practical spreading is a compromise that is often used under conditions where water depth increases as the receiver moves away from the shoreline, resulting in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions. Practical spreading was used to determine sound propagation for this project.

Sound Source Levels

The intensity of pile driving sounds is greatly influenced by factors such as the type of piles, hammers, and the physical environment in which the activity takes place. There are source level measurements available for certain pile types and sizes from the similar environments recorded from underwater pile driving projects in Alaska that were evaluated and used as proxy sound source levels to determine reasonable sound source levels likely result from the AKDOT&PF's pile driving and removal activities (Table 4). Many source levels used were more conservative as the values were from larger pile sizes.

TABLE 4—SOUND SOURCE LEVELS

Method and pile type	SSL at 10 meters			Literature source	**Federal Register** sources [a]
Continuous (Vibratory Pile Driving and DTH)	dB rms				
16-in Steel Piles	161			Navy 2012, 2015	A, B, C, H.
24-in Steel Piles	161			Navy 2012, 2015	C, D, E, H, I.
24-in DTH [b]	166			Denes *et al.* 2016 (Table 72) [b]	B, C, F, G.
8-in DTH [c]	166			NMFS [c].	
Impulsive (Impact Pile Driving and DTH)	dB rms	dB SEL	dB Peak		
24-in Steel Piles	193	181	210	Navy 2015	D, H, I.
24-in DTH [b]		154		Denes *et al.* 2016 [b].	
8-in DTH [c]		144	170	Reyff 2020.	

[a] **Federal Register** sources:
A: 84 FR 24490; May 28, 2019, City of Juneau Waterfront Improvement Project, Juneau, Alaska.
B: 85 FR 4278; January 24, 2020, Statter Harbor Improvement Project, Auke Bay, Alaska.
C: 85 FR 673; January 7, 2020, Tongass Narrows Ferry Berth Improvements, Ketchikan, Alaska.
D: 85 FR 19294; April 6, 2020, Port of Alaska's Petroleum and Cement Terminal, Anchorage, Alaska.
E: 84 FR 56767; October 23, 2019, Auke Bay Ferry Terminal Modifications and Improvements Project, Juneau, Alaska.
F: 85 FR 18196; April 1, 2020, Gastineau Channel Historical Society Sentinel Island Moorage Float Project, Juneau, Alaska.
G: 85 FR 12523; March 3, 2020, Ward Cove Cruise Ship Dock Project, Juneau, Alaska.
H: 83 FR 29749; June 26, 2018, City Dock and Ferry Terminal, Tenakee Springs, Alaska.
I: 82 FR 48987; October 23, 2017, Sand Point City Dock Replacement Project, Sand Point, Alaska.
[b] DTH pile installation is treated as a continuous sound for Level B calculations and impulsive for Level A calculations.
[c] Tension anchor installation (8-in DTH) is currently treated as DTH pile installation.
Notes: DTH = down-the-hole pile installation; SSL = sound source = level; dB = decibel; rms = root mean square; SEL = sound exposure level.

Level A Harassment

In conjunction with the NMFS Technical Guidance (2018), in recognition of the fact that ensonified area/volume could be more technically challenging to predict because of the duration component in the new thresholds, we developed a User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to help predict takes. We note that because of some of the assumptions included in the methods used for these tools, we

anticipate that isopleths produced are typically going to be overestimates of some degree, which may result in some degree of overestimate of Level A harassment take. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools, and will qualitatively address the output where appropriate. For stationary sources (such as from impact and vibratory pile driving and DTH), NMFS User Spreadsheet (2020) predicts the closest distance at which, if a marine mammal remained at that distance the whole duration of the activity, it would not incur PTS. Inputs used in the User Spreadsheet (Tables 5 and 6), and the resulting isopleths are reported below (Table 7).

TABLE 5—NMFS TECHNICAL GUIDANCE (2020) USER SPREADSHEET INPUT TO CALCULATE PTS ISOPLETHS FOR VIBRATORY PILE DRIVING

User spreadsheet input—vibratory pile driving spreadsheet Tab A.1 vibratory pile driving used			
	16-in piles (removal)	24-in piles temporary (install/removal)	24-in plumb/batter piles permanent (install)
Source Level (RMS SPL)	161	161	161
Weighting Factor Adjustment (kHz)	2.5	2.5	2.5
Number of piles within 24-hr period	4	4	4
Duration to drive a single pile (min)	30	30	30
Propagation (xLogR)	15	15	15
Distance of source level measurement (meters)	10	10	10

TABLE 6—NMFS TECHNICAL GUIDANCE (2020) USER SPREADSHEET INPUT TO CALCULATE PTS ISOPLETHS FOR IMPACT PILE DRIVING

User spreadsheet input—impact pile driving spreadsheet tab E.1 impact pile driving used							
	24-in piles (permanent)	8-in pile (DTH)	8-in pile (DTH)	8-in pile (DTH)	24-in pile (DTH)	24-in pile (DTH)	24-in pile (DTH)
Source Level (Single Strike/shot SEL)	181	144	144	144	154	154	154
Weighting Factor Adjustment (kHz)	2	2	2	2	2	2	2
Number of strikes per pile	20	54,000	108,000	162,000	54,000	81,000	162,000
Minutes per pile	.....	60	120	180	60	90	180
Number of piles per day	3	1	1	1	1	1	1
Propagation (xLogR)	15	15	15	15	15	15	15
Distance of source level measurement (meters)	10	10	10	10	10	10	10

TABLE 7—NMFS TECHNICAL GUIDANCE (2020) USER SPREADSHEET OUTPUTS TO CALCULATE LEVEL A HARASSMENT PTS ISOPLETHS

User spreadsheet output		PTS isopleths (meters)				
		Level A harassment				
Activity	Sound source level at 10 m	Low-frequency cetaceans	Mid-frequency cetaceans	High-frequency cetaceans	Phocid	Otariid
Vibratory Pile Driving/Removal						
16-in steel pile removal	161 SPL	10.8	1.0	16.0	6.6	0.5
24-in steel pile temporary installation and removal.	161 SPL	10.8	1.0	16.0	6.6	0.5
24-in steel pile permanent	161 SPL	10.8	1.0	16.0	6.6	0.5
Impact Pile Driving						
24-in steel permanent installation (3 piles a day).	181 SEL/193 SPL	112.6	4.0	134.1	60.3	4.4
24-in steel permanent installation (2 piles a day).	181 SEL/193 SPL	85.9	3.1	102.3	46.0	3.3
24-in steel permanent installation (1 piles a day).	181 SEL/193 SPL	54.1	1.9	64.5	29.0	2.1
DTH						
8-in steel (60 min)	144 SEL/166 SPL	35.8	1.3	42.7	19.2	1.4
8-in steel (120 min)	144 SEL/166 SPL	56.9	2.0	67.8	30.4	2.2
8-in steel (180 min)	144 SEL/166 SPL	74.5	2.7	88.8	39.9	2.9
24-in steel (60 min)	154 SEL/166 SPL	166.3	5.9	198.1	89.0	6.5

TABLE 7—NMFS TECHNICAL GUIDANCE (2020) USER SPREADSHEET OUTPUTS TO CALCULATE LEVEL A HARASSMENT PTS ISOPLETHS—Continued

User spreadsheet output		PTS isopleths (meters)				
		Level A harassment				
Activity	Sound source level at 10 m	Low-frequency cetaceans	Mid-frequency cetaceans	High-frequency cetaceans	Phocid	Otariid
24-in steel (90 min)	154 SEL/166 SPL	218.0	7.8	259.6	116.6	8.5
24-in steel (180 min)	154 SEL/166 SPL	346.0	12.3	412.1	185.2	13.5

Level B Harassment

Utilizing the practical spreading loss model, the AKDOT&PF determined underwater noise will fall below the behavioral effects threshold of 120 dB rms for marine mammals at the distances shown in Table 8 for vibratory pile driving/removal, and DTH. With these radial distances, the largest Level B harassment zone calculated was for DTH at 11,659 m. For calculating the Level B harassment zone for impact driving, the practical spreading loss model was used with a behavioral threshold of 160 dB rms. The maximum radial distance of the Level B harassment zone for impact piling equaled 1,585 m for 24-in piles. Table 8 below provides all Level B harassment radial distances (m) during the AKDOT&PF's planned activities.

TABLE 8—RADIAL DISTANCES (METERS) TO RELEVANT BEHAVIORAL ISOPLETHS

Activity	Received level at 10 meters (m)	Level B harassment zone (m) *
Vibratory Pile Driving/Removal and DTH		
16-in steel piles	161 SPL	5,415 (calculated 5,412).
24-in steel piles	161 SPL	5,415 (calculated 5,412).
8-in and 24-in DTH	166 SPL	11,660 (calculated 11,659).
Impact Pile Driving		
24-in steel piles	181 SEL/193 SPL	1,585.

* Numbers rounded up to nearest 5 meters. These specific rounded distances are for monitoring purposes rather than take estimation.

Marine Mammal Occurrence and Take Calculation and Estimation

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations. Potential exposures to impact pile driving, vibratory pile driving/removal and DTH noises for each acoustic threshold were estimated using group size estimates and local observational data. As shown above, distances to Level A harassment thresholds for project activities are relatively small in most cases and mitigation (*i.e.,* shutdown zones) is expected to avoid Level A harassment from these activities. Accordingly, take by Level B harassment only will be considered for this action. Take by Level B harassment are calculated differently for some species based on monthly or daily sightings data and average group sizes within the action area using the best available data.

Minke Whales

There are no density estimates of minke whales available in the project area. These whales are usually sighted individually or in small groups of two or three, but there are reports of loose aggregations of hundreds of animals (NMFS 2018). Dedicated surveys for cetaceans in Southeast Alaska found that minke whales were scattered throughout inland waters from Glacier Bay and Icy Strait to Clarence Strait (Dahlheim *et al.* 2009). All sightings were of single minke whales, except for a single sighting of multiple minke whales. Anecdotal observations suggest that minke whales do not enter Port Chester, and may be more rare in the project area (L. Bethel, personal communication, June 11, 2020 2020 as cited in the application). Based on the potential for one group of a group size of three whales entering the Level B harassment zone during the project, similar to what is observed in Tongass Narrows, NMFS authorizes, take of three minke whales over the 4-month project period by Level B harassment. No take by Level A harassment is authorized or anticipated to occur due to their rarer occurrence in the project area. In addition, the shutdown zones are larger than all the calculated Level A harassment isopleths for all pile driving/removal and DTH activities for cetaceans.

Humpback Whales

There are no density estimates for humpback whales available in the project area. Use of Nichols Passage and Port Chester by humpback whales is common but intermittent and dependent on the presence of prey fish. No systematic studies have documented humpback whale abundance near Metlakatla. Anecdotal information from Metlakatla and Ketchikan suggest that humpback whales' utilization of the area is intermittent year-round and local mariners estimate that one to two humpback whales may be present in the Port Chester area on a daily basis during summer months (L. Bethel, personal communication, June 11, 2020 2020 as cited in the application). This is consistent with reports from Ketchikan, which suggest that humpback whales occur alone or in groups of two or three individuals and abundance is highest in August and September (84 FR 34134; July 17, 2019). However, anecdotal reports suggest that humpback whale abundance is higher and occurrence is more regular in Metlakatla. Therefore,

NMFS authorizes two groups of two whales, up to four individuals per day, may be taken by Level B harassment for a total of 104 humpback whales (4 whales per day * 26 days = 104 humpback whales).

Under the MMPA, humpback whales are considered a single stock (Central North Pacific); however, we have divided them here to account for distinct population segments (DPSs) listed under the ESA. Using the stock assessment from Muto *et al.* 2020 for the Central North Pacific stock (10,103 whales) and calculations in Wade *et al.* 2016; 9,487 whales are expected to be from the Hawaii DPS and 606 from the Mexico DPS. Therefore, for purposes of consultation under the ESA, we anticipate that 7 whales of the total takes would be individuals from the Mexico DPS (104 × 0.061 = 6.3 rounded to 7). No take by Level A harassment is authorized or anticipated to occur due to their large size and ability to be visibly detected in the project area if an animal should approach the Level A harassment zone as well as the size of the Level A harassment zones, which are expected to be manageable for the protected species observers (PSOs). The calculated Level A isopleths for low-frequency cetaceans are 113 m or less with the exception of DTH of limited duration of 24-in piles where they range from 166.3–346.0 m. The shutdown zones (Table 10) are larger for all calculated Level A harassment isopleths during all pile driving activities (vibratory, impact and DTH) for all cetaceans.

Killer Whales

There are no density estimates of killer whales available in the project area. Three distinct eco-types occur in Southeast Alaska (resident, transient and offshore whales; Ford *et al.,* 1994; Dahlheim *et al.,* 1997, 2008). Dahlheim *et al.* (2009) observed transient killer whales within Lynn Canal, Icy Strait, Stephens Passage, Frederick Sound, and upper Chatham Strait. As determined during a line-transect survey by Dalheim *et al.* (2008), the greatest number of transient killer whale observed in Southeast Alaska occurred in 1993 with 32 animals seen over 2 months for an average of 16 sightings per month. Resident pods were also observed in Icy Strait, Lynn Canal, Stephens Passage, Frederick Sound and upper Chatham Straight (Dalheim *et al.* 2008). Transient killer whales are often found in long-term stable social units (pods) of 1 to 16 whales. Average pod sizes in Southeast Alaska were 6 in spring, 5 in summer, and 4 in fall. Pod sizes of transient whales are generally smaller than those of resident social groups. Resident killer whales occur in pods ranging from 7 to 70 whales that are seen in association with one another more than 50 percent of the time (Dahlheim *et al.* 2009; NMFS 2016b). In Southeast Alaska, resident killer whale mean pod size was approximately 21.5 in spring, 32.3 in summer, and 19.3 in fall (Dahlheim *et al.* 2009). Killer whales are observed occasionally during summer throughout Nichols Passage, but their presence in Port Chester is unlikely. Anecdotal local information suggests that killer whales are rarely seen within the Port Chester area, but may be present more frequently in Nichols Passage and other areas around Gravina Island (L. Bethel, personal communication, June 11, 2020 2020 as cited in the application). To be conservative NMFS authorizes one killer whale pod of up to 15 individuals once during the project could be taken by Level B harassment based on a pod of 12 killer whales that may be present each month similar to Tongass Narrows near Ketchikan. Additionally, a recent monitoring report for Tongass Narrows reported 10 individuals sighted and 10 Level B harassment takes of killer whales during May 2021. No take by Level A harassment is authorized or anticipated to occur to the ability to visibly detect these large whales and the small size of the Level A harassment zones. In addition, the shutdown zones are larger than all the calculated Level A harassment isopleths for all pile driving/removal and DTH activities for cetaceans.

Pacific White-Sided Dolphin

There are no density estimates of Pacific white-sided dolphins available in the project area. Most observations of Pacific white-sided dolphins occur off the outer coast or in inland waterways near entrances to the open ocean. Pacific white-sided dolphins have been observed in Alaska waters in groups ranging from 20 to 164 animals, with the sighting of 164 animals occurring in Southeast Alaska near Dixon Entrance to the south of Metlakatla (Muto *et al.,* 2018). In nearby Tongass Narrows, NMFS estimated that one group of 92 Pacific white-sided dolphin (median between 20 and 164) may occur over a period of 1 year (85 FR 673; January 7, 2020). There are no records of this species occurring in Port Chester, and it is uncommon for individuals to occur in the project area. Therefore, NMFS authorizes one large group of 92 dolphins may be taken by Level B harassment during the project. No take by Level A harassment authorized or anticipated as the Level A harassment isopleths are so small.

Dall's Porpoise

There are no density estimates of Dall's porpoise available in the project area. Little information is available on the abundance of Dall's porpoise in the inland waters of Southeast Alaska. Dall's porpoise are most abundant in spring, observed with lower numbers in the summer, and lowest numbers in fall. Jefferson *et al.,* 2019 presents abundance estimates for Dall's porpoise in these waters and found the abundance in summer (N = 2,680, CV = 19.6 percent), and lowest in fall (N = 1,637, CV = 23.3 percent). No systematic studies of Dall's porpoise abundance or distribution have occurred in Port Chester or Nichols Passage; however, Dall's porpoises have been consistently observed in Lynn Canal, Stephens Passage, upper Chatham Strait, Frederick Sound, and Clarence Strait (Dahlheim *et al.* 2009). The species is generally found in waters in excess of 600 ft (183 m) deep, which do not occur in Port Chester. If Dall's porpoises occur in the project area, they will likely be present in March or April, given the strong seasonal patterns observed in nearby areas of Southeast Alaska (Dahlheim *et al.* 2009). Dall's porpoises are seen once a month or less within Port Chester and Nichols Passage in groups of less than 10 animals (L. Bethel, personal communication, June 11, 2020 as cited in the application).

Dall's porpoises are not expected to occur in Port Chester because the shallow water habitat of the bay is atypical of areas where Dall's porpoises usually occur. Therefore, NMFS authorizes one group of Dall's porpoise (15 individuals) per month, similar to what was estimated in nearby Tongass Narrows, may be taken by Level B harassment for a total of 30 Dall's porpoises during the 26 days of in-water construction (2 months * 15 porpoises per month = 30). No take by Level A harassment is authorized or anticipated to occur due to their rarer occurrence in the project area and the unlikelihood that they would enter the Level A harassment zone and remain long enough to incur PTS in the rare event that they are encountered. No take by Level A harassment is authorized or anticipated to occur, as the calculated isopleths for high-frequency cetaceans are 134 m or less during all activities except during DTH for 24-in piles of limited duration where they are 198 m–412 m. The shutdown zones (Table 10) are larger for all calculated Level A harassment isopleths during all pile

driving activities (vibratory, impact and DTH) for all cetaceans.

Harbor Porpoise

There are no density estimates of harbor porpoise available in the project area. Although there have been no systematic studies or observations of harbor porpoises specific to Port Chester or Nichols Passage, there is potential for them to occur within the project area.

Abundance data for harbor porpoises in Southeast Alaska were collected during 18 seasonal surveys spanning 22 years, from 1991 to 2012 (Dahlheim *et al.* 2015). During that study, a total of 81 harbor porpoises were observed in the southern inland waters of Southeast Alaska, including Clarence Strait. The average density estimate for all survey years in Clarence Strait was 0.02 harbor porpoises per square kilometer. There does not appear to be any seasonal variation in harbor porpoise density for the inland waters of Southeast Alaska (Dahlheim *et al.* 2015). Approximately one to two groups of harbor porpoises are observed each week in group sizes of up to 10 animals around Driest Point, located 5 km (3.1 mi) north of the project location (L. Bethel, personal communication, June 11, 2020 as cited in the application). Therefore, NMFS authorizes that 2 groups of 5 harbor porpoises (average group size of local sightings) per 5 days of in-water work may be taken by Level B harassment. Expressed in another way, this is an average of 2 harbor porpoise per day of in-water work. Therefore, we estimate 52 exposures over the course of the project (26 days * 2 porpoises per day = 52). No take by Level A harassment is authorized or anticipated to occur, as the calculated isopleths for high-frequency cetaceans are 134 m or less during all activities except during DTH for 24-in piles of limited duration where they are 198 m–412 m. The shutdown zones (Table 10) are larger for all calculated Level A harassment isopleths during all pile driving activities (vibratory, impact and DTH) for all cetaceans.

Harbor Seal

There are no density estimates of harbor seals available in the project area. Harbor seals are commonly sighted in the waters of the inside passages throughout Southeast Alaska. Surveys in 2015 estimated 429 (95 percent Confidence Interval [CI]: 102–1,203) harbor seals on the northwest coast of Annettte Island, between Metlakatla and Walden Point. An additional 90 (95 percent CI: 18–292) were observed along the southwest coast of Annette Island, between Metlakatla and Tamgas Harbor (NOAA 2019). The Alaska Fisheries Science Center identifies three haulouts in Port Chester (less than a mile from the project area) and three additional haulouts north of Driest Point (3.7 mi from the project are). Abundance estimates for these haulouts are not available, but they are all denoted as having had more than 50 harbor seals at one point in time (NOAA 2020). However, local biologists report only small numbers (fewer than 10) of harbor seals are regularly observed in Port Chester. As many as 10 to 15 harbor seals may utilize Sylburn Harbor, north of Metlakatla across Driest Point (R. Cook, personal communication, June 5, 2020 as cited in the application), as a haulout location. Therefore, NMFS authorizes 15 harbor seals may be taken by Level B harassment each day, for a total of 390 exposures (26 days * 15 seals per day = 390). No take by Level A harassment is authorized or anticipated to occur, as the calculated isopleths are 60 m or less during all activities except during DTH for 24-in piles of limited duration where they are 89–186 m. In addition, the shutdown zones (Table 10) are larger for all calculated Level A harassment isopleths during all pile driving activities (vibratory, impact and DTH) for all pinnipeds.

Steller Sea Lion

There are no density estimates of Steller sea lions available in the project area. Steller sea lions are common within the project area; however, systematic counts or surveys have not been completed in the area directly surrounding Metlakatla. Three haulouts are located within 150 km (93 mi) of the project area (Fritz *et al.* 2016a); the nearest documented haulout is West Rock, about 45 km (28 mi) south of Metlakatla. West Rock had a count of 703 individuals during a June 2017 survey and 1,101 individuals during a June 2019 survey (Sweeney *et al.* 2017, 2019). Aerial surveys occurred intermittently between 1994 and 2015, and averaged 982 adult Steller sea lions (Fritz *et al.,* 2016b). Anecdotal evidence indicate that 3 to 4 Steller sea lions utilize a buoy as a haulout near the entrance of Port Chester, about 3.2 km (2 mi) from the project location (L. Bethel, personal communication, June 11, 2020 as cited in the application). Steller sea lions are not known to congregate near the cannery in Metlakatla. Anecdotal evidence suggests that the species assemblages and abundance in Metlakatla are similar to Tongass Narrows where 20 sea lions are estimated each day during July through September. A recent monitoring report for Tongass Narrows reported 41 individual sightings of Steller sea lions with 9 takes by Level B harassment in May 2021. Therefore to be conservative, NMFS authorizes two groups of 10 Steller sea lions (20 Steller sea lions) may be taken by Level B harassment for a total of 520 Steller sea lions (26 days * 20 sea lions per day = 520). No take by Level A harassment is authorized or anticipated to occur as the largest Level A isopleth calculated was 13.5 m during DTH of 24-in piles and the remaining isopleths were less than 10 m. In addition, the shutdown zones (Table 10) are larger for all calculated Level A harassment isopleths during all pile driving activities (vibratory, impact and DTH) for all pinnipeds.

Table 9 below summarizes the authorized take for all the species described above as a percentage of stock abundance.

TABLE 9—TAKE ESTIMATES AS A PERCENTAGE OF STOCK ABUNDANCE

Species	Stock (n_{EST})	Level B harassment	Percent of stock
Minke Whale	Alaska (N/A)	12	N/A.
Humpback Whale	Central North Pacific (10,103)	104	Less than 1 percent.
Killer Whale	Alaska Resident (2,347)	15	0.6.[a]
	Northern Resident (302)		5.0.[a]
	West Coast Transient (349)		4.3.[a]
Pacific White-Sided Dolphin	North Pacific (26,880)	92	Less than 1 percent.
Dall's Porpoise	Alaska (83,400)[b]	30	Less than 1 percent.
Harbor Porpoise	Southeast Alaska (NA)	52	NA.
Harbor Seal	Clarence Strait (27,659)	390	1.4.

TABLE 9—TAKE ESTIMATES AS A PERCENTAGE OF STOCK ABUNDANCE—Continued

Species	Stock (n_{EST})	Level B harassment	Percent of stock
Steller Sea Lion	Eastern U.S. (43,201)	520	1.2.

[a] Take estimates are weighted based on calculated percentages of population for each distinct stock, assuming animals present would follow same probability of presence in project area.

[b] Jefferson *et al.* 2019 presents the first abundance estimates for Dall's porpoise in the waters of Southeast Alaska with highest abundance recorded in spring (N = 5,381, CV = 25.4 percent), lower numbers in summer (N = 2,680, CV = 19.6 percent), and lowest in fall (N = 1,637, CV = 23.3 percent). However, NMFS currently recognizes a single stock of Dall's porpoise in Alaskan waters and an estimate of 83,400 Dall's porpoises is used by NMFS for the entire stock (Muto *et al.,* 2020).

Mitigation

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned) the likelihood of effective implementation (probability implemented as planned); and

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

General

The AKDOT&PF will follow mitigation procedures as outlined in their Marine Mammal Monitoring Plan and as described below. In general, if poor environmental conditions restrict visibility full visibility of the shutdown zone, pile driving installation and removal as well as DTH would be delayed.

Training

The AKDOT&PF must ensure that construction supervisors and crews, the monitoring team, and relevant AKDOT&PF staff are trained prior to the start of construction activity subject to this IHA, so that responsibilities, communication procedures, monitoring protocols, and operational procedures are clearly understood. New personnel joining during the project must be trained prior to commencing work.

Avoiding Direct Physical Interaction

The AKDOT&PF must avoid direct physical interaction with marine mammals during construction activity. If a marine mammal comes within 10 m of such activity, operations will cease and vessels will reduce speed to the minimum level required to maintain steerage and safe working conditions, as necessary to avoid direct physical interaction.

Shutdown Zones

For all pile driving/removal and DTH activities, the AKDOT&PF will establish a shutdown zone for a marine mammal species that is greater than its corresponding Level A harassment zone (Table 10). The purpose of a shutdown zone is generally to define an area within which shutdown of the activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). The shutdown zones are larger than all the calculated Level A harassment isopleths for all pile driving/removal and DTH activities for cetaceans and pinnipeds.

TABLE 10—PILE DRIVING SHUTDOWN ZONES DURING PROJECT ACTIVITIES

Activity	Pile diameter	Pile type or number of piles	Shutdown distance (meters)	
			Cetaceans	Pinnipeds
Vibratory Installation/Removal	16- and 24-in	Battered and Plumb	50	50
DTH	24-in	Temporary	200	200
		Battered, Permanent	260	120
		Plumb, Permanent	415	200
DTH	8-in	Permanent	100	50
Impact	24-in	3 piles	135	100
		2 piles.		
		1 pile	100	

Soft Start

The AKDOT&PF must use soft start techniques when impact pile driving. Soft start requires contractors to provide an initial set of three strikes from the hammer at reduced energy, followed by a 30-second waiting period. Then two subsequent reduced-energy strike sets would occur. A soft start will be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer. Soft start is not required during vibratory pile driving and removal activities.

Based on our evaluation of the applicant's planned measures, NMFS has determined that the planned mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth, requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and
- Mitigation and monitoring effectiveness.

Monitoring Zones

The AKDOT&PF will conduct monitoring to include the area within the Level B harassment presented in Table 8. Monitoring will include all areas where SPLs are equal to or exceed 120 dB rms (for vibratory pile driving/removal and DTH) and 160 dB rms (for impact pile driving). These zones provide utility for monitoring conducted for mitigation purposes (*i.e.,* shutdown zone monitoring) by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring of the Level B harassment zones enables observers to be aware of and communicate the presence of marine mammals in the project area, but outside the shutdown zone, and thus prepare for potential shutdowns of activity.

Pre-Start Clearance Monitoring

Pre-start clearance monitoring must be conducted during periods of visibility sufficient for the lead PSO to determine the shutdown zones clear of marine mammals. Pile driving and DTH may commence when the determination is made.

Visual Monitoring

Monitoring must take place from 30 minutes (min) prior to initiation of pile driving and DTH activity (*i.e.,* pre-start clearance monitoring) through 30 min post-completion of pile driving and DTH activity. If a marine mammal is observed entering or within the shutdown zones, pile driving and DTH activity will be delayed or halted. If pile driving or DTH is delayed or halted due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily exited and been visually confirmed beyond the shutdown zone or 15 min have passed without re-detection of the animal. Pile driving and DTH activity will be halted upon observation of either a species for which incidental take is not authorized or a species for which incidental take has been authorized but the authorized number of takes has been met, entering or within the harassment zone.

PSO Monitoring Requirements and Locations

The AKDOT&PF will establish monitoring locations as described in the Marine Mammal Monitoring Plan. PSOs will be responsible for monitoring, the shutdown zones, the Level B harassment zones, and the pre-clearance zones, as well as effectively documenting Level B harassment take. As described in more detail in the Reporting section below, they will also (1) document the frequency at which marine mammals are present in the project area, (2) document behavior and group composition (3) record all construction activities, and (4) document observed reactions (changes in behavior or movement) of marine mammals during each sighting. Observers will monitor for marine mammals during all in-water pile installation/removal and DTH associated with the project. The AKDOT&PF will monitor the project area to the extent possible based on the required number of PSOs, required monitoring locations, and environmental conditions. Monitoring will be conducted by PSOs from land. For all pile driving and DTH activities, a minimum of one observer must be assigned to each active pile driving and DTH location to monitor the shutdown zones. Two PSOs must be onsite during all in-water activities and will monitor from the best vantage point. Due to the remote nature of the area, the PSOs will meet with the future designated Contractor and AKDOT&PF to determine the most appropriate observation location(s) for monitoring during pile installation and removal. These observers must record all observations of marine mammals, regardless of distance from the pile being driven or during DTH.

In addition, PSOs will work in shifts lasting no longer than 4 hrs with at least a 1-hr break between shifts, and will not perform duties as a PSO for more than 12 hrs in a 24-hr period (to reduce PSO fatigue).

Monitoring of pile driving will be conducted by qualified, NMFS-approved PSOs. The AKDOT&PF shall adhere to the following conditions when selecting PSOs:

- PSOs must be independent (*i.e.,* not construction personnel) and have no other assigned tasks during monitoring periods;

- At least one PSO must have prior experience performing the duties of a PSO during construction activities pursuant to a NMFS-issued incidental take authorization;
- Other PSOs may substitute other relevant experience, education (degree in biological science or related field), or training;
- Where a team of three PSOs are required, a lead observer or monitoring coordinator shall be designated. The lead observer must have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization; and
- PSOs must be approved by NMFS prior to beginning any activity subject to this IHA.

The AKDOT&PF will ensure that the PSOs have the following additional qualifications:

- Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface with ability to estimate target size and distance; use of binoculars may be necessary to correctly identify the target;
- Experience and ability to conduct field observations and collect data according to assigned protocols;
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior; and
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

Final Report

The AKDOT&PF will submit a draft report to NMFS on all monitoring conducted under this IHA within 90 calendar days of the completion of monitoring or 60 calendar days prior to the requested issuance of any subsequent IHA for construction activity at the same location, whichever comes first. A final report must be prepared and submitted within 30 days following resolution of any NMFS comments on the draft report. If no comments are received from NMFS within 30 days of receipt of the draft report, the report shall be considered final. All draft and final marine mammal monitoring reports must be submitted to *PR.ITP.MonitoringReports@noaa.gov* and *ITP.Egger@noaa.gov.* The report must contain the informational elements described in the Marine Mammal Monitoring Plan and, at minimum, must include:

- Dates and times (begin and end) of all marine mammal monitoring;
- Construction activities occurring during each daily observation period, including:
  - How many and what type of piles were driven and by what method (*e.g.,* impact, vibratory, DTH);
  - Total duration of driving time for each pile (vibratory driving) and number of strikes for each pile (impact driving); and
  - For DTH, duration of operation for both impulsive and non-pulse components.
- PSO locations during marine mammal monitoring;
- Environmental conditions during monitoring periods (at beginning and end of PSO shift and whenever conditions change significantly), including Beaufort sea state and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance;
- Upon observation of a marine mammal, the following information:
  - PSO who sighted the animal and PSO location and activity at time of sighting;
  - Time of sighting;
  - Identification of the animal (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified), PSO confidence in identification, and the composition of the group if there is a mix of species;
  - Distance and bearing of each marine mammal observed to the pile being driven for each sighting (if pile driving and DTH was occurring at time of sighting);
  - Estimated number of animals (min/max/best);
  - Estimated number of animals by cohort (adults, juveniles, neonates, group composition etc.;
  - Animal's closest point of approach and estimated time spent within the harassment zone; and
  - Description of any marine mammal behavioral observations (*e.g.,* observed behaviors such as feeding or traveling), including an assessment of behavioral responses to the activity (*e.g.,* no response or changes in behavioral state such as ceasing feeding, changing direction, flushing, or breaching).
- Detailed information about implementation of any mitigation (*e.g.,* shutdowns and delays), a description of specific actions that ensued, and resulting changes in behavior of the animal, if any; and
- All PSO datasheets and/or raw sightings data.

Reporting of Injured or Dead Marine Mammals

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, the AKDOT&PF must report the incident to NMFS Office of Protected Resources (OPR) (*PR.ITP.MonitoringReports@noaa.gov*), NMFS (301–427–8401) and to the Alaska regional stranding network (877–925–7773) as soon as feasible. If the death or injury was clearly caused by the specified activity, the AKDOT&PF must immediately cease the specified activities until NMFS OPR is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of this IHA. The AKDOT&PF will not resume their activities until notified by NMFS. The report must include the following information:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- Species identification (if known) or description of the animal(s) involved;
- Condition of the animal(s) (including carcass condition if the animal is dead);
- Observed behaviors of the animal(s), if alive;
- If available, photographs or video footage of the animal(s); and
- General circumstances under which the animal was discovered.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken''

through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

As stated in the mitigation section, shutdown zones that are larger than the Level A harassment zones will be implemented, which, in combination with the fact that the zones are small to begin with, is expected to avoid the likelihood of Level A harassment for marine mammals species.

Exposures to elevated sound levels produced during pile driving activities may cause behavioral disturbance of some individuals, but they are expected to be mild and temporary. Effects on individuals that are taken by Level B harassment, as enumerated in the Take Estimation section, on the basis of reports in the literature as well as monitoring from other similar activities, will likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring) (*e.g.,* Thorson and Reyff, 2006; Lerma, 2014). Most likely, individuals will simply move away from the sound source and be temporarily displaced from the areas of pile driving, although even this reaction has been observed primarily only in association with impact pile driving. These reactions and behavioral changes are expected to subside quickly when the exposures cease.

During all impact driving, implementation of soft start procedures and monitoring of established shutdown zones will be required, significantly reducing the possibility of injury. Given sufficient notice through use of soft start (for impact driving), marine mammals are expected to move away from an irritating sound source prior to it becoming potentially injurious. In addition, PSOs will be stationed within the action area whenever pile driving/removal and DTH activities are underway. Depending on the activity, the AKDOT&PF will employ the use of two PSOs to ensure all monitoring and shutdown zones are properly observed.

The project would likely not permanently impact any marine mammal habitat since the project will occur within the same footprint as existing marine infrastructure. The nearshore and intertidal habitat where the project will occur is an area of relatively high marine vessel traffic and some local individuals would likely be somewhat habituated to the level of activity in the area, further reducing the likelihood of more severe impacts. The closest pinniped haulouts are used by harbor seals and are less than a mile from the project area; however, for the reasons described immediately above (including the nature of expected responses and the duration of the project) impacts to reproduction or survival of individuals is not anticipated, much less effects on the species or stock. There are no other biologically important areas for marine mammals near the project area.

In addition, impacts to marine mammal prey species are expected to be minor and temporary. Overall, the area impacted by the project is very small compared to the available habitat around Metlakatla. The most likely impact to prey will be temporary behavioral avoidance of the immediate area. During pile driving/removal and DTH activities, it is expected that fish and marine mammals would temporarily move to nearby locations and return to the area following cessation of in-water construction activities. Therefore, indirect effects on marine mammal prey during the construction are not expected to be substantial.

In summary and as described above, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality is anticipated or authorized;
- No take by Level A harassment is expected or authorized;
- Anticipated incidents of Level B harassment consist of, at worst, temporary modifications in behavior;
- The required mitigation measures (*i.e.,* shutdown zones) are expected to be effective in reducing the effects of the specified activity;
- Minimal impacts to marine mammal habitat/prey are expected;
- The action area is located and within an active marine commercial area, and;
- There are no known biologically important areas in the vicinity of the project, with the exception of nearby harbor seal haulouts—however, as described above, exposure to the work conducted in the vicinity of the haulouts is not expected to impact the reproduction or survival of any individual seals.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the monitoring and mitigation measures, NMFS finds that the total marine mammal take from the planned activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under Section 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

Take of six of the marine mammal stocks authorized will comprise at most approximately 1.4 percent or less of the stock abundance. There are no official stock abundances for harbor porpoise and minke whales; however, as discussed in greater detail in the Description of Marine Mammals in the Area of Specified Activities in the **Federal Register** notice of the proposed IHA (86 FR 34203; June 29, 2021), we believe for the abundance information that is available, the estimated takes are likely small percentages of the stock abundance. For harbor porpoise, the abundance for the Southeast Alaska stock is likely more represented by the aerial surveys that were conducted as these surveys had better coverage and were corrected for observer bias. Based on this data, the estimated take could potentially be approximately 4 percent of the stock abundance. However, this is unlikely and the percentage of the stock taken is likely lower as the take

estimates are conservative and the project occurs in a small footprint compared to the available habitat in Southeast Alaska. For minke whales, in the northern part of their range they are believed to be migratory and so few minke whales have been seen during three offshore Gulf of Alaska surveys that a population estimate could not be determined. With only twelve authorized takes for this species, the percentage of take in relation to the stock abundance is likely to be very small.

Based on the analysis contained herein of the planned activity (including the mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

In order to issue an IHA, NMFS must find that the specified activity will not have an ''unmitigable adverse impact'' on the subsistence uses of the affected marine mammal species or stocks by Alaskan Natives. NMFS has defined ''unmitigable adverse impact'' in 50 CFR 216.103 as an impact resulting from the specified activity: (1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (i) Causing the marine mammals to abandon or avoid hunting areas; (ii) Directly displacing subsistence users; or (iii) Placing physical barriers between the marine mammals and the subsistence hunters; and (2) That cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

The project area does not spatially overlap any known subsistence hunting. The project area is a developed area with regular marine vessel traffic. Nonetheless, the AKDOT&PF provided advanced public notice of construction activities to reduce construction impacts on local residents, adjacent businesses, and other users of Port Chester and nearby areas. This included notification to nearby Alaska Native tribes that may have members who hunt marine mammals for subsistence. Currently, the Metlakatla Indian Community does not authorize the harvest of marine mammals for subsistence use (R. Cook, personal communication, June 5, 2020 as cited in the application).

The planned project is not likely to adversely impact the availability of any marine mammal species or stocks that are commonly used for subsistence purposes or to impact subsistence harvest of marine mammals in the region because construction activities are localized and temporary and mitigation measures will be implemented to minimize disturbance of marine mammals in the project area. Accordingly, NMFS has determined that there will not be an unmitigable adverse impact on the availability of any marine mammals for taking for subsistence uses from the AKDOT&PF's planned activities.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species, in this case with the Alaska Regional Office (AKRO).

NMFS is authorizing take of the Central North Pacific stock of humpback whales, including individuals from the Mexico DPS of humpback whales, which are listed under the ESA. The Permit and Conservation Division completed a Section 7 consultation with the AKRO for the issuance of this IHA. The AKRO's biological opinion states that the action is not likely to jeopardize the continued existence of the Mexico DPS of humpback whales.

Authorization

As a result of these determinations, NMFS authorizes an IHA to the AKDOT&PF for conducting for the planned pile driving and removal activities as well as DTH during construction of the Metlakatla Seaplane Facility Refurbishment Project, Metlakatla, Alaska for one year, beginning August 2021, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: August 3, 2021.

Catherine Marzin,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2021–16861 Filed 8–5–21; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB270]

Takes of Marine Mammals Incidental To Specified Activities; Taking Marine Mammals Incidental to Elkhorn Slough Tidal Marsh Restoration Project, Phase III in Monterey County, California

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

ACTION: Notice; proposed issuance of an incidental harassment authorization; request for comments.

SUMMARY: NMFS has received a request from the California Department of Fish and Wildlife (CDFW) for authorization to take marine mammals incidental to the Elkhorn slough Tidal Marsh Restoration Project (Phase III) in Monterey County, CA. which includes the excavation and movement of soil with heavy machinery for marsh restoration. NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-time, one-year renewal that could be issued under certain circumstances and if all requirements are met, as described in Request for Public Comments at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorizations and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than September 7, 2021.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Written comments should be submitted via email to *ITP.Corcoran@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. Attachments to comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at *https://*

www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Kim Corcoran, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the original application and supporting documents (including NMFS FR notices of the prior authorizations), as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment.

The current action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental harassment authorizations with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed renewal qualifies to be categorically excluded from further NEPA review just as the initial IHA did.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

Summary of Request

On June 14, 2021, NMFS received a request from CDFW for an IHA to take marine mammals incidental to the Elkhorn Slough Restoration Project, Phase III, at the Seal Bend Restoration Area in Monterey Country, CA. The application was deemed adequate and complete on July 27, 2021. CDFW's request is for take of a small number of Pacific harbor seals (*Phoca vitulina*) by Level B harassment only. Neither CDFW nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

NMFS previously issued an IHA to CDFW for Phase I (82 FR 16800; April 6, 2017) and Phase II (85 FR 14640; March 13, 2020) of the Elkhorn Slough Restoration Project. Restoration work under the 2020 IHA at the Minhoto-Hester and Seal Bend restoration areas was expected to be completed within 180 days within the one-year timeframe of the IHA. However, on May 3, 2021 CDFW informed NMFS that the estimated 180 days of construction for both the Minhoto-Hester and Seal Bend Restoration Areas would not be enough to complete the project. This preliminary estimate did not adequately account for variable weather conditions experienced during construction (*e.g.,* wet weather and soils required extensive reworking of fill), the amount of time to haul material from the borrow area to the fill location, or contractor availability which resulted in a smaller crew than initially expected. Therefore, only 118 days of construction occurred under the initial IHA. To cover the remaining work at the Minhoto-Hester Restoration Area, CDFW requested an IHA Renewal. NMFS published a notice of a proposed IHA Renewal and request for comments in the **Federal Register** on June 8, 2021 to complete the remaining 62 days of work (86 FR 30412; June 8, 2021) (Hereafter referred to as the 2021 Renewal). We subsequently published the final notice of our issuance of the IHA Renewal on July 7, 2021 (86 FR 35751).

As work at the Seal Bend Restoration Area had not begun and could not be covered by the IHA Renewal, CDFW requested that a new IHA be issued that would be valid for one year from the date of issuance. Under this proposed IHA, CDFW would conduct 240 days of work to restore 28.6 acres (11.57 hectares) of tidal marsh habitat in the Seal Bend Restoration Area. The project would include the use of haul trucks and heavy earthmoving equipment to transport dry material out onto the marsh. The proposed project activities will not differ from the 2020 IHA other than the number of construction days, and the means of calculating take.

Description of the Proposed Activity

Overview

Over the past 150 years, human activities have altered the tidal, freshwater, and sediment processes, which are essential to support and sustain Elkhorn Slough's estuarine habitats. In response to years of anthropogenic degradation (*e.g.,* diking and marsh draining), the Elkhorn Slough Tidal Marsh Restoration Project (project) plans to restore approximately 122 acres (49.37 hectares) of tidal marsh across three phases, all of which are located in Monterey County, California (Figure 1). Phase I of the project, completed in 2018, restored 61 acres (24.69 hectares) of tidal marsh within the Minhoto-Hester Marsh in Elkhorn Slough (Monterey, CA) (Figure 2) (82 FR 16800; April 06, 2017) (Hereafter referred to as the 2017 IHA). Phase II of the project, planned for completion in September 2021, plans to restore 29.4 acres (11.90 hectares) of tidal marsh at the Minhoto-Hester Restoration Area adjacent to the Phase I Restoration Area (see Figure 2). As the remainder of the

work associated with the project has not been completed and could not be covered by the 2021 Renewal, CDFW requests that this proposed IHA cover take incidental to Phase III of the project, which will restore 28.6 acres (11.57 hectares) at the Seal Bend Restoration Area shown in Figure 2. Similar to previous projects, Phase III will relocate soil from an upland area called ''the borrow'' through use of heavy earth moving equipment, within a 12 month period. Construction activities are expected to produce airborne noise and visual disturbance that have the potential to result in behavioral harassment of Pacific harbor seals (Phoca vitulina). NMFS is proposing to authorize take, by Level B Harassment, of Pacfic harbor seals as a result of the specified activity. To support public review and comment on the IHA that NMFS is proposing to issue here, we refer to the documents related to the previously issued IHA and discuss any new or changed information here. The previous documents include the **Federal Register** notice of the issuance of the 2020 IHA (85 FR 14640; March 13, 2020), the **Federal Register** notice of the issuance of the 2021 IHA Renewal (86 FR 35751; July 7, 2021), and all associated references and documents. We also refer the reader to CDFW's previous and current applications and monitoring reports which can be found at *https://www.fisheries.noaa.gov/node/23111.*

Dates and Duration

As previously mentioned, the Phase II IHA covered restoration work at both the Minhoto-Hester Restoration Area and the Seal Bend Restoration Area for 180 total days of construction but the work was not able to be completed for both locations within the timeframe and take estimate constraints of the 2020 IHA and 2021 Renewal IHA for the reasons discussed above. Therefore, CDFW is requesting this new authorization for 240 construction days to account for similar, anticipated construction constraints at the Seal Bend Restoration Area, such as likely wet weather, the distance between the borrow area and restoration site, and limited contractor availability. CDFW is prepared to start the work at Seal Bend as soon as they receive authorization, so this IHA will be valid for one year from the date of issuance.

Specific Geographic Region

The project is located in the Elkhorn Slough estuary, about 90 miles south of San Francisco and 20 miles north of Monterey in Monterey Country, California (Figure 1). The project sites are located on land owned and operated by CDFW as part of the Elkhorn Slough Ecological and National Estuarine Research Reserves. The waters of the Elkhorn Slough State Marine Reserve and Monterey Bay National Marine Sanctuary run north of the Phase III project site in Elkhorn Slough's main channel. Two additional Marine Protected Areas are located within approximately one mile of the project site: Elkhorn Slough State Marine Conservation Area and Moro Cojo Slough State Marine Reserve.

Phase III would restore the Seal Bend Restoration Area which includes about 28.6 acres (11.57 hectares) of historic farmland adjacent to Elkhorn Slough and west of the Phase I and II restoration areas (Figure 2). The proposed project area is low-lying area consisting of subsided pickleweed *(Salicornia)* marsh, intertidal mudflats, and tidal channels. Fill material for Seal Bend will be obtained from a 38 acre (15.38 hectare) upland borrow area south of the Minhoto-Hester (Phase II) Restoration Area (Figure 2). Once complete, the slopes of the borrow area would be graded to increase marsh area and create a gently sloping ecotone band along the edge of the Phase I and II sites.

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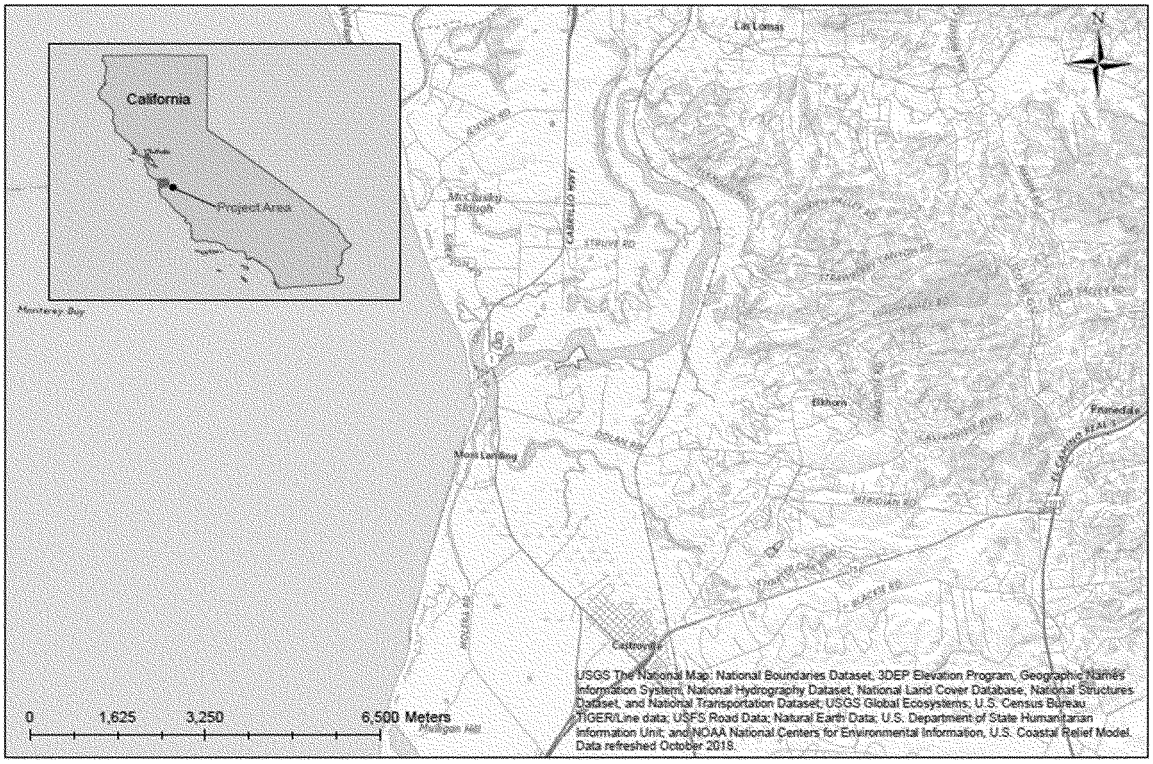

Figure 1. Location of the proposed restoration project in Monterey County, California.

Figure 2. Map depicting the location of each restoration site for the project for the proposed and previous phases

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Detailed Description of Specific Activity

As previously described, the proposed project would restore 28.6 acres (11.57 hectares) of tidal marsh habitat at the Seal Bend Restoration Area. As described in more detail in the 2020 IHA, project components to restore hydrologic function to the project area would include raising the subsided marsh plain, maintaining or re-excavating existing tidal channels, and restoring marsh plain, ecotone, and native grassland habitat within a borrow/upland buffer area.

Up to 133,346 cubic yards (CY) (101950.33 cubic meters (CM)) of soil will be obtained from the upland borrow area to raise the subsided marsh plain to an average of 1.9 feet (0.58 m) above the current height. This target elevation would allow emergent wetland vegetation to naturally be reestablished. Sediment would be placed to a fill elevation slightly higher than the target marsh plain elevation to allow for settlement and consolidation of the underlying soils. After construction is complete, the project would rely primarily on natural vegetation recruitment in the restored marsh areas.

An additional detailed description of the proposed restoration project is found in the proposed and issued 2020 IHA. The location and nature of the activities, including the types of equipment planned for use, are identical to those described in the previous notices. Differences between the 2020 IHA and the proposed 2021–2022 IHA occur in the number of days restoration work would occur, the method for calculating take, and visual monitoring requirements, all of which are discussed in detail below.

Description of Marine Mammals in the Area of Specified Activities

A description of the marine mammals in the area of the activities is found in the 2020 IHA, which remains applicable to the proposed 2021–2022 IHA as well. In addition, NMFS has reviewed recent 2020 Stock Assessment Reports, information on relevant Unusual Mortality Events, and recent scientific literature, and determined that no new information affects our original analysis of impacts under this proposed IHA.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

A description of the potential effects of the specified activities on marine mammals and their habitat may be found in the documents supporting the 2020 IHA, which remains applicable to the issuance of the proposed 2021–2022 IHA. There is no new information on potential effects.

Estimated Take

A detailed description of the previous methods and inputs used to estimate authorized take is found in the 2020 IHA. The total number of construction days and the method of estimating take have been modified from the 2020 IHA to reflect construction delays as discussed above and the monitoring data received under the 2020 IHA. The source levels and marine mammal occurrence and density remain unchanged from the 2020 IHA and detailed information regarding these figures can be found in the proposed and issued 2020 IHA.

Take Calculation and Estimates

To repeat how take was calculated in the 2020 IHA, we used the total number of seals taken during Phase I construction (*i.e.,* 62 seals) divided by the sum of the daily average number of seals observed hourly during Phase I. That percentage (8.79 percent) was rounded to 9 percent and multiplied by the sum of the highest daily count of seals observed by the Reserve Otter Monitoring Projects at all observation areas between January 2018 and April 2019 (*i.e.,* 417). That number was multiplied by the total number of construction days to arrive at the total take estimate that was used.

For the Phase III project, we have additional monitoring data that more accurately reflects the amount of take that occurs during this type of restoration activity. In particular we now have data that suggests the maximum number of seals taken per day within 300 m of construction activity has been 8, which occurred on September 8, 2020 (Table 1). Therefore, we propose to use that maximum number of seals taken per day to estimate take using the following formula:

Total Take Estimate = Max # of seals taken per day * # of Construction Days

The average total individual takes per day for Phase II was 1.33 which is considerably lower than the proposed maximum number of seals taken per day (8) (Table 1). Therefore we believe this approach is adequately precautionary and reflects likely expected take. Using this approach, a summary of estimated takes of harbor seals incidental to the proposed project activities are provided in Table 2.

TABLE 1—PHASE II HARBOR SEAL DISTURBANCE DATA—NUMBER OF SEALS EXPERIENCING LEVEL B HARASSMENT

Date	Distance (m)	Total individuals harassed [1]
9/2/2020	300m	0
9/8/2020	150m	0
9/8/2020	150m	0
9/9/2020	60m	0
9/10/2020	60m	0
9/15/2020	60m	1
9/21/2020	60m	0
9/21/2020	60m	2
11/9/2020	300m	1
3/17/2021	200m	5
3/24/2021	60m	1
3/24/2021	60m	1
4/5/2021	80m	2
4/5/2021	60m	1
4/14/2021	80m	2
9/2/2020	60m	0
9/3/2020	20m	1
9/8/2020	80m	8
9/9/2020	40m	0

TABLE 1—PHASE II HARBOR SEAL DISTURBANCE DATA—NUMBER OF SEALS EXPERIENCING LEVEL B HARASSMENT—Continued

Date	Distance (m)	Total individuals harassed [1]
9/16/2020	100m	1
9/22/2020	40m	0
10/19/2020	40m	2
10/28/2020	100m	0
11/5/2020	60m	0
12/3/2020	80m	1
12/16/2020	60m	7
5/4/2021	80m	0
Total		36

[1] "Total Seals Taken" = the number of seals that moved or flushed during the incident. Alert responses are not considered to be takes.

TABLE 2—CALCULATED AND PROPOSED TAKE AND PERCENTAGE OF STOCK EXPOSED

Authorized take			
Species	Level B	Level A	Percent of stock [3]
Pacific Harbor Seal	8 max seals taken per day [1] *(240 days [2]) = 1920	0	6.2

[1] Maximum number of seals harassed/taken in one day during Phase II.
[2] Number of construction days at the Seal Bend Restoration Area.
[3] Data from U.S. Pacific Marine Mammal Stock Assessments: 2014 (Carretta *et al.,* 2015) (Abundance = 30,968).

Proposed Mitigation, Monitoring and Reporting Measures

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned); and

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Description of Proposed Mitigation

Some of the proposed mitigation measures are identical to those included in the **Federal Register** notification announcing the final 2020 IHA and detailed descriptions of these requirements can be found in that document. However, a few requirements have been updated to reflect NMFS more recent construction requirements and those changes are discussed in detail below and proposed for this project:

Visual Monitoring—CDFW must fulfill monitoring requirements as described below. Required monitoring must be conducted by dedicated, trained, NMFS-approved Protected Species Observer(s) (PSO(s)). CDFW must monitor the project area to the maximum extent possible based on the required number of PSOs, required monitoring locations, and environmental conditions.

- Level B Harassment Zone—PSOs shall establish a Level B harassment zone within 300 m of all construction activities.
- When construction activities occur either, (1) in water or; (2) within the boundaries of the Seal Bend Restoration Area (Phase III) identified in Figure 2, monitoring must occur every other day when work is occurring.
- When construction activities occur near the ''borrow'' area where marsh fill material is gathered, monitoring must occur every fifth day when work is occurring within 300 m from seal haulouts or, if outside this area, when work is occurring less than 200 m from the water. Occurrence of marine mammals within the Level B harassment zone must be communicated to the construction lead to prepare for the potential shutdown when required.

Description of Proposed Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting

that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and
- Mitigation and monitoring effectiveness.

Changes from the 2020 IHA include:

- 5(g)(v)(10): Notes should include any of the following information to the extent it is feasible to record:
  - Age-class;
  - Sex;
  - Unusual activity or signs of stress;
  - Activity of seals observed within hour timeframe (*e.g.,* resting, swimming, etc.) and approximate number of seals that have arrived or left since last hourly count; and
  - Any other information worth noting;
- 6(a): The Holder must submit its draft report(s) on all monitoring conducted under this IHA within 90 calendar days of the completion of monitoring or 60 calendar days prior to the requested issuance of any subsequent IHA for construction activity at the same location, whichever comes first. A final report must be prepared and submitted within 30 calendar days following receipt of any NMFS comments on the draft report. If no comments are received from NMFS within 30 calendar days of receipt of the draft report, the report shall be considered final.

The rest of proposed monitoring and reporting measures are identical to those included in the FR Notice announcing the final 2020 IHA and detailed descriptions of these requirements can be found in that document.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

Construction activities associated with this project have the potential to disturb or displace marine mammals. No serious injury or mortality is expected, and with mitigation we expect to avoid any potential for Level A Harassment as a result of the Seal Bend construction activities for Phase III. The specified activities may result in take, in the form of Level B harassment (behavioral disturbance) only, from visual disturbance and/or noise from construction activities. The project area is within a portion of the local, year round, habitat for harbor seals of the greater Elkhorn Slough. Behavioral disturbance associated with these activities are expected to affect only a small amount of the total population, although those effects could be recurring over the life of the project if the same individuals remain in the project vicinity. Harbor seals may avoid the area or halt any behaviors (*e.g.,* resting) when exposed to anthropogenic noise or visual disturbance. Due to the abundance of suitable and, in some cases, newly restored haulout habitat available in the greater Elkhorn Slough, the short-term displacement of resting harbor seals is not expected to affect the overall fitness of any individual animal.

Effects on individuals that are taken by Level B Harassment, on the basis of reports in the literature as well as monitoring from previous phases and other similar activities, will likely be limited to reactions such as displacement from the area or disturbance during resting. The construction activities analyzed here, such as equipment used, construction approach, and turbidity management, are the same as those activities previously analyzed under the 2017 and 2020 IHAs. Both Phase I and Phase II of the project reported no injuries or mortality to marine mammals as a result of the construction activities, and no known long-term adverse consequences from behavioral harassment have been documented. Repeated exposures of individuals to levels of noise or visual disturbance at these levels, though they may cause Level B Harassment, are unlikely to result in hearing impairment or significant disruption of foraging behaviors. Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (*i.e.,* 24 hour cycle), and behavioral reactions (such as disruption of critical life functions, displacement, or avoidance of important habitat) are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). However, Pacific harbor seals have been hauling out at Elkhorn slough for several years (including during pupping season and while females are pregnant), despite the presence of anthropogenic noise and activities such as vessel traffic, Union Pacific Railroad (UPRR) trains, and human voices from kayaking and recreational activities. Harbor seals have repeatedly hauled out to rest (inside and outside the project area) or

pup (outside of the project area) despite these potential stressors. The activities are not expected to result in the alteration of reproductive or feeding behaviors. It is not likely that neonates will be in the project area as females prefer to keep their pups along the main channel of Elkhorn Slough, which is outside the area expected to be restored by project activities (Figure 2). Seals are primarily foraging outside of Elkhorn Slough and at night in Monterey Bay, outside the project area, and during times when construction activities are not occurring.

Pacific harbor seals, as the only potentially affected marine mammal species under NMFS jurisdiction in the action area, are not listed as threatened or endangered under the ESA and NMFS SARs for this stock has shown to be increasing in population size and is considered stable (Caretta *et al.,* 2015). Even repeated Level B Harassment of some small subset of the overall stock is unlikely to result in any significant decrease in viability for the affected individuals, and thus will not result in any adverse impacts to the stock as a whole. The restoration of the marsh habitat will have no adverse effect on marine mammal habitat, but possibly a long-term beneficial effect on harbor seals by improving ecological function of the slough, including higher species diversity, increase species abundance, larger fish, and improved habitat.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality is anticipated or authorized;
- No Level A Harassment is anticipated or authorized;
- Anticipated incidents of Level B Harassment consist of, at worst, temporary modifications in behavior;
- Primary foraging and reproductive habitat are outside of the project area and not expected to result in the alteration of habitat important to these behaviors or substantially impact the behaviors themselves. There is alternative haulout habitat just outside the footprint of the construction area, along the main channel of Elkhorn Slough, and in Parson's Slough, often the preferred pupping grounds in recent years (per comm Jim Harvey 2019), that will be available for seals while some of the haulouts are inaccessible;
- Restoration of the marsh habitat will have no adverse effect on marine mammal habitat, but possibly a long-term beneficial effect;
- Presumed efficacy of the mitigation measures in reducing the effects of the specified activity to the level of least practicable impact; and
- These stocks are not listed under the ESA or considered depleted under the MMPA.

In combination, we believe that these factors, as well as the available body of evidence from previous phases of the project and other similar activities, demonstrate that the potential effects of the specified activities will have only short-term effects on a relatively small portion of the entire California stock. The specified activities are not expected to impact rates of recruitment or survival and will therefore not result in population-level impacts.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

For the proposed Phase III of the Elkhorn Slough Tidal Marsh Restoration Project, the authorized take (if we conservatively assume that each take occurred to a new animal, which is unlikely) comprises approximately 6.2 percent of the abundance of Pacific harbor seals in the California Stock. Therefore, based on the analysis herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stock.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stock or species implicated by this action. Therefore NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16. U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

No incidental take of ESA-listed species is proposed for authorization or expected to result from this activity in the Elkhorn Slough Reserve. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to CDFW for conducting restoration activities at the Seal Bend Restoration Area in Elkhorn Slough (Monterey County, CA) for 12 months from the date of issuance, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.*

Request for Public Comments

We request comment on our analyses (included in both this document and the referenced documents supporting the prior IHAs), the proposed authorization, and any other aspect of this Notice of Proposed IHA for the proposed Elkhorn Slough Tidal Marsh Restoration Project, Phase III, in Monterey County, CA. We also request at this time comment on the potential for renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform our

final decision on the request for MMPA authorization.

On a case-by-case basis, NMFS may issue a one-time, one-year Renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical, or nearly identical, activities as described in the *Detailed Description of Specific Activity* section of this notice is planned or (2) the activities as described in the *Detailed Description of Specific Activity* section of this notice would not be completed by the time the IHA expires and a Renewal would allow for completion of the activities beyond that described in the *Dates and Duration* section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed Renewal IHA effective date (recognizing that the Renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA);
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested Renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take); and

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized; and

- Upon review of the request for Renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: August 2, 2021.

Catherine Marzin,

Director, Office of Protected Resources, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB227]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys, Virginia and North Carolina

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

ACTION: Notice; issuance of incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to Kitty Hawk Wind, LLC (Kitty Hawk Wind) to incidentally harass, by Level B harassment, marine mammals during marine site characterization surveys offshore Virginia and North Carolina.

DATES: The IHA is effective July 15, 2021 through October 31, 2021.

FOR FURTHER INFORMATION CONTACT: Jaclyn Daly, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth.

Description of Proposed Activity

Overview

On April 27, 2021, NMFS received an adequate and complete application from Kitty Hawk Wind requesting an IHA authorizing the take, by Level B harassment only, of nine species of marine mammals incidental to marine site characterization surveys, specifically in association with the use of high-resolution geophysical (HRG) survey equipment off North Carolina. We note surveys will also occur off Virginia; however, for reasons described below, take of marine mammals incidental to use of those surveys is not expected to occur. The surveys will support offshore wind development in 40 percent of the lease area (OCS–A 0508) in the northwest corner closest to the North Carolina shoreline (approximately 198 square kilometers (km^2)). Kitty Hawk Wind would use five types of survey equipment; however, as described below, only the Fugro SRP EAH 2D sparker has the potential to harass marine mammals. Exposure to noise from the surveys may cause behavioral changes in marine mammals (*e.g.,* avoidance, increased swim speeds, etc.) rising to the level of take (Level B harassment) as defined under the MMPA. NMFS has issued the requested IHA.

Dates and Duration

Kitty Hawk Wind would commence the survey no earlier than July 15, with the objective of completing the work by September 31, 2021. The surveys would cover approximately 3,300 km of survey trackline over 25 days, not including non-survey days likely needed for weather down time. The IHA would be effective from July 15 through October 31, 2021. Although the survey will likely be completed by September 31, 2021, the additional month long effective period will allow for any unexpected weather delays while still

affording protection to select migratory marine mammal species. This schedule is based on 24-hour operations.

Detailed Description of Specific Activity

The purpose of Kitty Hawk Wind's marine site characterization surveys is to support the siting of the proposed wind turbine generators and offshore export cables, providing a more detailed understanding of the seabed and sub-surface conditions in the wind development area (WDA) and export cable corridor.

Kitty Hawk Wind anticipates that during most of the survey only two vessels would be necessary, with one vessel operating nearshore and another operating offshore. However, up to three vessels may operate at any given time with final vessel choices dependent on the final survey design, vessel availability, and survey contractor selection. Concurrently operating vessels would remain at least 1 km apart. The vessels will be capable of maintaining course and a survey speed of approximately 3 knots (5.6 km per hour (hr)) while transiting survey lines. Surveys will be conducted along track lines spaced 300 m apart, with tie lines perpendicular to the main transect lines also spaced 300 m apart.

Acoustic sources planned for use during HRG survey activities proposed by Kitty Hawk Wind include the following:

• Medium penetration, impulsive sources (*i.e.,* boomers and sparkers) are used to map deeper subsurface stratigraphy. A boomer is a broadband source operating in the 3.5 Hz to 10 kHz frequency range. Sparkers create omnidirectional acoustic pulses from 50 Hz to 4 kHz. These sources are typically towed behind the vessel.

Operation of the following survey equipment types is not expected to present reasonable risk of marine mammal take, and will not be discussed further beyond the brief summaries provided below.

• Non-impulsive, parametric sub-bottom profilers (SBPs) are used for providing high data density in sub-bottom profiles that are typically required for cable routes, very shallow water, and archaeological surveys. These sources generate short, very narrow-beam (1° to 3.5°) signals at high frequencies (generally around 85–100 kHz). The narrow beamwidth significantly reduces the potential that a marine mammal could be exposed to the signal, while the high frequency of operation means that the signal is rapidly attenuated in seawater. These sources are typically deployed on a pole rather than towed behind the vessel.

• Ultra-short baseline (USBL) positioning systems are used to provide high accuracy ranges by measuring the time between the acoustic pulses transmitted by the vessel transceiver and a transponder (or beacon) necessary to produce the acoustic profile. It is a two-component system with a pole-mounted transceiver and one or several transponders mounted on other survey equipment. USBLs are expected to produce extremely small acoustic propagation distances in their typical operating configuration.

• Multibeam echosounders (MBESs) are used to determine water depths and general bottom topography. The proposed MBESs all have operating frequencies >180 kHz and are therefore outside the general hearing range of marine mammals.

Side scan sonars (SSS) are used for seabed sediment classification purposes and to identify natural and man-made acoustic targets on the seafloor. The proposed SSSs all have operating frequencies >180 kHz and are therefore outside the general hearing range of marine mammals. Table 1 identifies representative survey equipment proposed by Kitty Hawk Wind. The make and model of the listed geophysical equipment may vary depending on availability and the final equipment choices will vary depending upon the final survey design, vessel availability, and survey contractor selection. Not all sources within Table 1 have the potential to result in take (for reasons described above); however, for completeness, we have included them here. Based on our assessment, only the Fugro SPR EAH 2D Sparker has the potential to result in the take of marine mammals.

All decibel (dB) levels included in this notice are referenced to 1 micoPascal. The root mean square decibel level (dB_{rms}) represents the square root of the average of the pressure of the sound signal over a given duration. The peak dB level (dB_{peak}) represents the range in pressure between zero and the greatest pressure of the signal. Operating frequencies are presented in kilohertz (kHz).

TABLE 1—SUMMARY OF REPRESENTATIVE HRG EQUIPMENT

HRG system	Representative HRG survey equipment	Operating frequencies kilohertz (kHz)	Source level dB_{peak}	Source level dB_{rms}	Pulse duration (ms)	Beam width (degree)
Subsea Positioning/ultra-short baseline positioning system (USBL) [a].	Sonardyne Ranger 2 USBL	35–50	200	188	16	180
Sidescan Sonar [a b]	Klein 3900 Side Scan Sonar	445/900	226	220	0.016 to 0.100	1 to 2
Parametric Shallow penetration sub-bottom profiler [a].	Innomar parametric SES–2000 Standard.	85 to 115	247	[c] 241	0.07 to 2	1
Multibeam Echo Sounder [a b]	Reson T20–P	200/300/400	227	221	2 to 6	1.8 ± 0.2
Multi-level Stacked Sparker	Fugro SPR EAH 2D Sparker (700 J).	0.4 to 3.5	[d] 223	[d] 213	[d] 0.5 to 3	180

[a] Potential harassment from operation of this device is not anticipated.
[b] Operating frequencies are above all relevant marine mammal hearing thresholds.
[c] The equipment specification sheets indicate a peak source level of 247 dB re 1 μPA m. The average difference between the peak and SPLRMS source levels for sub-bottom profilers measured by Crocker and Fratantonio (2016) was 6 dB. Therefore, the estimated SPLRMS sound level is 241 dB re 1 μPA m.
[d] Sound levels where not available from the manufacturer. Therefore, the source levels and pulse duration are based on data from Crocker and Fratantonio (2016) using the Applied Acoustics Dura-Spark as a comparable proxy. The source levels are based on an energy level of 1,000 J with 240 tips and a bandwidth of 3.2 kHz.

Mitigation, monitoring, and reporting measures contained within the IHA are described in detail later in this document (please see Mitigation and Monitoring and Reporting sections).

Comments and Responses

A notice of proposed IHA was published in the **Federal Register** on May 25, 2021 (86 FR 28061). During the 30-day public comment period, NMFS received one comment letter from the Southern Environmental Law Center (SELC), which submitted comments on behalf of Natural Resources Defense Council, National Wildlife Federation, Conservation Law Foundation, Defenders of Wildlife, Whale and Dolphin Conservation, Assateague Coastal Trust, the Nature Conservancy Virginia, North Carolina Wildlife Federation, Sierra Club Virginia Chapter, Surfrider Foundation, All Our Energy, Gotham Whale, International Marine Mammal Project of Earth Island Institute, Inland Ocean Coalition, Mass Audubon, NY4WHALES, Ocean Conservation Research, Oceanic Preservation Society, and Sanctuary Education Advisory Specialists. NMFS has posted the comment letter online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-otherenergy-activities-renewable.* A summary of the comments as well as NMFS' responses are below.

Comment 1: SELC recommends NMFS: (1) Fund analyses of recently collected sighting and acoustic data for all data-holders; (2) continue to fund and expand surveys and studies to improve our understanding of distribution and habitat use of marine mammals off North Carolina and Virginia, including within and adjacent to the Project Area, as well as throughout the broader Mid-Atlantic region, in the very near future; and (3) take a ''precautionary approach'' with regard to siting and mitigation when permitting offshore wind activities in areas for which species distribution data are limited.

Response: NMFS agrees with SELC that continued surveys are warranted as is the analysis of collected data. We welcome the opportunity to participate in fora where implications of such data and development of a dataset would be discussed. Note, however, that NMFS will fund pertinent surveys based on agency priorities and budgetary considerations. Note that NOAA Fisheries recently published ''Technical Memorandum NMFS–OPR–64: North Atlantic Right Whale (NARW) Monitoring and Surveillance: Report and Recommendations of the National Marine Fisheries Service's Expert Working Group'' (*https://www.fisheries.noaa.gov/resource/document/north-atlantic-right-whalemonitoring-and-surveillance-report-andrecommendations*). This report includes recommendations for a comprehensive monitoring strategy to guide future analyses and data collection. NOAA Fisheries will consider the Expert Working Group's recommendations, as well as other relevant information, in its decision-making about right whale research and population monitoring.

Comment 2: SELC is concerned over use of the Roberts *et al.* 2020 density data to inform take estimates because they claim it excludes data obtained through additional sighting databases, passive acoustic monitoring (PAM), and satellite telemetry. They also contend that the density model uses data primarily from before 2010 and therefore does not reflect shifts in (NARW) distribution observed over the past five years (2017–2021). SELC contends that because the density maps produced by the Roberts *et al.* models do not fully reflect the abundance, distribution, and density of marine mammals for the U.S. East Coast, they cannot be the only information source relied upon when estimating take. They recommend NMFS consider any data from state monitoring efforts, PAM data, opportunistic marine mammal sightings, and other data sources.

Response: Habitat-based density models produced by the Duke University Marine Geospatial Ecology Lab (MGEL) (Roberts *et al.* 2016, 2017, 2018, 2020) represent the best available scientific information concerning marine mammal occurrence within the U.S. Atlantic Ocean. Density models were originally developed for all cetacean taxa in the U.S. Atlantic (Roberts *et al.,* 2016); more information, including the model results and supplementary information for each of those models, is available at *https://seamap.env.duke.edu/models/Duke/EC/.* These models provided key improvements over previously available information, by incorporating additional aerial and shipboard survey data from NMFS and from other organizations collected over the period 1992–2014, incorporating 60 percent more shipboard and 500 percent more aerial survey hours than did previously available models; controlling for the influence of sea state, group size, availability bias, and perception bias on the probability of making a sighting; and modeling density from an expanded set of 8 physiographic and 16 dynamic oceanographic and biological covariates. In subsequent years, certain models have been updated on the basis of additional data as well as methodological improvements. In addition, a new density model for seals was produced as part of the 2017–18 round of model updates.

Of particular note, Roberts *et al.* (2020) further updated density model results for NARWs by incorporating additional sighting data and implementing three major changes: Increasing spatial resolution, generating monthly estimates on three time periods of survey data, and dividing the study area into five discrete regions. This most recent update—model version 9 for NARWs—was undertaken with the following objectives (Roberts *et al.,* 2020):

- To account for recent changes to right whale distributions, the model should be based on survey data that extend through 2018, or later if possible. In addition to updates from existing collaborators, data should be solicited from two survey programs not used in prior model versions:
  - Aerial surveys of the Massachusetts and Rhode Island Wind Energy Areas led by New England Aquarium (Kraus *et al.,* 2016), spanning 2011–2015 and 2017–2018.
  - Recent surveys of New York waters, either traditional aerial surveys initiated by the New York State Department of Environmental Conservation in 2017, or digital aerial surveys initiated by the New York State Energy Research and Development Authority in 2016, or both.
- To reflect a view in the right whale research community that spatiotemporal patterns in right whale density changed around the time the species entered a decline in approximately 2010, consider basing the new model only on recent years, including contrasting ''before'' and ''after'' models that might illustrate shifts in density, as well as a model spanning both periods, and specifically consider which model would best represent right whale density in the near future.
- To facilitate better application of the model to near-shore management questions, extend the spatial extent of the model farther in-shore, particularly north of New York.
- Increase the resolution of the model beyond 10 kilometers (km), if possible.

All of these objectives were met in developing the most recent update to the density model. The commenters do not cite this most recent report, and the comments suggest that the aforementioned data collected by the New England Aquarium is not reflected in the model. Therefore, it is unclear whether the commenters are aware of the most recently available data, which is used herein.

As noted above, NMFS has determined that the Roberts *et al.* suite

of density models represent the best available scientific information, and we specifically note that the 2020 version of the NARW model may address some of the specific concerns provided by the commenters. (Note that there has been an additional minor model update affecting predictions for Cape Cod Bay in the month of December, which is not relevant to the location of this survey off of Delaware and New Jersey.) However, NMFS acknowledges that there will always be additional data that is not reflected in the models and that may inform our analyses, whether because the data were not made available to the model authors or because the data is more recent than the latest model version for a specific taxon. NMFS will review any recommended data sources to evaluate their applicability in a quantitative sense (*e.g.,* to an estimate of take numbers) and, separately, to ensure that relevant information is considered qualitatively when assessing the impacts of the specified activity on the affected species or stocks and their habitat. NMFS will continue to use the best available scientific information, and we welcome future input from interested parties on data sources that may be of use in analyzing the potential presence and movement patterns of marine mammals, including NARWs, in U.S. Atlantic waters.

Moreover, data sources cited by SELC pertain to Virginia waters. As described in Kitty Hawk Wind's application and the notice of proposed IHA, none of the sources used in Virginia waters have the potential to harass animals, either because they operate above the hearing ranges of all marine mammals or have such narrow beams widths or low source levels that harassment is unlikely. Therefore, no take in Virginia waters is anticipated to occur as the source with potential to result in harassment, the Furgo sparker, is only used on the WDA off North Carolina.

Finally, as described in the ''Estimated Take'' section of the notice of proposed IHA and below, Kitty Hawk Wind and NMFS also consider monitoring data collected by Kitty Hawk Wind during previous marine site characterization surveys. Therefore, density estimates alone were not solely used to inform take authorization amounts for all species. As described in the notice of proposed IHA, take was adjusted from the density-based calculations for pilot whales, common dolphins, Atlantic spotted dolphins and Risso's dolphins. In summary, use of the Roberts *et al.* density data in combination of site-specific data collected by Kitty Hawk Wind represents a reasonable approach representing the best available science for estimating take from the proposed marine site characterization surveys.

Comment 3: SELC identifies that the Roberts *et al.* model does not differentiate between species of pilot whale or seal, or between stocks of bottlenose dolphin. They are concerned that the proposed IHA separates marine mammals by species or by stock but the same accounting is used for each, and observations do not distinguish between species or stock. They go on to say that a [negligible impact finding] record that provides ''general discussions with little, if any, relevance to the population-level effects on specific species and stock, and to conclusory statements that no such effects are expected,'' is inadequate.

Response: SELC is correct that the Roberts *et al.* density models do not distinguish between stocks of pilot whales and bottlenose dolphins. We note that seal models are not applicable here given the time of year the survey will be conducted and NMFS did not propose, nor authorize, take of any seal species or stock incidental to the proposed marine site characterization survey. The MMPA requires that species- or stock-specific negligible impact determinations be made, and NMFS has done so. In this case, NMFS has authorized take numbers specific to each affected species or stock. As a general matter, NMFS is unaware of any available density data which differentiates between species of pilot whales or seals, or stocks of bottlenose dolphins. However, lack of such data does not preclude the requisite species or stock-specific findings. In the event that an amount of take is authorized at the guild or species level only, *e.g.,* for pilot whales or bottlenose dolphins, respectively, NMFS may adequately evaluate the effects of the activity by conservatively assuming (for example) that all takes authorized for the guild or species would accrue to each potentially affected species or stock. In this case, NMFS made clear why only the offshore stock of bottlenose dolphins is likely to be taken by the proposed marine site characterizations surveys and, for pilot whales, has assigned take on the basis of an assumed group size of 20 for each potentially affected species. NMFS fully describes the reasons why the amount of take authorized, per stock, would have a negligible impact to each marine mammal stock. NMFS has also clarified the total amount of take authorized to each stock of pilot whales (long-finned and short-finned) is 20 each.

Comment 4: SELC believes the assumptions regarding seasonal occurrence of NARW in the survey area are unfounded because they assert NARWs are detected during every month of the year in the Mid-Atlantic.

Response: As described in the notice of proposed IHA, Kitty Hawk Wind plans to complete the surveys by the end of September (we note the IHA is effective until October 31, 2021 in case of unexpected, long weather delays). Of that time, only half of the days would utilize the sparker, the only piece of equipment with potential to harass marine mammals. NMFS does not assert there is zero possibility that NARWs could be encountered but uses the best available science to identify that it is highly unlikely a NARW would be present in the project area (both Virginia and North Carolina) during this time of year and for this short survey. The density estimate considered in estimating take was 0.006 NARWs per 100 km^2. The resulting take calculation was 0.097, appropriately rounded to zero. In the case that a NARW is encountered, Kitty Hawk Wind is required to implement shut down at 500 m, reduce speeds to 10kts, and maintain a 500 m setback distance to avoid take. Overall, NMFS does not anticipate nor authorize take of NARWs incidental to the survey. To further ensure that take of NARW will not occur, NMFS has limited the effective period of the IHA to a very short duration, expiring on October 31, 2021.

Comment 5: SELC believes NMFS should acknowledge the potential for take by Level A harassment from HRG surveys on small cetaceans and reconsider the analysis of Level A harassment from HRG surveys on harbor porpoises and other acoustically sensitive species.

Response: NMFS disagrees the potential for Level A harassment *i.e.,* permanent threshold shift (PTS) exists from exposure to marine site characterization survey sources for any marine mammal, including high frequency cetaceans (*i.e.,* harbor porpoise). Given the time of year the surveys would occur, harbor porpoise are not normally in the region, let alone in close proximity to survey vessel. The take, by Level B harassment only, of one harbor porpoise is authorized in the IHA as a precautionary measure. Further, as described in the proposed IHA, the risk of any marine mammal incurring permanent hearing loss is highly unlikely. Kitty Hawk Wind's application identifies conservative calculations to the NMFS thresholds that indicate the potential onset of PTS. These distances are extremely close to the vessel for low and high frequency cetaceans (approximately 18 m and 120 m, respectively). The potential for Level A

harassment of mid-frequency cetaceans essentially does not exist as the calculated Level A harassment distance is 0.5 m (based on the SEL threshold; received levels exceeding peak thresholds were not reached at any distance for any hearing group). These distances are conservative as they do not account for the influences of absorption, water depth, and/or beamwidth, all of which can result in smaller harassment radii.

Comment 6: SELC acknowledges that the proposed IHA includes mitigation measures to avoid vessel strikes yet believes NMFS overlooked vessel collisions as a source of potential take and recommends vessel collisions should be incorporated into NMFS' take analysis. SELC identified that vessels associated with the proposed activity will move at speeds well below 10 kts but that NMFS did not address potential vessel strike from vessels transiting to and from the lease area.

Response: As described in the proposed IHA, NMFS does not anticipate vessel strike of any marine mammal would occur incidental to the proposed marine site characterization surveys. Kitty Hawk Wind did not request take from vessel strike nor did NMFS authorize any.

NMFS included a vessel strike analysis in the notice of proposed IHA (86 FR 28061, May 25, 2021) under the Potential Effects of Specified Activities on Marine Mammals and Their Habitat section. We identified that at average transit speed for geophysical survey vessels, the probability of serious injury or mortality resulting from a strike is less than 50 percent. However, the likelihood of a strike actually happening is again low given the smaller size of these vessels and generally slower speeds during transit. Further, Kitty Hawk Wind is required to implement monitoring and mitigation measures during transit, including observing for marine mammals and maintaining defined separation distances between the vessel and any marine mammal (see Mitigation and Monitoring and Reporting sections below). Finally, despite several years of marine site characterization surveys occurring off the U.S. east coast, no vessels supporting offshore wind development have struck a marine mammal either in transit or during surveying. Because vessel strikes are not reasonably expected to occur, no take is authorized. The mitigation measures in the IHA related to vessel strike avoidance are not limited to vessels operating within the WDA or cable corridors and therefore apply to transiting vessels. Although the proposed IHA considered this, the final IHA is more clear in Condition 4(i) that vessel strike avoidance measures apply to vessels during both transit and survey operations phases.

Comment 7: SELC is concerned that avoidance of NARWs in response to survey noise could push NARWs and other large whales out of protected areas and into areas with greater risk of vessel collision, such as shipping lanes entering the Chesapeake Bay; therefore, vessel strike due to displacement should considered in NMFS' take analysis.

Response: It is unclear what NARW protected areas SELC is referring to given the temporal and spatial aspects of the proposed surveys (*e.g.,* no seasonal management areas (SMAs) are designated in the project area during the survey timeframe). Regardless, we do not anticipate that NARWs would be displaced from Kitty Hawk Wind's proposed marine site characterization surveys. The survey would occur during a time of year when NARW is very low and Kitty Hawk Wind has committed to shutting down and avoiding NARWs in the unlikely scenario a NARW is encountered such that no Level B harassment is anticipated to occur. Further, sources used in the cable corridors are either above marine mammal hearing ranges or have such low source levels and narrow beam widths that harassment, in absence of mitigation, is not anticipated. Therefore, even if a NARW was in the area of the cable corridor surveys, a displacement impact is not anticipated.

Operation of the sparker in the WDA could lead to some avoidance of marine mammals for which take is authorized (*i.e.,* non-NARWs) from the immediate vicinity of the vessel, but there is no evidence to suggest that animals would be displaced hundreds of miles from the WDA to shipping lanes near the entrance of the Chesapeake Bay. In summary, SELCs concerns do not reflect a likely scenario and NMFS does not anticipate NARWs, or any marine mammal, to be displaced to the degree risk of vessel strike is increased.

Comment 8: SELC considers the renewal process to be inconsistent with the statutory requirements under section 101(a)(5)(D) of the MMPA, including the 30-day public comment requirement.

Response: In prior responses to comments about IHA Renewals (*e.g.,* 84 FR 52464; October 02, 2019 and 85 FR 53342, August 28, 2020), NMFS has explained how the Renewal process, as implemented, is consistent with the statutory requirements contained in section 101(a)(5)(D) of the MMPA, provides additional efficiencies beyond the use of abbreviated notices, and, further, promotes NMFS' goals of improving conservation of marine mammals and increasing efficiency in the MMPA compliance process. Therefore, we intend to continue implementing the Renewal process.

All IHAs issued, whether an initial IHA or a renewal IHA, are valid for a period of not more than one year. And the public has at least 30 days to comment on all proposed IHAs, with a cumulative total of 45 days for IHA renewals. The notice of the proposed IHA published in the **Federal Register** on May 25, 2021 (86 FR 28061) made clear that the agency was seeking comment on both the initial proposed IHA and the potential issuance of a renewal for this project. Because any renewal is limited to another year of identical or nearly identical activities in the same location or the same activities that were not completed within the effective period of the initial IHA, reviewers have the information needed to effectively comment on both the immediate proposed IHA and a possible 1-year renewal, should the IHA holder choose to request one in the coming months.

While there would be additional documents submitted with a renewal request, for a qualifying renewal these would be limited to documentation that NMFS would make available and use to verify that the activities are identical to those in the initial IHA, are nearly identical such that the changes would have either no effect on impacts to marine mammals or decrease those impacts, or are a subset of activities already analyzed and authorized but not completed under the initial IHA. NMFS would also need to confirm, among other things, that the activities would occur in the same location; involve the same species and stocks; provide for continuation of the same mitigation, monitoring, and reporting requirements; and that no new information has been received that would alter the prior analysis. The renewal request would also contain a preliminary monitoring report, in order to verify that effects from the activities do not indicate impacts of a scale or nature not previously analyzed. The additional 15-day public comment period provides the public an opportunity to review these few documents, provide any additional pertinent information and comment on whether they think the criteria for a renewal have been met. Between the initial 30-day comment period on these same activities and the additional 15 days, the total comment period for a renewal is 45 days.

Comment 9: SELC recommended NMFS impose a seasonal restriction on site characterization activities that have

the potential to injure or harass NARWs. SELC identified this seasonal restriction should occur from November 1 through April 30, citing the best available scientific information on the relative density of NARWs in the mid-Atlantic as well as potential presence of pregnant females and mother-calf pairs. SELC further notes that they consider source levels greater than 180 dB re 1 μPa (SPL) at 1-meter at frequencies between 7 Hz and 35 kHz to be potentially harmful to low-frequency cetaceans.

Response: As described in the proposed IHA, Kitty Hawk Wind anticipates that the marine site characterization surveys will be complete by September 31, 2021. Kitty Hawk Wind has committed to this and NMFS has limited the effective period of the IHA to October 31, 2021.

It is unclear how the commenters determined that source levels greater than 180 dB re 1 μPa (SPL) are potentially harmful to low-frequency cetaceans. NMFS historically applied a received level (not source level) root mean square (rms) threshold of 180 dB SPL as the potential for marine mammals to incur PTS (*i.e.,* Level A (injury) harassment); however, in 2016, NMFS published it *Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing* which updated the 180 dB SPL Level A harassment threshold. Since that time, NMFS has been applying dual threshold criteria based on both peak and a weighted (to account for marine mammal hearing) cumulative sound exposure level. NMFS released a revised version of the Technical Guidance in 2018. We encourage the ENGOs to review the Technical Guidance available at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance* to inform future reviews of any proposed IHA on which they may wish to comment. As described in the Estimated Take section, NMFS has established a PTS (Level A harassment) threshold of 183 dB cumulative SEL for low frequency specialists. Based on a conservative model that does not account for beamwidth and absorption, a NARW would have to come within 17.9 m of the sparker to potentially incur PTS. Not only are NARWs uncommon during the time of year the survey would occur, Kitty Hawk is also required to not approach any NARW within 500 m or operate the sparker within 500 m of a NARW. As such, there is no potential for a NARW to experience PTS (*i.e.,* Level A harassment) from the proposed survey.

Comment 10: SELC recommends robust and effective real-time monitoring and mitigation systems are in place to protected NARWs throughout the year.

Response: NMFS is generally supportive of this concept. A network of near real-time baleen whale monitoring devices are active or have been tested in portions of New England and Canadian waters. These systems employ various digital acoustic monitoring instruments which have been placed on autonomous platforms including slocum gliders, wave gliders, profiling floats and moored buoys. Systems that have proven to be successful will likely see increased use as operational tools for many whale monitoring and mitigation applications. The ENGOs cited the NMFS publication ''Technical Memorandum NMFS-OPR-64: NARW Monitoring and Surveillance: Report and Recommendations of the National Marine Fisheries Service's Expert Working Group'' which is available at: *https://www.fisheries.noaa.gov/resource/document/north-atlantic-right-whale-monitoring-and-surveillance-report-and-recommendations.* This report summarizes a workshop NMFS convened to address objectives related to monitoring NARWs and presents the Expert Working Group's recommendations for a comprehensive monitoring strategy to guide future analyses and data collection. Among the numerous recommendations found in the report, the Expert Working Group encouraged the widespread deployment of auto-buoys to provide near real-time detections of NARW calls that visual survey teams can then respond to for collection of identification photographs or biological samples.

Comment 11: SELC recommends that if a survey is shut down during periods of low visibility, including night time, developers should be required to wait until daylight hours and good visibility for surveying to resume.

Response: While we acknowledge the limitations inherent in detection of marine mammals at night, NMFS disagrees with this recommendation. As described in our notice of proposed IHA, the impacts of marine site characterization surveys on marine mammals is relatively low. No auditory injury is expected to result even in the absence of mitigation, given the very small estimated Level A harassment zones (as described in Kitty Hawk Wind's application). Any potential impacts to marine mammals authorized for take would be limited to short-term behavioral responses. Restricting surveys in the manner suggested by the commenters may reduce marine mammal exposures by some degree in the short term, but, this measure would lead to delays in completing the survey which could push the work into times of the year when NARWs are present or more abundant. Furthermore, restricting the applicant to ramp-up only during daylight hours would have the potential to result in lengthy shutdowns of the survey equipment, which could result in the applicant failing to collect the data they have determined is necessary and, subsequently, the need to conduct additional surveys the following year. This would result in significantly increased costs incurred by the applicant. Thus, the restriction suggested by the commenters would not be practicable for the applicant to implement. In consideration of potential effectiveness of the recommended measure and its practicability for the applicant, NMFS has determined that restricting survey start-ups to daylight hours when visibility is unimpeded is not warranted or practicable in this case.

Comment 12: SELC contends the real-time PAM and shutdown on acoustic detections should be required citing that NMFS is relying on visual observation as the primary means of detecting NARWs. SELC believes the effectiveness of detecting marine mammals with thermal and infrared technology is questionable. They acknowledge recent research suggests these tool are effective during calm conditions but state that NMFS should consider limitations of these systems and ensure that the detection of marine mammals is possible at distances out to and beyond the exclusion zones prior to reliance on this evolving technology.

Response: The foremost concern expressed by the ENGOs in making the recommendation to require use of PAM is with regard to North Atlantic right whales. As described above, the likelihood of a NARW being present within the survey area is extremely low. SELC is requesting extremely costly and time consuming (*i.e.,* impracticable) monitoring and mitigation measures that are not warranted based on the best available science indicating extremely low densities of NARWs during the effective period of the IHA and that the potential severity of impact of the surveys on marine mammals is general considered very low and the survey is very short (12.5 days of sparker use during a time when NARW density is extremely low).

SELC does not explain why they expect that PAM would be effective in detecting vocalizing mysticetes. It is generally well-accepted fact that, even in the absence of additional acoustic

sources, using a towed passive acoustic sensor to detect baleen whales (including right whales) is not typically effective because the noise from the vessel, the flow noise, and the cable noise are in the same frequency band and will mask the vast majority of baleen whale calls. Vessels produce low-frequency noise, primarily through propeller cavitation, with main energy in the 5–300 Hertz (Hz) frequency range. Source levels range from about 140 to 195 decibel (dB) re 1 μPa (micropascal) at 1 m (NRC, 2003; Hildebrand, 2009), depending on factors such as ship type, load, and speed, and ship hull and propeller design. Studies of vessel noise show that it appears to increase background noise levels in the 71–224 Hz range by 10–13 dB (Hatch *et al.,* 2012; McKenna *et al.,* 2012; Rolland *et al.,* 2012). PAM systems employ hydrophones towed in streamer cables approximately 500 m behind a vessel. Noise from water flow around the cables and from strumming of the cables themselves is also low-frequency and typically masks signals in the same range. Experienced PAM operators participating in a recent workshop (Thode *et al.,* 2017) emphasized that a PAM operation could easily report no acoustic encounters, depending on species present, simply because background noise levels rendered any acoustic detection impossible. The same workshop report stated that a typical eight-element array towed 500 m behind a vessel could be expected to detect delphinids, sperm whales, and beaked whales at the required range, but not baleen whales, due to expected background noise levels (including seismic noise, vessel noise, and flow noise).

There are several additional reasons why we do not agree that use of PAM is warranted for 24-hour HRG surveys. While NMFS agrees that PAM can be an important tool for augmenting detection capabilities in certain circumstances, its utility in further reducing impact during HRG survey activities is limited. First, for this activity, the area expected to be ensonified above the Level B harassment threshold is relatively small (a maximum of 445 m)—this reflects the fact that, to start with, the source level is comparatively low and the intensity of any resulting impacts would be lower level and, further, it means that inasmuch as PAM will only detect a portion of any animals exposed within a zone, the overall probability of PAM detecting an animal in the harassment zone is low—together these factors support the limited value of PAM for use in reducing take with smaller zones. PAM is only capable of detecting animals that are actively vocalizing, while many marine mammal species vocalize infrequently or during certain activities, which means that only a subset of the animals within the range of the PAM would be detected (and potentially have reduced impacts). Additionally, localization and range detection can be challenging under certain scenarios. For example, odontocetes are fast moving and often travel in large or dispersed groups which makes localization difficult.

Given that the effects to marine mammals from the types of surveys authorized in this IHA are expected to be limited to low level behavioral harassment even in the absence of mitigation, the limited additional benefit anticipated by adding this detection method (especially for right whales and other low frequency cetaceans, species for which PAM has limited efficacy), and the cost and impracticability of implementing a full-time PAM program, we have determined the current requirements for visual monitoring are sufficient to ensure the least practicable adverse impact on the affected species or stocks and their habitat.

Comment 13: SELC requests NMFS encourage Kitty Hawk Wind to collaborate with scientists in collecting data that would increase the understanding of the effectiveness of night vision and infrared technologies off North Carolina, Virginia and the broader Mid-Atlantic region with a view towards utilizing these technologies to commence surveys at night in the future.

Response: NMFS agrees collaboration with scientists to improve the understanding of the effectiveness of night vision and infrared technologies for all offshore wind development and will encourage Kitty Hawk Wind to do so.

Comment 14: SELC believes the shutdown zones established for vessels operating a sparker should be applied to all vessels using equipment that operate below 180 kHz because they claim such sources have the potential to cause acoustic harassment of marine mammals.

Response: NMFS disagrees that all sources below 180 kHz have the potential to cause harassment and; therefore, shutdown is necessary for all equipment operating below 180 kHz. SELC's recommendation does not consider fundamental acoustic propagation or consider source operating characteristics such as beam width. The Innomar and USBL are non-impulsive, non-parametric sound sources. The Innomar's beam width is 1 degree meaning a marine mammal would have to be in a particular part of the water column very close to the source (essentially under the vessel) to experience sounds loud enough to experience harassment. The incredibly short duration of that exposure based on a moving animal and moving source does not warrant a shutdown as harassment is not a likely outcome of exposure.

Comment 15: SELC believes the proposed exclusion zone sizes are inconsistent with those required for similar activities in other IHAs. They cite the previous IHA for HRG surveys in the Kitty Hawk Lease Area, wherein NMFS required a 200-meter exclusion zone for all large whales, pilot whales, and Risso's dolphins, and question why deviations from the 200-m exclusion zone were made. SELC recommends a clearance zone of 500 m for all marine mammals and, to the extent feasible, a 1,000-m exclusion zone for NARWs.

Response: NMFS disagrees with this recommendation and has determined that the exclusion zones included here are sufficiently protective. First, we note SELC is incorrect that the previous IHA required a 200 m exclusion zone for all large whales, pilot whales, and Risso's dolphin. The actual exclusion zones in that referenced IHA (both proposed and final) were 500-m for NARWs, 200- m for sei and fin whales, and 100-m for all other large cetaceans (humpback whale, minke whale, pilot whale, Risso's dolphin). Here, Kitty Hawk Wind must implement a 500-m exclusion zone for all ESA-listed whales (*i.e.,* the same exclusion zone for NARWs and a larger exclusion zone for fin and sei whales). The final IHA also increases the exclusion zone from proposed to final such that the final exclusion zone is 100 m. Therefore, while there is inconsistency, the IHA includes more protective measures for marine mammals than the previous IHA. We note that the 500-m exclusion zone for NARWs exceeds the modeled distance to the largest Level B harassment isopleth distance (445 m). The commenters do not provide any justification for the contention that the existing exclusion zones are insufficient, and do not provide any rationale for their recommended alternatives (other than that they are larger). In summary, SELC's recommendation that the exclusion zone be increased to 500-m for all marine mammals (except NARWs) and 1,000-m for NARW is unsupported and does not consider the negative operational impacts of such a recommendation. NMFS believes more

frequent shutdowns due to these measures would unnecessarily increase survey duration, potentially pushing the project into times when NARWs are more likely to be present.

Comment 16: SELC recommended that a combination of visual monitoring—by four protected species observers adhering to ''two-on/two-off'' schedule—and PAM should be used at all times that survey work is underway, and, for efforts that continue into the nighttime, night vision or infrared technology should also be used.

Response: NMFS typically requires that a single protected species observer (PSO) must be stationed at the highest vantage point and engaged in general 360-degree scanning during daylight hours only. Although NMFS acknowledges that the single PSO cannot reasonably maintain observation of the entire 360-degree area around the vessel, it is reasonable to assume that the single PSO engaged in continual scanning of such a small area (*i.e.,* 500-m EZ, which is greater than the maximum 141-m harassment zone) will be successful in detecting marine mammals that are available for detection at the surface. The monitoring reports submitted to NMFS have demonstrated that PSOs active only during daylight operations are able to detect marine mammals and implement appropriate mitigation measures. Kitty Hawk Wind proposed using two PSOs and night vision/infrared technology during nighttime operations. This was included in their application and the proposed IHA made available for public comment; therefore, the portion of the comment related to using night vision technology has been satisfied. Regarding PAM, we refer to our response to Comment 12 in that use of PAM is not warranted given the very low level of impact from the survey should a marine mammal be exposed to sparker use and the impracticability of implementing PAM during the very short survey.

Comment 17: SELC does not agree with the proposal to waive the shutdown requirement for certain species of small delphinid. They are particularly concerned that this exemption will leave the two stocks of bottlenose dolphin, which are designated as depleted and/or strategic under the MMPA, without adequate shutdown protections and therefore NMFS should remove all stocks of bottlenose dolphin from this exemption.

Response: The only stock likely to be present within the WDA during use of the sparker, and for which take is authorized, is the offshore stock of bottlenose dolphins. This stock is not a depleted or strategic stock. While the northern and southern migratory coastal stocks are depleted and strategic, they are likely to be found within the transit corridor where the Furgo sparker is not used. As previous described, the sources used in the transit corridor operate about 180 kHz (outside of marine mammal hearing) or do not have the potential to result in harassment due to their operating characteristics (*e.g.,* very narrow beam width). Therefore, NMFS retained the shutdown requirement as proposed.

Comment 18: SELC recommends a mandatory speed restriction of 10 kts for all project vessels within any designated dynamic management area (DMA) for NARWs.

Response: The measure that all vessels traveling within a DMA was included as condition 4(i)(i) of the proposed IHA that was made available for public comment. The condition that all project vessels (while in transit or during active surveying) travel at 10 kts or less in both a DMA and an acoustically-triggered Slow Zone is included in the final IHA. However, we note that given the location and time of year surveys will occur, it is unlikely a DMA or acoustically-triggered slow zone would be established.

Comment 19: SELC believes a sighting of three of more NARWs is too high of a bar to trigger a DMA and recommends NMFS expand the DMA requirement to include sightings of mother-calf pairs.

Response: DMAs are a component of the 2008 *Final Rule To Implement Speed Restrictions to Reduce the Threat of Ship Collisions With NARWs* (73 FR 60173, October 10, 2008). The rule was promulgated to minimize lethal ship strikes of NARWs and based on the best available science. DMAs are triggered based on the analysis and findings of Clapham and Pace (2001). Any changes to the DMA program regarding modifying the triggering of a DMA is outside the scope of the proposed IHA to Kitty Hawk Wind. We note that despite being established alongside NOAA's mandatory vessel speed regulations in Seasonal Management Areas in 2008, the DMA program is voluntary for the general public. However, as described in the IHA, Kitty Hawk Wind is required to reduce vessel speeds to 10 kts should a NARW mother/calf pair be observed.

Comment 20: SELC requests PAM should be employed in all transit lanes to supplement the efforts of observers in visually detecting marine mammals.

Response: As noted in our response to Comment 12, SELC is requesting costly monitoring be employed that is not warranted and is impracticable for the applicant to implement. Despite years of effort, no marine site characterization vessels in the U.S., either in transit or during active surveying and which operate under PSO requirements as the ones included in the IHA, have never struck a marine mammal. NMFS is also unaware of any marine site characterization vessel strikes in Europe. The vessels involved will work 24-hrs per day; therefore, transit time is very limited to essentially to and from the WDA upon onset and completion of the survey with some limited potential for transit to sheltered waters in the case of foul weather.

Changes From Proposed IHA to Final IHA

The effective period of the IHA is now limited to July 15, 2021 through October 31, 2021 to ensure no take of NARWs. We have also increased the clearance zone for all Endangered Species Act (ESA)-listed marine mammals (not just NARWs) to 500 m; increased the vessel separation distance for all ESA-listed marine mammals during both surveying and transit to 500 m; and included a 10 knot speed restriction for vessels traveling in an acoustically-triggered slow zone (the proposed IHA contained a 10 knot speed restriction for dynamic management areas (DMAs) only).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS's Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's website (*https://www.fisheries.noaa.gov/find-species*).

Table 2 lists all species or stocks that may occur within the survey area and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2021). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS's SARs). While no mortality is anticipated

or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS's stock abundance estimates. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS's U.S. Atlantic and Gulf of Mexico SARs (*e.g.,* Hayes *et al.,* 2019, 2020). All values presented in Table 2 are the most recent available at the time of publication and are available in the 2019 SARs and draft 2020 SARs (available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports*).

TABLE 2—SUMMARY INFORMATION OF SPECIES WITHIN THE PROPOSED SURVEY AREA

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Balaenidae:						
North Atlantic right whale	*Eubalaena glacialis*	Western North Atlantic	E/D; Y	368 (-; 356; 2020) [4]	0.8	18.6
Family Balaenopteridae (rorquals):						
Humpback whale	*Megaptera novaeangliae*	Gulf of Maine	-/-; Y	1,393 (0; 1,375; 2016)	22	58
Fin whale	*Balaenoptera physalus*	Western North Atlantic	E/D; Y	6,802 (0.24; 5,573; 2016)	11	2.35
Sei whale	*Balaenoptera borealis*	Nova Scotia	E/D; Y	6,292 (1.02; 3,098; 2016)	6.2	1.2
Minke whale	*Balaenoptera acutorostrata*	Canadian East Coast	-/-; N	21,968 (0.31; 17,002; 2016)	170	10.6
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Physeteridae:						
Sperm whale	*Physeter macrocephalus*	NA	E; Y	4,349 (0.28;3,451; See SAR)	3.9	0
Family Delphinidae:						
Long-finned pilot whale	*Globicephala melas*	Western North Atlantic	-/-; N	39,215 (0.30; 30,627; See SAR).	306	21
Short finned pilot whale	*Globicephala macrorhynchus*	Western North Atlantic	-/-; Y	28,924 (0.24; 23,637; 2016)	236	160
Bottlenose dolphin	*Tursiops truncatus*	Western North Atlantic Offshore.	-/-; N	62,851 (0.23; 51,914, 2016)	519	28
		W.N.A. Northern Migratory Coastal.	-/-; Y	6,639 (0.41, 4,759, 2016)	48	12.2–21.5
Common dolphin	*Delphinus delphis*	Western North Atlantic	-/-; N	172,947 (0.21; 145,216; 2016)	1,452	399
Atlantic spotted dolphin	*Stenella frontalis*	Western North Atlantic	-/-; N	39,921 (0.27; 32,032; 2012)	320	0
Risso's dolphin	*Grampus griseus*	Western North Atlantic	-/-; N	35,493 (0.19; 30,289; 2016)	303	54.3
Family Phocoenidae (porpoises):						
Harbor porpoise	*Phocoena phocoena*	Gulf of Maine/Bay of Fundy	-/-; N	95,543 (0.31; 74,034; 2016)	851	217
Order Carnivora—Superfamily Pinnipedia						
Family Phocidae (earless seals):						
Harbor seal	*Phoca vitulina*	Western North Atlantic	-/-; N	75,834 (0.15; 66,884, 2018)	2,006	350

[1] ESA status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable.

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

[4] Pace *et al* 2021.

All species that could potentially occur in the proposed survey areas are included in Table 2. While NARWs, sei and sperm whales, and harbor seals have been sighted within the survey area, the temporal occurrence of the surveys (summer/early fall) does not overlap with the time of year these species may be present in the survey area as most of these species are in northern latitudes during this time. For these reasons, along with the very short duration of the survey, we consider the potential for take of these species *de minimus* and they will not be discussed further.

In addition to what is included in Sections 3 and 4 of the application, the SARs, and NMFS' website, further detail informing the baseline for select species (*e.g.,* information regarding current Unusual Mortality Events (UME) and important habitat areas) was provided in the notice of proposed IHA (86 FR 28061; May 25, 2021) and is not repeated here. No new information is available since publication of that notice.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007)

recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 dB threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 3.

TABLE 3—MARINE MAMMAL HEARING GROUP

[NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information. Nine marine mammal species (all cetaceans) have the reasonable potential to be taken by the survey activities (Table 5). Of the cetacean species that may be present, three are classified as low-frequency cetaceans (*i.e.,* all mysticete species), five are classified as mid-frequency cetaceans (*i.e.,* all delphinid species), and one is classified as a high-frequency cetacean (*i.e.,* harbor porpoise).

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

The notice of proposed IHA included a summary of the ways that Kitty Hawk Wind's specified activity may impact marine mammals and their habitat (86 FR 28061; May 25, 2021). In summary, the potential effects of Kitty Hawk Wind's specified survey activity are expected to be limited to Level B harassment of select marine mammal species. No permanent or temporary auditory effects, or significant impacts to marine mammal habitat, including prey, are expected. No new information is available that would change our previous analysis; therefore, we refer the reader to the aforementioned notice of proposed IHA rather than repeating the details here. The Estimated Take section includes a quantitative analysis of the number of individuals that are expected to be taken by Kitty Hawk Wind's activity. The Negligible Impact Analysis and Determination section considers the potential effects of the specified activity, the Estimated Take section, and the Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

Estimated Take

This section provides an estimate of the number of incidental takes authorized through the IHA, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes are by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to noise from certain HRG acoustic sources. Based primarily on the characteristics of the signals produced by the acoustic sources planned for use, Level A harassment is neither anticipated (even absent mitigation), nor authorized. Consideration of the anticipated effectiveness of the mitigation measures (*i.e.,* exclusion zones and shutdown measures), discussed in detail below in the Mitigation section, further strengthens the conclusion that Level A harassment is not a reasonably anticipated outcome of the survey activity. As described previously, no serious injury or mortality is anticipated or authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the take estimates.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment for non-explosive sources—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 160 dB re 1 μPa (rms) for the impulsive sources (*i.e.,* sparkers) evaluated here for Kitty Hawk Wind's proposed activity.

Level A Harassment—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). For more information, see NMFS' 2018 Technical Guidance, which may be accessed at *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

Kitty Hawk Wind's proposed activity includes the use of impulsive (*i.e.,* sparkers) sources. However, as discussed above, NMFS has concluded that Level A harassment is not a reasonably likely outcome for marine mammals exposed to noise through use of the sources proposed for use here, and the potential for Level A harassment is not evaluated further in this document. Please see Kitty Hawk Wind's application for details of a quantitative exposure analysis exercise, *i.e.,* calculated Level A harassment isopleths and estimated Level A harassment exposures. Maximum estimated Level A harassment isopleths ranged from 0 to 2 m for all sources and hearing groups with the exception of the Furgo 2D Sparker). The Level A harassment isopleth for low frequency, mid-frequency, and high frequency cetaceans was 18, 0.5, and 120.5 m, respectively and 10 m for phocids. Kitty Hawk Wind did not request authorization of take by Level A harassment, and we did not authorize Level A harassment in the IHA.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds, which include source levels and transmission loss coefficient.

The Fugro SPR EAH 2D sparker is the only source with the potential to result in marine mammal harassment; therefore, the 160 dB_{rms} isopleth resulting from this source is applied in ensonified area calculations. As noted previously, Kitty Hawk Wind intends to survey a total track-line distance of 3,300 km over the course of 25 days. It is estimated that the sparker will be in operation for approximately 50 percent of this duration. During the remainder of survey days, only sources not expected to have the potential to result in take of marine mammals would be used. To be conservative, the sparker has been assigned a duration of 13 days (instead of 12.5 days). The distance to the 160 dB_{rms} Level B harassment isopleth is calculated using the conservative practical spreading model and a source level of 213dB_{rms} (Table 1). The resulting isopleth is 445 m.

Kitty Hawk then considered track line coverage and isopleth distance to estimate the maximum ensonified area over a 24-hr period, also referred to as the zone of influence (ZOI). The estimated distance of the daily vessel track line was determined using the estimated average speed of the vessel (3 knots [5.6 km/hr]) over a 24-hr operational period for a total daily track line coverage of 134.4 km. The ZOI was calculated by squaring the respective maximum distance to the Level B harassment threshold (445 m) and multiplying by the estimated daily vessel track line distance of approximately 134.4 km to obtain the area of a box (118.7km^2). Then the ensonified area around the vessel at any given point (0.63) was added to that area to account for ½ of a circle at each end of the box. The resulting ZOI is 119.3km^2 (Table 4).

The ZOI is a representation of the maximum extent of the ensonified area around a sound source over a 24-hr period. The ZOI was calculated per the following formula:

$$ZOI = (Distance/day \times 2r) + \pi r^2$$

TABLE 4—ENSONIFIED AREA DURING SPARKER USE

Survey equipment	Number of active survey days [a]	Estimated total line distance (km)	Estimated distance per day (km)	ZOI per day (km^2)
Fugro SPR EAH 2D Sparker	13	1,700	133.4	119.3

Marine Mammal Occurrence

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations.

Habitat-based density models produced by the Duke University Marine Geospatial Ecology Laboratory (Roberts *et al.,* 2016, 2017, 2018, 2020) represent the best available information regarding marine mammal densities in the survey area. The density data presented by Roberts *et al.* (2016, 2017, 2018, 2020) incorporates aerial and shipboard line-transect survey data from NMFS and other organizations and incorporates data from 8 physiographic and 16 dynamic oceanographic and biological covariates, and controls for the influence of sea state, group size, availability bias, and perception bias on the probability of making a sighting. These density models were originally developed for all cetacean taxa in the U.S. Atlantic (Roberts *et al.,* 2016). In subsequent years, certain models have been updated based on additional data as well as certain methodological improvements. More information is available online at *https://*

seamap.env.duke.edu/models/Duke/EC/. Marine mammal density estimates in the survey area (animals/km^2) were obtained using the most recent model results for all taxa (Roberts *et al.,* 2016, 2017, 2018, 2020). The updated models incorporate additional sighting data, including sightings from NOAA's Atlantic Marine Assessment Program for Protected Species (AMAPPS) surveys.

Monthly density grids (*e.g.,* rasters) for each species were overlain with the Survey Area and values from all grid cells that overlapped the Survey Area were averaged to determine monthly mean density values for each species. Monthly mean density values within the Survey Area were averaged by season (Winter [December, January, February], Spring [March, April, May], Summer [June, July, August], Fall [September, October, November]) to provide seasonal density estimates. Since the HRG surveys would only occur during summer and fall, only those values were used in the take estimation analysis. Within each survey segment (Wind Development Area and offshore export cable corridor), the highest seasonal density estimates during the duration of the proposed survey were used to estimate take.

Take Calculation and Estimation

Here we describe how the information provided above is brought together to produce a quantitative take estimate.

For most species, the authorized take amount is equal to the calculated take amount resulting from the following equation: D × ZOI × 13 days. We note the densities provided in Table 5 represent the number of animals/100 km; therefore, the density is normalized to 1km in the equation. However, for some species, this equation does not reflect those species that can travel is large groups—an important parameter to consider that is not captured by density values. The equation also does not capture the propensity of some delphinid species to be attracted to the vessel and bowride. Therefore, to account for these real-world situations, the authorized take is a product of group size. For large groups of spotted and short beaked common dolphins knowing their affinity for bow riding (and therefore coming very close to the vessel), Kitty Hawk Wind assumed one group could be taken each day of sparker operations (13 days). Based on previous survey data, as described in previous monitoring reports, Kitty Hawk Wind assumes an average group size for spotted dolphins is 16 in the survey area. For common dolphins, the overall average reported group size was 4 in all survey areas but the average group size during the geotechnical surveys was 17 individuals. Therefore, in this case, Kitty Hawk Wind assumed a group of 17 common dolphins could be taken on any given day of sparker operation. For Risso's dolphin and pilot whales, one group is anticipated to be taken over the 13 days of sparker operations. Average group size for these species are 25 and 20, respectively (Reeves *et al.* 2002). Take for all other species is a reflection of the calculated take. Given the timing and location of the surveys, Kitty Hawk Wind is not requesting, nor are we proposing to authorize, take of NARWs or sei whales. Table 5 provides the amount of take authorized in the IHA.

TABLE 5—MARINE MAMMAL DENSITY AND TAKE ESTIMATES

Species	Stock	Max avg seasonal density (animals/100 km^2) [1]	Calculated take	Authorized take	Percent of population
Humpback whale	Gulf of Maine	0.084	1.297	1	<1
Fin whale	Western North Atlantic	0.171	2.648	3	<1
Minke whale	Canadian East Coast	0.105	1.634	2	<1
Pilot whales	Western North Atlantic	0.073	1.139	[3] 20	<1
Harbor porpoise	Gulf of Maine/Bay of Fundy	0.033	0.510	1	<1
Bottlenose dolphin [2]	Western North Atlantic, offshore	7.913	122.725	123	<1
Common dolphin	Western North Atlantic	1.583	24.555	[4] 221	<1
Atlantic spotted dolphin	Western North Atlantic	7.669	118.937	[4] 208	<1
Risso's dolphin	Western North Atlantic	0.058	0.893	[4] 25	<1

[1] Density values from Duke University (Roberts *et al.* 2016b, 2017, 2018, 2020).
[2] Estimates based on bottlenose dolphin stock preferred water depths (Reeves *et al.* 2002; Waring *et al.* 2016).
[3] Roberts (2018) only provides density estimates for "generic" pilot whales and seals; therefore, an equal potential for takes has been assumed either for species or stocks within the larger group. The take adjusted from calculated value to account for encountering one group over the course of the 13 days of sparker use.
[4] Take adjusted from calculated take to account for encountering one group on each of the 13 days of sparker use.

Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned); and

(2) The practicability of the measures for applicant implementation, which

may consider such things as cost and impact on operations.

Mitigation for Marine Mammals and Their Habitat

NMFS proposes that the following mitigation measures be implemented during Kitty Hawk Wind's planned marine site characterization surveys.

Marine Mammal Shutdown Zones

An immediate shutdown of the Sparker would be required if a marine mammal is sighted entering or within its respective exclusion zone (Table 6). The vessel operator must comply immediately with any call for shutdown by the Lead PSO. Any disagreement between the Lead PSO and vessel operator should be discussed only after shutdown has occurred. Subsequent restart of the survey equipment can be initiated if the animal has been observed exiting its respective exclusion zone or until an additional time period has elapsed (*i.e.,* 30 minutes for all other species). Table 6 provides the required shutdown zones.

TABLE 6—SHUTDOWN ZONES DURING SPARKER USE

Species	Shutdown zone (m)
ESA-listed marine mammals	500
Non-ESA marine mammals [1]	100

[1] If a delphinid from specified genera is visually detected approaching the vessel (*i.e.,* to bow ride) or towed equipment, shutdown is not required.

Pre-Clearance of the Shutdown Zones

Kitty Hawk Wind would implement a 30-minute pre-clearance period of the shutdown zones prior to the initiation of ramp-up of HRG equipment. During this period, the exclusion zone will be monitored by the PSOs, using the appropriate visual technology. Ramp-up may not be initiated if any marine mammal(s) is within its respective shutdown zone. If a marine mammal is observed within the shutdown zone during the pre-clearance period, ramp-up may not begin until the animal(s) has been observed exiting its respective shutdown zone or until an additional time period has elapsed with no further sighting (*i.e.,* 15 minutes for small odontocetes, and 30 minutes for all other species). Kitty Hawk Wind must clear an area of 500 m for all ESA-listed marine mammals and 100 m for all other marine mammals around the sparker prior to commencing a survey (or when a break in operation greater than 30 minutes occurs).

Shutdown Procedures

The vessel operator must comply immediately with any call for shutdown by the Lead PSO. Any disagreement between the Lead PSO and vessel operator should be discussed only after shutdown has occurred. Subsequent restart of the survey equipment can be initiated if the animal has been observed exiting its respective shutdown zone or the relevant time period has lapsed without re-detection (15 minutes for small odontocetes and seals, and 30 minutes for all other species).

The shutdown requirement would be waived for small delphinids of the following genera: *Delphinus, Stenella* (*frontalis* only), and *Tursiops.* Specifically, if a delphinid from the specified genera s visually detected approaching the vessel (*i.e.,* to bow ride) or towed equipment, shutdown is not required. Furthermore, if there is uncertainty regarding identification of a marine mammal species (*i.e.,* whether the observed marine mammal(s) belongs to one of the delphinid genera for which shutdown is waived), PSOs must use best professional judgement in making the decision to call for a shutdown. Additionally, shutdown is required if a delphinid detected in the exclusion zone and belongs to a genus other than those specified.

If the acoustic source is shut down for reasons other than mitigation (*e.g.,* mechanical difficulty) for less than 30 minutes, it may be activated again only if the PSOs have maintained constant observation and the shutdown zone is clear of marine mammals. If the source is turned off for more than 30 minutes, it may only be restarted after PSOs have cleared the shutdown zones for 30 minutes.

If a species for which authorization has not been granted, or, a species for which authorization has been granted but the authorized number of takes have been met, approaches or is observed within the Level B harassment zone (445 m), shutdown would be required.

Ramp-Up

The Fugro SPR EAH 2D Sparker operates on a binary on/off switch and thus ramp-up is not technically feasible for this piece of equipment.

Vessel Strike Avoidance

Kitty Hawk Wind will ensure that vessel operators and crew maintain a vigilant watch for marine mammals and slow down or stop their vessels to avoid striking these species. All personnel responsible for navigation and marine mammal observation duties will receive site-specific training on marine mammals sighting/reporting and vessel strike avoidance measures. Vessel strike avoidance measures would include the following, except under circumstances when complying with these requirements would put the safety of the vessel or crew at risk:

- Vessel operators and crews must maintain a vigilant watch for all protected species and slow down, stop their vessel, or alter course, as appropriate and regardless of vessel size, to avoid striking any protected species. A visual observer aboard the vessel must monitor a vessel strike avoidance zone based on the appropriate separation distance around the vessel (distances stated below). Visual observers monitoring the vessel strike avoidance zone may be third-party observers (*i.e.,* PSOs) or crew members, but crew members responsible for these duties must be provided sufficient training to (1) distinguish protected species from other phenomena and (2) broadly to identify a marine mammal as a right whale, other whale (defined in this context as sperm whales or baleen whales other than right whales), or other marine mammal;
- All vessels (*e.g.,* source vessels, chase vessels, supply vessels), regardless of size, must observe a 10-knot speed restriction in the unlikely scenario a NARW dynamic management area (DMA) is in effect;
- All vessels must reduce their speed to 10 knots or less when mother/calf pairs, pods, or large assemblages of cetaceans are observed near a vessel underway;
- All vessels must maintain a minimum separation distance of 500 m from all ESA-listed marine mammals. If a whale is observed but cannot be confirmed as a species other than an ESA-listed whale, the vessel operator must assume that it is an ESA-listed whale and take appropriate action;
- All vessels must, to the maximum extent practicable, attempt to maintain a minimum separation distance of 100 m from all other marine mammals, with an understanding that at times this may not be possible (*e.g.,* for animals that approach the vessel);
- When marine mammals are sighted while a vessel is underway, the vessel shall take action as necessary to avoid violating the relevant separation distance (*e.g.,* attempt to remain parallel to the animal's course, avoid excessive speed or abrupt changes in direction until the animal has left the area). If marine mammals are sighted within the relevant separation distance, the vessel must reduce speed and shift the engine to neutral, not engaging the engines

until animals are clear of the area. This does not apply to any vessel towing gear or any vessel that is navigationally constrained; and

• These requirements do not apply in any case where compliance would create an imminent and serious threat to a person or vessel or to the extent that a vessel is restricted in its ability to maneuver and, because of the restriction, cannot comply.

Project-specific training will be conducted for all vessel crew prior to the start of a survey and during any changes in crew such that all survey personnel are fully aware and understand the mitigation, monitoring, and reporting requirements. Prior to implementation with vessel crews, the training program will be provided to NMFS for review and approval. Confirmation of the training and understanding of the requirements will be documented on a training course log sheet. Signing the log sheet will certify that the crew member understands and will comply with the necessary requirements throughout the survey activities.

Based on our evaluation of Kitty Hawk Wind's proposed measures, NMFS has determined that the mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the planned action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

• Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);

• Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);

• Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;

• How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;

• Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and

• Mitigation and monitoring effectiveness.

Monitoring Measures

Visual monitoring will be performed by qualified, NMFS-approved PSOs, the resumes of whom will be provided to NMFS for review and approval prior to the start of survey activities. Kitty Hawk Wind would employ independent, dedicated, trained PSOs, meaning that the PSOs must (1) be employed by a third-party observer provider, (2) have no tasks other than to conduct observational effort, collect data, and communicate with and instruct relevant vessel crew with regard to the presence of marine mammals and mitigation requirements (including brief alerts regarding maritime hazards), and (3) have successfully completed an approved PSO training course appropriate for their designated task.

The PSOs will be responsible for monitoring the waters surrounding each survey vessel to the farthest extent permitted by sighting conditions, including exclusion zones, during all HRG survey operations. PSOs will visually monitor and identify marine mammals, including those approaching or entering the established exclusion zones during survey activities. It will be the responsibility of the Lead PSO on duty to communicate the presence of marine mammals as well as to communicate the action(s) that are necessary to ensure mitigation and monitoring requirements are implemented as appropriate.

During all HRG survey operations (*e.g.,* any day on which use of an HRG source is planned to occur), a minimum of one PSO must be on duty during daylight operations on each survey vessel, conducting visual observations at all times on all active survey vessels during daylight hours (*i.e.,* from 30 minutes prior to sunrise through 30 minutes following sunset). Two PSOs will be on watch during nighttime operations. The PSO(s) would ensure 360° visual coverage around the vessel from the most appropriate observation posts and would conduct visual observations using binoculars and/or night vision goggles and the naked eye while free from distractions and in a consistent, systematic, and diligent manner. PSOs may be on watch for a maximum of 4 consecutive hours followed by a break of at least 2 hours between watches and may conduct a maximum of 12 hours of observation per 24-hour period. In cases where multiple vessels are surveying concurrently, any observations of marine mammals would be communicated to PSOs on all nearby survey vessels.

PSOs must be equipped with binoculars and have the ability to estimate distance and bearing to detect marine mammals, particularly in proximity to exclusion zones. Reticulated binoculars must also be available to PSOs for use as appropriate based on conditions and visibility to support the sighting and monitoring of marine mammals. During nighttime operations, night-vision goggles with thermal clip-ons and infrared technology would be used. Position data would be recorded using hand-held or vessel GPS units for each sighting.

During good conditions (*e.g.,* daylight hours; Beaufort sea state 3 or less), to the maximum extent practicable, PSOs would also conduct observations when the acoustic source is not operating for comparison of sighting rates and behavior with and without use of the active acoustic sources. Any observations of marine mammals by crew members aboard any vessel associated with the survey would be relayed to the PSO team.

Data on all PSO observations would be recorded based on standard PSO collection requirements. This would include dates, times, and locations of survey operations; dates and times of observations, location and weather; details of marine mammal sightings (*e.g.,* species, numbers, behavior); and details of any observed marine mammal behavior that occurs (*e.g.,* noted behavioral disturbances).

Reporting Measures

Within 90 days after completion of survey activities or expiration of this IHA, whichever comes sooner, a final technical report will be provided to NMFS that fully documents the methods and monitoring protocols, summarizes the data recorded during monitoring, summarizes the number of marine mammals observed during survey activities (by species, when known), summarizes the mitigation actions taken during surveys (including what type of mitigation and the species and number of animals that prompted the mitigation action, when known), and provides an interpretation of the results and effectiveness of all mitigation and monitoring. Any recommendations made by NMFS must be addressed in the final report prior to acceptance by NMFS. All draft and final marine mammal and acoustic monitoring reports must be submitted to *PR.ITP.MonitoringReports@noaa.gov* and *ITP.Daly@noaa.gov.* The report must contain at minimum, the following:

- PSO names and affiliations;
- Dates of departures and returns to port with port name;
- Dates and times (Greenwich Mean Time) of survey effort and times corresponding with PSO effort;
- Vessel location (latitude/longitude) when survey effort begins and ends; vessel location at beginning and end of visual PSO duty shifts;
- Vessel heading and speed at beginning and end of visual PSO duty shifts and upon any line change;
- Environmental conditions while on visual survey (at beginning and end of PSO shift and whenever conditions change significantly), including wind speed and direction, Beaufort sea state, Beaufort wind force, swell height, weather conditions, cloud cover, sun glare, and overall visibility to the horizon;
- Factors that may be contributing to impaired observations during each PSO shift change or as needed as environmental conditions change (*e.g.,* vessel traffic, equipment malfunctions); and
- Survey activity information, such as type of survey equipment in operation, acoustic source power output while in operation, and any other notes of significance (*i.e.,* pre-clearance survey, ramp-up, shutdown, end of operations, etc.).

If a marine mammal is sighted, the following information should be recorded:

- Watch status (sighting made by PSO on/off effort, opportunistic, crew, alternate vessel/platform);
- PSO who sighted the animal;
- Time of sighting;
- Vessel location at time of sighting;
- Water depth;
- Direction of vessel's travel (compass direction);
- Direction of animal's travel relative to the vessel;
- Pace of the animal;
- Estimated distance to the animal and its heading relative to vessel at initial sighting;
- Identification of the animal (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified); also note the composition of the group if there is a mix of species;
- Estimated number of animals (high/low/best);
- Estimated number of animals by cohort (adults, yearlings, juveniles, calves, group composition, etc.);
- Description (as many distinguishing features as possible of each individual seen, including length, shape, color, pattern, scars or markings, shape and size of dorsal fin, shape of head, and blow characteristics);
- Detailed behavior observations (*e.g.,* number of blows, number of surfaces, breaching, spyhopping, diving, feeding, traveling; as explicit and detailed as possible; note any observed changes in behavior);
- Animal's closest point of approach and/or closest distance from the center point of the acoustic source;
- Platform activity at time of sighting (*e.g.,* deploying, recovering, testing, data acquisition, other); and
- Description of any actions implemented in response to the sighting (*e.g.,* delays, shutdown, ramp-up, speed or course alteration, etc.) and time and location of the action.

Although not anticipated, if a NARW is observed at any time by PSOs or personnel on any project vessels, during surveys or during vessel transit, Kitty Hawk Wind must immediately report sighting information to the NMFS NARW Sighting Advisory System: (866) 755–6622. NARW sightings in any location must also be reported to the U.S. Coast Guard via channel 16.

In the event that Kitty Hawk Wind personnel discover an injured or dead marine mammal, Kitty Hawk Wind would report the incident to the NMFS Office of Protected Resources (OPR) and the NMFS Southeast Marine Mammal Stranding Network within 24 hours. The report would include the following information:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- Species identification (if known) or description of the animal(s) involved;
- Condition of the animal(s) (including carcass condition if the animal is dead);
- Observed behaviors of the animal(s), if alive;
- If available, photographs or video footage of the animal(s); and
- General circumstances under which the animal was discovered.

In the unanticipated event of a ship strike of a marine mammal by any vessel involved in the activities covered by the IHA, Kitty Hawk Wind would report the incident to the NMFS OPR and the NMFS Southeast Marine Mammal Stranding Network within 24 hours. The report would include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Species identification (if known) or description of the animal(s) involved;
- Vessel's speed during and leading up to the incident;
- Vessel's course/heading and what operations were being conducted (if applicable);
- Status of all sound sources in use;
- Description of avoidance measures/requirements that were in place at the time of the strike and what additional measures were taken, if any, to avoid strike;
- Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, visibility) immediately preceding the strike;
- Estimated size and length of animal that was struck;
- Description of the behavior of the marine mammal immediately preceding and following the strike;
- If available, description of the presence and behavior of any other marine mammals immediately preceding the strike;
- Estimated fate of the animal (*e.g.,* dead, injured but alive, injured and moving, blood or tissue observed in the water, status unknown, disappeared); and
- To the extent practicable, photographs or video footage of the animal(s).

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number

of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, our analysis applies to all the species listed in Table 5, given that NMFS expects the anticipated effects of the planned survey to be similar in nature. NMFS does not anticipate that serious injury or mortality would occur as a result from HRG surveys, even in the absence of mitigation, and no serious injury or mortality is authorized. As discussed in the Potential Effects of Specified Activities on Marine Mammals and their Habitat section, non-auditory physical effects and vessel strike are not expected to occur. NMFS expects that all potential takes would be in the form of short-term Level B behavioral harassment in the form of temporary avoidance of the area or decreased foraging (if such activity was occurring), reactions that are considered to be of low severity and with no lasting biological consequences (*e.g.,* Southall *et al.,* 2007). Even repeated Level B harassment of some small subset of an overall stock is unlikely to result in any significant realized decrease in viability for the affected individuals, and thus would not result in any adverse impact to the stock as a whole. As described previously due to the nature of the operations, Level A harassment is not expected even in the absence of mitigation. The small size of the Level A harassment zones and the required shutdown zones for certain activities further bolster this conclusion. In addition to being temporary, the maximum expected Level B harassment zone around a survey vessel is 445 m, producing expected effects of particularly low severity. Therefore, the ensonified area surrounding each vessel is relatively small compared to the overall distribution of the animals in the area and their use of the habitat. Feeding behavior is not likely to be significantly impacted as prey species are mobile and are broadly distributed throughout the survey area; therefore, marine mammals that may be temporarily displaced during survey activities are expected to be able to resume foraging once they have moved away from areas with disturbing levels of underwater noise. Because of the temporary nature of the disturbance and the availability of similar habitat and resources in the surrounding area, the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations. There are no rookeries, mating or calving grounds known to be biologically important to marine mammals within the planned survey area at the time of survey (the biologically important area (BIA) for NARWs is for a time period outside the proposed survey time period) and there are no primary feeding areas known to be biologically important to marine mammals within the planned survey area. In addition, there is no designated critical habitat for any ESA-listed marine mammals in the planned survey area.

NMFS expects that takes would be in the form of short-term Level B behavioral harassment by way of brief startling reactions and/or temporary vacating of the area, or decreased foraging (if such activity was occurring)—reactions that (at the scale and intensity anticipated here) are considered to be of low severity, with no lasting biological consequences. Since both the sources and marine mammals are mobile, animals would only be exposed briefly to a small ensonified area that might result in take. Additionally, required mitigation measures (*e.g.,* shutdown) would further reduce exposure to sound that could result in more severe behavioral harassment. In summary, and as described above, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality or serious injury is anticipated or authorized;
- No Level A harassment (PTS) is anticipated, even in the absence of mitigation measures, or proposed to be authorized;
- Take is anticipated to be primarily Level B behavioral harassment consisting of brief startling reactions and/or temporary avoidance of the survey area and could occur over a very short time period (13 days);
- No areas of particular importance to marine mammals (*e.g.,* BIA, critical habitat) occur within the survey area; and
- Impacts on marine mammal habitat and species that serve as prey species for marine mammals are expected to be minimal and the alternate areas of similar habitat value for marine mammals are readily available.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities. For this IHA, take of all species or stocks is below one third of the estimated stock abundance (in fact, take of individuals is less than 7 percent of the abundance for all affected stocks).

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

On June 29, 2021, NMFS Greater Atlantic Regional Fisheries Office (GARFO) completed programmatic consultation pursuant to section 7 of the ESA concerning the effects of certain site assessment and site characterization activities to be carried out to support the siting of offshore wind energy development projects off the U.S. Atlantic coast. The consultation concluded that marine site assessment surveys, such as those proposed by Kitty Hawk Wind, may affect but are not likely to adversely affect, ESA-listed marine mammals provided the project design criteria and best management practices identified in that consultation are followed. The scope of Kitty Hawk Wind's surveys fall within the scope of the activities analyzed in that consultation and NMFS has included a provision in the IHA that all consultation project design criteria (PDCs) and best management practices (BMPs) be adhered to. Consideration of potential issuance of IHA by NMFS OPR for Survey Activities was also included; therefore, NMFS action of issuing an IHA to Kitty Hawk Wind is covered by the 2021 programmatic consultation.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NAO 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review.

Authorization

NMFS has issued an IHA to Kitty Hawk Wind for the potential harassment of small numbers of nine species marine mammal species incidental to conducting marine site characterization surveys offshore of Virginia and North Carolina provided the mitigation, monitoring and reporting requirements contained within the IHA are followed.

Dated: July 27, 2021.

Angela Somma,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2021–16774 Filed 8–5–21; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to and deletions from the Procurement List.

SUMMARY: This action adds service(s) to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes product(s) and service(s) from the Procurement List previously furnished by such agencies.

DATES: *Date added to and deleted from the Procurement List:* September 05, 2021.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 785–6404, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 5/14/2021 the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed additions to the Procurement List. This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the product(s) and service(s) and impact of the additions on the current or most recent contractors, the Committee has determined that the product(s) and service(s) listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product(s) and service(s) to the Government.

2. The action will result in authorizing small entities to furnish the product(s) and service(s) to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the product(s) and service(s) proposed for addition to the Procurement List.

End of Certification

Accordingly, the following service(s) are added to the Procurement List:

Service(s)

Service Type: Third Party Logistics Support Services

Mandatory for: US Army, Army Contracting Command, Aberdeen Proving Ground, MD

Designated Source of Supply: Goodwill Industries of South Florida, Inc., Miami, FL

Contracting Activity: Dept of the Army, W6QK ACC–APG

The Committee finds good cause to dispense with the 30-day delay in the effective date normally required by the Administrative Procedure Act. See 5 U.S.C. 553(d). This addition to the Committee's Procurement List is effectuated because of the expiration of the Army Contracting Command, Aberdeen Proving Ground, 3rd Party Logistics Support Services contract. The Federal customer contacted and has

worked diligently with the AbilityOne Program to fulfill this service need under the AbilityOne Program. To avoid performance disruption, and the possibility that the Army Contracting Command, Aberdeen Proving Ground will refer its business elsewhere, this addition must be effective on August 20, 2021, ensuring timely execution for an August 21, 2021 start date while still allowing 14 days for comment. Pursuant to its own regulation 41 CFR 51–2.4, the Committee determined that no severe adverse impact exists on the current contractor. The Committee also published a notice of proposed Procurement List addition in the **Federal Register** on May 14, 2021, and did not receive any comments from any interested persons, including from the incumbent contractor. This addition will not create a public hardship and has limited effect on the public at large, but, rather, will create new jobs for other affected parties—people with significant disabilities in the AbilityOne program who otherwise face challenges locating employment. Moreover, this addition will enable Federal customer operations to continue without interruption.

Deletions

On 7/2/2021 the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List. This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3.

After consideration of the relevant matter presented, the Committee has determined that the product(s) and service(s) listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the product(s) and service(s) to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the product(s) and service(s) deleted from the Procurement List.

End of Certification

Accordingly, the following product(s) and service(s) are deleted from the Procurement List:

Product(s)

NSN(s)—Product Name(s):
8520–01–522–3885—Refill, Sanitizer, Hand, w/Aloe, 800 mL
Designated Source of Supply: Travis Association for the Blind, Austin, TX
Contracting Activity: GSA/FSS Greater Southwest Acquisiti, Fort Worth, TX
Service Type: Janitorial/Custodial
Mandatory for: US Army Reserve, Abingdon USARC, 1309 Continental Drive, Abingdon, MD
Designated Source of Supply: The Arc Northern Chesapeake Region, Incorporated, Aberdeen, MD
Contracting Activity: Dept of the Army, W6QK ACC–PICA, Picatinny Arsenal, NJ

Michael R. Jurkowski,
Deputy Director, Business Operations.

[FR Doc. 2021–16817 Filed 8–5–21; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from the Procurement List.

SUMMARY: The Committee is proposing to add service(s) to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes product(s) previously furnished by such agencies.

DATES: Comments must be received on or before: September 05, 2021.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 785–6404, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the product(s) and service(s) listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following service(s) are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Service(s)

Service Type: Secure document destruction
Mandatory for: Department of Health and Human Services, Albuquerque Indian Health Service, Santa Fe Service Unit, Santa Fe, NM
Designated Source of Supply: Adelante Development Center, Inc., Albuquerque, NM
Contracting Activity: Indian Health Service, Albuquerque Area Indian Health SVC

Deletions

The following product(s) are proposed for deletion from the Procurement List:

Product(s)

NSN(s)—Product Name(s):
8460–00–368–4281—Case, Map and Photograph
Contracting Activity: DLA Troop Support, Philadelphia, PA
NSN(s)—Product Name(s):
8455–01–113–0062—Qualification Badge, Basic Marksman, U. S. Army
Designated Source of Supply: Fontana Resources at Work, Fontana, CA
Contracting Activity: DLA Troop Support, Philadelphia, PA
NSN(s)—Product Name(s):
7360–00–660–0526—Dining Packet, In-Flight, Deluxe
Designated Source of Supply: Cincinnati Association for the Blind, Cincinnati, OH
Contracting Activity: GSA/FSS Greater Southwest Acquisiti, Fort Worth, TX
NSN(s)—Product Name(s):
8520–01–303–4037—Toothpaste, 3.0 oz., Fluoride
8530–01–293–1387—Toothbrush, Adult, Assorted Colors, 6'', Soft Bristles
Designated Source of Supply: North Jersey Friendship House, Inc., Hackensack, NJ
Contracting Activity: GSA/FSS Greater Southwest Acquisiti, Fort Worth, TX
NSN(s)—Product Name(s):
8455–01–113–0066—Qualification Badge, Basic Sharpshooter, U.S. Army
Designated Source of Supply: Fontana Resources at Work, Fontana, CA
Contracting Activity: DLA Troop Support, Philadelphia, PA

Michael R. Jurkowski,
Deputy Director, Business Operations.

[FR Doc. 2021–16816 Filed 8–5–21; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Environmental Impact Statement for Army Training Land Retention of State Lands at Kahuku Training Area, Poamoho Training Area, and Makua Military Reservation, Island of O'ahu, Hawai'i

AGENCY: Department of the Army, Defense (DoD).

ACTION: Amended notice of intent.

SUMMARY: The Department of the Army (Army) is issuing this Amended Notice of Intent, updating the original notice published on July 23, 2021 of its continuing intent to prepare an Environmental Impact Statement (EIS) to address the Army's proposed retention of up to approximately 6,300 acres of land currently leased to the Army by the State of Hawai'i (''State-owned lands'') on the island of O'ahu. Since coronavirus (COVID–19) restrictions have eased in the City and County of Honolulu in the State of Hawaii (Mayor of the City and County of Honolulu's Fourteenth Proclamation issued July 2, 2021), in addition to virtual scoping opportunities, EIS scoping sessions are scheduled to be held at Leilehua Golf Course (199 Leilehua Golf Course Rd., Wahiawa, HI 96786) on August 10 and 11, 2021 from 6 to 9 p.m.

DATES: The Army invites public comments on the scope of the EIS during a 40-day public scoping period. Comments must be received by September 1, 2021.

ADDRESSES: Please send written comments to the EIS website at: *https://home.army.mil/hawaii/index.php/OAHUEIS.* Alternatively, comments can be emailed to *usarmy.hawaii.nepa@mail.mil,* or mailed to: O'ahu ATLR EIS Comments, P.O. Box 3444, Honolulu, HI 96801–3444. EIS scoping sessions will be held at Leilehua Golf Course (199 Leilehua Golf Course Rd., Wahiawa, HI 96786) on August 10 and 11, 2021 from 6 to 9 p.m., during which video presentations will also be viewable at *https://home.army.mil/hawaii/index.php/OahuEIS,* and oral comments will be taken via an accompanying call-in option at 808–556–8277.

FOR FURTHER INFORMATION CONTACT: Please contact Amy Bugala, U.S. Army Garrison-Hawai'i (USAG–HI) Public Affairs Officer, at: (808) 656–3158 or by email to: *usarmy.hawaii.comrel@mail.mil.*

SUPPLEMENTARY INFORMATION: The Army is updating **Federal Register**, Vol. 86, No. 139, 39007 with this notice. USAG–HI is home to the 25th Infantry Division (ID), and other commands, whose mission is to deploy to conduct decisive actions in support of unified land operations; the Division conducts continuous persistent engagement with regional partners to shape the environment and prevent conflict across the Pacific operational environment. On orders, these units may conduct theater-wide deployment to perform combat operations in support of U.S. Indo-Pacific Command (USINDOPACOM). The 25th ID is based out of Schofield Barracks on the island of O'ahu and trains on a rotational basis at various training areas, including KTA, Poamoho, and MMR.

Located in northeast O'ahu, KTA has been the site of military training since the mid-1950s. Current training activities on State-owned lands at KTA include high-density company-level helicopter training in a tactical environment, large-scale ground maneuver training, and air support training.

Located in the Ko'olau Mountains in north-central O'ahu, the Poamoho Training Area has been the site of military training since 1964 and provides ideal airspace with ravines and deep vegetation vital to realistic helicopter training.

Located in northwest O'ahu, MMR has been a site for military training for nearly 100 years. Tactical training at MMR began in 1941 after the surprise attack on Pearl Harbor and military exercises continue to this day. Current training activities on State-owned lands at MMR include maneuver training, the establishment and use of restricted airspace for unmanned aerial vehicle training, as well as wildfire suppression and security activities.

State-owned lands include approximately 1,170 acres at Kahuku Training Area (KTA), approximately 4,370 acres at Poamoho Training Area (Poamoho), and approximately 760 acres at Makua Military Reservation (MMR). Training areas are utilized by Army units and other users such as the Marine Corps and Hawaii Army National Guard. Because the Proposed Action involves State-owned lands, the EIS will be a joint NEPA–HEPA document; therefore, the public scoping processes will run concurrently and will jointly meet NEPA and HEPA requirements. The EIS will evaluate the environmental impacts from implementing the proposed land retention.

The purpose of land retention is to secure the long-term military use of State-owned parcels, for which current leases expire in 2029. The need to retain use of these training lands is to allow the military to continue to meet current and future training and combat readiness requirements on Army-managed lands in Hawai'i.

To understand the environmental consequences of the decisions to be made, the EIS will evaluate the reasonably foreseeable impacts of a range of potential alternatives that meet the purpose of and need for the Proposed Action. Alternatives to be considered include the No Action Alternative, (1) Full Retention, (2) Modified Retention, and (3) Minimum Retention and Access. The Proposed Action does not involve new training, construction, or resource management activities. Under Full Retention, the Army would retain all State-owned lands within each training area. Under Modified Retention, the Army would retain all State-owned lands within each training area except lands on which limited training occurs. Under Limited Retention and Access, the Army would retain the minimum amount of State-owned lands within each training area that is required for USARHAW to continue to meet its current ongoing training requirements. This includes the State-owned lands with the most vital training/support facilities, infrastructure, maneuver land, all U.S. Government-owned utilities, and access to these features. Other reasonable alternatives raised during the scoping process that meet the Army mission, project purpose, and need will also be considered for evaluation in the EIS.

An EIS-level analysis is being undertaken because the land retention action could have potentially significant impacts on environmental and social resource areas including biological resources, cultural resources, hazardous and toxic materials and wastes, socioeconomics, utilities, and human health and safety. The analysis in the EIS will determine the projected level of impact on each resource area.

The Army anticipates permits and authorizations may be required for the Proposed Action, including a lease from the State of Hawai'i Department of Land and Natural Resources (DLNR), National Historic Preservation Act and Hawai'i Historic Preservation Review consultation with the State Historic Preservation Officer, Endangered Species Act Section 7 consultation with the U.S. Fish and Wildlife Service, a Coastal Zone Management consistency determination from the Hawai'i State Office of Planning, and a Conservation District Use Permit applicability determination from the DLNR Office of Conservation and Coastal Lands.

The Draft EIS will be available at the end of 2022. The Final EIS will be published in 2023, and the ROD will be available by fall 2024. The Final EIS and Record of Decision are estimated to be available within three years of this notice.

Native Hawaiian organizations; Federal, State, and local agencies; and the public are invited to be involved in the scoping process for the preparation of this EIS by participating in a scoping meeting and/or submitting written comments. The Army requests assistance with identifying potential alternatives to the Proposed Action to be considered and identification of information and analyses relevant to the Proposed Action. Written comments must be sent within 40 days of publication of the Notice of Intent in the **Federal Register**. Written comments will be accepted during the EIS Scoping Open House and throughout the duration of the 40-day scoping process through an online comment platform or by mail or email. Notification of the EIS Scoping Open House will also be published and announced in local news media outlets and on the EIS website: *https://home.army.mil/hawaii/index.php/OAHUEIS.* Hard copy scoping materials are available by making a request to Amy Bugala, USAG–HI Public Affairs Officer at (808) 656–3158 or by email to: *usarmy.hawaii.comrel@mail.mil.*

James W. Satterwhite, Jr.,

Army Federal Register Liaison Officer.

[FR Doc. 2021–16807 Filed 8–5–21; 8:45 am]

BILLING CODE 5061–AP–P

DEPARTMENT OF DEFENSE

Department of Army

Final Environmental Impact Statement and Finding of no Practicable Alternative for Implementation of Area Development Plan at Davison Army Airfield, Fort Belvoir, Virginia

AGENCY: Department of Army, DoD.

ACTION: Notice of availability.

SUMMARY: The Department of Army (Army) announces the availability of the Final Environmental Impact Statement (EIS) for the proposed implementation of an Area Development Plan (ADP) for Davison Army Airfield (DAAF) at Fort Belvoir, Virginia. In accordance with the National Environmental Policy Act (NEPA), the Final EIS analyzes the potential environmental impacts associated with implementing the construction, modernization, and demolition projects at DAAF recommended in the ADP (Proposed Action). A Finding of No Practicable Alternative (FONPA) addressing potential impacts on floodplains and wetlands was prepared in parallel with and is included as an appendix to the Final EIS. The Proposed Action would be implemented over an approximately 30-year time period to provide facilities and infrastructure necessary to support the ongoing and future missions of DAAF's tenants. The Proposed Action would improve the airfield's functional layout, demolish and replace aging facilities and infrastructure, and address multiple operational safety concerns along the runway. The ADP is specific to DAAF and all projects would occur entirely within its boundaries. No substantial changes in missions, air operations, or the number of aircraft and personnel at DAAF would occur under the Proposed Action.

FOR FURTHER INFORMATION CONTACT: Please contact: Ms. Wilamena G. Harback, Fort Belvoir Directorate of Public Works-Environmental Division (DPW–ED) via phone at (703) 806–3193 or (703) 806–0020, during normal working business hours, Monday through Friday, 8:00 a.m. to 4:00 p.m. Further information may also be requested via email to: *FortBelvoirNOI@usace.army.mil.* Electronic copies of the Final EIS and FONPA are available on Fort Belvoir's website at: *https://home.army.mil/belvoir/index.php/about/Garrison/directorate-public-works/environmental-division.*

SUPPLEMENTARY INFORMATION: The Final EIS analyzes the potential environmental impacts of the Army's Proposed Action to implement the construction, modernization, and demolition projects recommended in the ADP. The Proposed Action would occur entirely within the 673-acre DAAF property on Fort Belvoir. Up to 24 ADP projects would be implemented in three sequential phases over the course of an approximately 30-year time period, as follows: Short-range (next 10 years), mid-range (11 to 20 years from now), and long-range (21 to 30 years from now). No substantial changes in missions, air operations, or the number of aircraft and personnel at DAAF would occur under the Proposed Action. Operational noise levels following implementation of the Proposed Action would remain similar to current conditions.

The Proposed Action includes the construction of new hangars, administrative and operational facilities; the modernization of existing facilities; the demolition of up to 37 existing buildings and structures; and related infrastructure improvements. Demolition activities would remove a number of facilities that partially obstruct the airfield's Primary and Transitional Surfaces, which are required to be free of obstructions in accordance with Department of Defense (DoD) operational safety criteria. These facilities require temporary safety waivers to operate.

The Final EIS assesses the direct, indirect, and cumulative potential environmental impacts associated with the Proposed Action. In support of the Final EIS, the Army conducted consultation to obtain regulatory concurrence in accordance with Section 7 of the Endangered Species Act, Section 106 of the National Historic Preservation Act, and Section 307 of the Coastal Zone Management Act.

The Army evaluated several alternatives for the Proposed Action before selecting two action alternatives for detailed analysis in the Final EIS: The Full Implementation Alternative and the Partial Implementation Alternative. A No Action Alternative was also carried forward for analysis.

1. *Full Implementation Alternative (Preferred Alternative):* This alternative would implement the complete suite of 24 projects recommended in the DAAF ADP. The Full Implementation Alternative would accommodate the space and functional needs of all DAAF tenants consistent with applicable DoD requirements. It would also fulfill DAAF's vision to create a safe, secure, sustainable, and consolidated aviation complex.

2. *Partial Implementation Alternative:* This alternative would implement a modified, reduced program of 15 ADP projects at DAAF. The Partial Implementation Alternative would not address DAAF's tenants' requirements in full, but would substantially improve conditions.

Under the No Action Alternative, the Army would not implement the DAAF ADP; existing conditions at the airfield would continue for the foreseeable future. The No Action Alternative does not meet the Proposed Action's purpose and need, but was analyzed in the Final EIS to provide a baseline for the comparison of impacts from the Full and Partial Implementation Alternatives.

The Final EIS analyzed the Proposed Action's potential impacts on land use, aesthetics, and coastal zone management; historic and cultural resources; air quality; noise; geology, topography, and soils; water resources; biological resources; health and safety; and hazardous materials and waste.

The Final EIS determined that the Full Implementation Alternative and Partial Implementation Alternative would have potentially significant adverse impacts on waters of the U.S., including wetlands, from the construction and operation of new facilities and infrastructure. Adverse impacts on all other resources analyzed in the Final EIS, including the 100-year floodplain on DAAF, would be less-than-significant under either action alternative. Adherence to applicable regulatory permitting requirements would mitigate significant adverse effects on waters of the U.S. to the extent possible. Management measures would be implemented to avoid or minimize less-than-significant adverse impacts on all other resources. Both action alternatives would have beneficial effects on land use, plans, and aesthetics, and the management of hazardous materials and waste on the airfield.

In compliance with Executive Order (E.O.) 11988, *Floodplain Management* and E.O. 11990, *Protection of Wetlands,* the Army prepared a FONPA explaining its decision to implement the Proposed Action in the 100-year floodplain and wetlands on DAAF.

The Army conducted a 45-day public review and comment period for the Draft EIS and Draft FONPA between July 24 and September 8, 2020, including two publicly accessible teleconferences on August 24, 2020. Comments received during the public comment period were considered by the Army and are addressed accordingly in the Final EIS. None of the comments required substantive changes to the Proposed Action, alternatives, or impact analysis.

The Final EIS and FONPA are being made available to the public for 30 days in accordance with the Army NEPA regulations under 32 CFR 651. Electronic copies of these documents will be available for review or download on Fort Belvoir's website at: *https://home.army.mil/belvoir/index.php/about/Garrison/directorate-public-works/environmental-division.* Due to closures of public facilities associated with the COVID–19 pandemic, printed copies of the Final EIS and FONPA will not be made available at local public libraries. A printed copy of the Final EIS or FONPA may be requested from Fort Belvoir DPW–ED at the phone number or email address provided above.

The Army will prepare and publish its Record of Decision (ROD) for the Proposed Action no sooner than 30 days after the publication of this NOA for the Final EIS. The ROD will identify the Environmentally Preferred Alternative, the Army's Selected Alternative for implementing the Proposed Action, and the mitigation and protective measures that will be incorporated to prevent or minimize potential adverse impacts. Publication of the ROD will formally conclude the NEPA process for the DAAF ADP EIS.

James W. Satterwhite Jr.,

Army Federal Register Liaison Officer.

[FR Doc. 2021–16815 Filed 8–5–21; 8:45 am]

BILLING CODE 5061–AP–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket Number DARS–2021–0011; OMB Control Number 0704–0454]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Administrative and Information Matters

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice.

SUMMARY: The Defense Acquisition Regulations System has submitted to OMB for clearance the following proposed revision of a currently approved collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by September 7, 2021.

SUPPLEMENTARY INFORMATION:

Title, Associated Form, and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS), U.S.-International Atomic Energy Agency Additional Protocol; OMB Control Number 0704–0454.

Affected Public: Businesses and other for-profit entities and not-for-profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

Type of Request: Revision of a currently approved collection.

Number of Respondents: 10.

Responses per Respondent: 1.

Annual Responses: 10.

Average Burden per Response: 1 hour.

Annual Response Burden Hours: 10.

Reporting Frequency: On occasion.

Needs and Uses: Under the U.S.-International Atomic Energy Agency (IAEA) Additional Protocol, the United States is required to declare a wide range of public and private nuclear-related activities to the IAEA and potentially provide access to IAEA inspectors for verification purposes. The U.S.-IAEA Additional Protocol permits the United States unilaterally to declare exclusions from inspection requirements for activities with direct national security significance.

The contract clause at DFARS 252.204–7010, as prescribed at DFARS 204.470–3, is included in contracts for research and development or major defense acquisition programs involving fissionable materials (*e.g.,* uranium, plutonium, neptunium, thorium, americium); other radiological source materials; or technologies directly related to nuclear power production, including nuclear or radiological waste materials.

The clause requires a contractor to provide written notification to the applicable DoD program manager and a copy of the notification to the contracting officer if the contractor is required to report its activities under the U.S.-IAEA Additional Protocol. Upon such notification, DoD will determine if access may be granted to IAEA inspectors, or if a national security exclusion should be applied.

Comments and recommendations on the proposed information collection should be sent to Ms. Susan Minson, DoD Desk Officer, at *Oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer and the Docket ID number and title of the information collection.

You may also submit comments, identified by docket number and title, by the following method: *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.

DoD Clearance Officer: Ms. Angela Duncan. Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

[FR Doc. 2021–16592 Filed 8–5–21; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2021–OS–0055]

Request for Information Related to IP Evaluation and Valuation Methods and Techniques

AGENCY: Office of the Deputy Assistant Secretary of Defense (Acquisition Enablers), Department of Defense (DoD).

ACTION: Request for information; extension of comment period.

SUMMARY: On July 1, 2021, the DoD published a notice soliciting information from the public (including, but not limited to, the private sector, academia, and other interested parties) related to Intellectual Property (IP) evaluation and valuation methods and techniques. Subsequent to publication of the notice, DoD is extending the comment period from August 2, 2021 to September 17, 2021.

DATES: The comment period for the notice published on July 1, 2021 (86 FR 35076–35078) is extended. The due date for submitting comments is September 17, 2021.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: DoD cannot receive written comments at this time due to the COVID–19 pandemic. Comments should be sent electronically to the docket listed above.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. George Winborne, Communications, Knowledge and Performance Management Lead, Intellectual Property Cadre, Office of the USD (Acquisition & Sustainment), at 202–815–3995, or email: *george.o.winborne.civ@mail.mil*.

SUPPLEMENTARY INFORMATION: The public comment period in extended to September 17, 2021. All other information in the notice of July 1, 2021 remains the same.

Dated: August 3, 2021.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2021–16848 Filed 8–5–21; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Fusion Energy Sciences Advisory Committee; Notice of Renewal

AGENCY: Office of Science, Department of Energy.

ACTION: Notice of renewal.

SUMMARY: Pursuant to the Federal Advisory Committee Act, and in accordance with the Code of Federal Regulations, and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Fusion Energy Sciences Advisory Committee has been renewed for a two-year period. The Committee will provide advice to the Office of Science, on long-range plans, priorities, and strategies for advancing plasma science, fusion science and fusion technology—the knowledge base needed for an economically and environmentally attractive fusion energy source. Additionally, the renewal of the Fusion Energy Sciences Advisory Committee has been determined to be essential to the conduct of the Department of Energy business and to be in the public interest in connection with the performance of duties imposed upon the Department of Energy, by law and agreement. The Committee will operate in accordance with the provisions of the Federal Advisory Committee Act, adhering to the rules and regulations in implementation of that Act.

FOR FURTHER INFORMATION CONTACT: Samuel J. Barish at (301) 903–2917; email: *sam.barish@science.doe.gov.*

Signing Authority

This document of the Department of Energy was signed on August 2, 2021, by Miles Fernandez, Acting Committee Management Officer, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on August 3, 2021.

Treena V. Garrett,

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

[FR Doc. 2021–16799 Filed 8–5–21; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP21–474–000]

Rover Pipeline, LLC; Notice of Applications and Establishing Intervention Deadline

Take notice that on July 20, 2021, Rover Pipeline LLC (Rover), 1300 Main Street, Houston, Texas 77002, filed an application pursuant to section 7(c) of the Natural Gas Act (NGA), in Docket No. CP21–474–000, for authorization to construct a construct and operate a new delivery point on Rover's mainline which includes ancillary facilities and a new delivery meter station at Mile Post 19.5 on to North Coast Gas Transmission, LLC in Seneca County, Ohio. The Rover-North Coast Interconnect will receive up to 108,000 dekatherms (Dth) per day of pipeline quality natural gas from an interconnect with the North Coast Gas Transmission, LLC Interconnect gathering system. Rover estimates the cost of the project to be $776,396 all as more fully set forth in the request which is on file with the Commission and open to public inspection with the Commission and open for public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding Rover's application may be directed to Blair Lichtenwalter, Senior Director,

Regulatory Affairs, Rover Pipeline LLC, 1300 Main Street, Houston, Texas 77002, by telephone at (713) 989–2605 or by email at *Blair.Lictenwalter@energytransfer.com.*

Pursuant to Section 157.9 of the Commission's Rules of Practice and Procedure,[1] within 90 days of this Notice the Commission staff will either: Complete its environmental review and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or environmental assessment (EA) for this proposal. The filing of an EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Public Participation

There are three ways to become involved in the Commission's review of this project: You can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on August 23, 2021. How to file comments and motions to intervene is explained below.

Comments

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before August 23, 2021. However, the filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

Persons who comment on the environmental review of this project will be placed on the Commission's environmental mailing list, and will receive notification when the environmental documents (EA or EIS) are issued for this project and will be notified of meetings associated with the Commission's environmental review process.

Interventions

Any person, which includes individuals, organizations, businesses, municipalities, and other entities,[2] has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure [3] and the regulations under the NGA [4] by the intervention deadline for the project, which is August 23, 2021. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. [For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene.] For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

How To File Comments and Interventions

There are two ways to submit your comments and motions to intervene to the Commission. In all instances, please reference the Project docket numbers CP21–474–000 in your submission. The Commission encourages electronic filing of submissions.

(1) You may file your comments or motions to intervene electronically by using the eFiling feature, which is located on the Commission's website (*www.ferc.gov)* under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Comment on a Filing'' or ''Intervention''; or

(2) You can file a paper copy of your comments by mailing them to the following address below. Your written comments must reference the Project docket numbers (CP21–474–000).

To mail via USPS, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To mail via any other courier, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Motions to intervene must be served on the applicants either by mail or email (with a link to the document) at: Rover Pipeline LLC, 1300 Main Street, Houston, Texas 77002 or at *Blair.Lictenwalter@energytransfer.com.* Any subsequent submissions by an intervenor must be served on the applicants and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online. Service can be via email with a link to the document.

All timely, unopposed [5] motions to intervene are automatically granted by operation of Rule 214(c)(1).[6] Motions to intervene that are filed after the intervention deadline are untimely, and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations.[7] A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

[1] 18 CFR (Code of Federal Regulations) 157.9.

[2] 18 CFR385.102(d).

[3] 18 CFR 385.214.

[4] 18 CFR 157.10.

[5] The applicant has 15 days from the submittal of a motion to intervene to file a written objection to the intervention.

[6] 18 CFR 385.214(c)(1).

[7] 18 CFR 385.214(b)(3) and (d).

Tracking the Proceeding

Throughout the proceeding, additional information about the projects will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at www.f*erc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

Intervention Deadline: 5:00 p.m. Eastern Time on August 23, 2021.

Dated: August 2, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–16806 Filed 8–5–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER19–1280–002; ER19–1281–003.

Applicants: Broadlands Wind Farm LLC, Lexington Chenoa Wind Farm LLC.

Description: Notice of Change in Status of Broadlands Wind Farm LLC, et al.

Filed Date: 7/30/21.

Accession Number: 20210730–5274.

Comments Due: 5 p.m. ET 8/20/21.

Docket Numbers: ER21–1225–002.

Applicants: Long Ridge Energy Generation LLC.

Description: Tariff Amendment: Response to Request for Additional Information to be effective 4/29/2021.

Filed Date: 7/30/21.

Accession Number: 20210730–5167.

Comments Due: 5 p.m. ET 8/20/21.

Docket Numbers: ER21–1805–001.

Applicants: Upper Missouri G. & T. Electric Cooperative, Inc.

Description: Tariff Amendment: Response to Deficiency Letter FERC Nos. 1,2,3,5, and 11 to be effective 6/30/2021.

Filed Date: 8/2/21.

Accession Number: 20210802–5001.

Comments Due: 5 p.m. ET 8/23/21.

Docket Numbers: ER21–1993–001.

Applicants: Upper Missouri G. & T. Electric Cooperative, Inc.

Description: Tariff Amendment: Response to Deficiency Letter FERC Nos. 1, 5, 7, 8, and 9 to be effective 5/25/2021.

Filed Date: 8/2/21.

Accession Number: 20210802–5000.

Comments Due: 5 p.m. ET 8/23/21.

Docket Numbers: ER21–2137–001.

Applicants: IR Energy Management LLC.

Description: Tariff Amendment: Supplement to June 15, 2021 Application for Market-Based Rate Authorization to be effective 9/10/2021.

Filed Date: 8/2/21.

Accession Number: 20210802–5030.

Comments Due: 5 p.m. ET 8/23/21.

Docket Numbers: ER21–2583–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to WMPA, Service Agreement No. 5821; Queue No. AF2–101 to be effective 9/10/2020.

Filed Date: 8/2/21.

Accession Number: 20210802–5015.

Comments Due: 5 p.m. ET 8/23/21.

Docket Numbers: ER21–2584–000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Cancellation: Notice of Cancellation of WMPA, Service Agreement No. 4233; Queue No. AB1–005 to be effective 8/31/2021.

Filed Date: 8/2/21.

Accession Number: 20210802–5016.

Comments Due: 5 p.m. ET 8/23/21.

Docket Numbers: ER21–2585–000.

Applicants: Pacific Gas and Electric Company.

Description: § 205(d) Rate Filing: Q2 2021 Quarterly Filing of City and County of San Francisco's WDT SA (SA 275) to be effective 6/30/2021.

Filed Date: 8/2/21.

Accession Number: 20210802–5035.

Comments Due: 5 p.m. ET 8/23/21.

Docket Numbers: ER21–2586–000.

Applicants: Alabama Power Company.

Description: § 205(d) Rate Filing: SA Solar LGIA Filing to be effective 7/19/2021.

Filed Date: 8/2/21.

Accession Number: 20210802–5039.

Comments Due: 5 p.m. ET 8/23/21.

Docket Numbers: ER21–2587–000.

Applicants: Alabama Power Company.

Description: Tariff Cancellation: RE Sumter (Sumter County Solar) LGIA Termination Filing to be effective 8/2/2021.

Filed Date: 8/2/21.

Accession Number: 20210802–5040.

Comments Due: 5 p.m. ET 8/23/21.

Docket Numbers: ER21–2588–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: First Revised ISA, SA No. 5958; Queue No. AC1–074/AC2–075 to be effective 7/1/2021.

Filed Date: 8/2/21.

Accession Number: 20210802–5050.

Comments Due: 5 p.m. ET 8/23/21.

Docket Numbers: ER21–2589–000.

Applicants: California Independent System Operator Corporation.

Description: § 205(d) Rate Filing: 2021–08–02 Certificate of Concurrence—Desert Quartzite to be effective 7/16/2021.

Filed Date: 8/2/21.

Accession Number: 20210802–5065.

Comments Due: 5 p.m. ET 8/23/21.

Docket Numbers: ER21–2590–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: § 205(d) Rate Filing: Rate Schedule FERC No. 333 between Tri-State and United Power to be effective 10/1/2021.

Filed Date: 8/2/21.

Accession Number: 20210802–5076.

Comments Due: 5 p.m. ET 8/23/21.

Docket Numbers: ER21–2591–000.

Applicants: Arizona Public Service Company.

Description: Compliance filing: OATT Modifications—Pursuant to Order 676–I to be effective 12/31/9998.

Filed Date: 7/27/21.

Accession Number: 20210727–5180.

Comments Due: 5 p.m. ET 8/17/21.

Docket Numbers: ER21–2592–000.

Applicants: Pacific Gas and Electric Company.

Description: § 205(d) Rate Filing: CXA La Paloma Unexecuted LGIA (TO SA 420) to be effective 8/3/2021.

Filed Date: 8/2/21.

Accession Number: 20210802–5088.

Comments Due: 5 p.m. ET 8/23/21.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES21–61–000; ES21–62–000; ES21–63–000; ES21–64–000.

Applicants: AEP Texas Inc., Appalachian Power Company, Indiana Michigan Power Company, Public Service Company of Oklahoma.

Description: Application Under Section 204 of the Federal Power Act for

Authorization to Issue Securities of AEP Texas Inc., et al.

Filed Date: 7/30/21.

Accession Number: 20210730–5206.

Comments Due: 5 p.m. ET 8/20/21.

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: August 2, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–16811 Filed 8–5–21; 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 Number: PR21–49–001.

Applicants: Black Hills Energy Arkansas, Inc.

Description: Submits tariff filing per 284.123(b),(e)+(g): BHEA Amended SOC Filing to be effective 6/1/2021 under PR21–49 Filing.

Filed Date: 7/30/2021.

Accession Number: 202107305086.

Comments Due: 5 p.m. ET 8/20/2021.

284.123(g) Protests Due: 5 p.m. ET 8/20/2021.

Docket Number: PR21–57–000.

Applicants: Louisville Gas and Electric Company.

Description: Submits tariff filing per 284.123(b),(e)/: Revised Statement of Operating Conditions and Exhibit A Statement of Rates to be effective 7/1/2021.

Filed Date: 7/30/2021.

Accession Number: 202107305004.

Comments/Protests Due: 5 p.m. ET 8/20/2021.

Docket Number: PR21–58–000.

Applicants: Bay Gas Storage Company, LLC.

Description: Submits tariff filing per 284.123(b)(2)+(g): Bay Gas Storage Petition for Rate Approval to be effective 8/1/2021.

Filed Date: 7/30/2021.

Accession Number: 202107305171.

Comments Due: 5 p.m. ET 8/20/2021.

284.123(g) Protests Due: 5 p.m. ET 9/28/2021.

Docket Numbers: RP21–975–000.

Applicants: Columbia Gas Transmission, LLC.

Description: § 4(d) Rate Filing: TCO August 21 Negotiated Rate Agreements to be effective 8/1/2021.

Filed Date: 7/27/21.

Accession Number: 20210727–5046.

Comments Due: 5 p.m. ET 8/9/21.

Docket Numbers: RP21–976–000.

Applicants: Transcontinental Gas Pipe Line Company, LLC.

Description: § 4(d) Rate Filing: Rate Schedule S–2 Tracker Filing eff 8–1–2021 to be effective 8/1/2021.

Filed Date: 7/27/21.

Accession Number: 20210727–5075.

Comments Due: 5 p.m. ET 8/9/21.

Docket Numbers: RP21–977–000.

Applicants: Dauphin Island Gathering Partners.

Description: Dauphin Island Gathering Partners submits 2020–2021 Cash Out Report.

Filed Date: 7/27/21.

Accession Number: 20210727–5113.

Comments Due: 5 p.m. ET 8/9/21.

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: August 2, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–16809 Filed 8–5–21; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9057–7]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements (EIS)

Filed July 26, 2021 10 a.m. EST Through August 2, 2021 10 a.m. EST

Pursuant to 40 CFR 1506.9.

Notice: Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search.*

EIS No. 20210104, Draft, FERC, LA, Alberta Xpress and Lease Capacity Abandonment Projects, Comment Period Ends: 09/20/2021, Contact: Office of External Affairs 866–208–3372.

EIS No. 20210105, Final, USACE, LA, West Bank and Vicinity, Louisiana General Re-Evaluation Report with Integrated Environmental Impact Statement, Review Period Ends: 09/07/2021, Contact: Bradley Drouant 504–862–1516.

EIS No. 20210106, Final, USACE, LA, Lake Pontchartrain and Vicinity, Louisiana General Re-Evaluation Report with Integrated Environmental Impact Statement, Review Period Ends: 09/07/2021, Contact: Bradley Drouant 504–862–1516.

EIS No. 20210107, Draft, BLM, ID, Cedar Fields Plan Amendment Draft EIS for the Monument Resource Management Plan, Comment Period Ends: 11/10/2021, Contact: Lisa Cresswell 208–732–7270.

EIS No. 20210108, Draft, NRC, SC, License Renewal of the Columbia Fuel Fabrication Facility in Richland County, South Carolina, Comment Period Ends: 09/20/2021, Contact: Diana Diaz-Toro 301–415–0930.

EIS No. 20210109, Final, STB, UT, Uinta Basin Railway, Review Period Ends: 09/07/2021, Contact: Joshua Wayland 202–245–0330.

EIS No. 20210110, Final, BLM, NV, Robinson Mine Plan of Operations Amendment, Review Period Ends: 09/07/2021, Contact: Tiera Arbogast 775–293–5042.

EIS No. 20210111, Final, USA, MD, Davison Army Airfield Area Development Plan, Review Period Ends: 09/07/2021, Contact: Denean Summers 210–466–1313.

EIS No. 20210112, Draft, USFS, NM, Lincoln National Forest Draft Land Management Plan: Chaves, Eddy, Lincoln, and Otero Counties, New Mexico, Comment Period Ends: 11/05/2021, Contact: Diane Prather 575–649–9405.

Dated: August 2, 2021.

Candi Schaedle,

Acting Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2021–16798 Filed 8–5–21; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID 41814]

Open Commission Meeting Thursday, August 5, 2021

July 29, 2021.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, August 5, 2021, which is scheduled to commence at 10:30 a.m. Due to the current COVID–19 pandemic and related agency telework and headquarters access policies, this meeting will be in a wholly electronic format and will be open to the public on the internet via live feed from the FCC's web page at *www.fcc.gov/live* and on the FCC's YouTube channel.

Item No.	Bureau	Subject
1	ENGINEERING AND TECHNOLOGY	*Title:* Establishing Two New Innovation Zones (ET Docket No. 19–257). *Summary:* The Commission will consider a Public Notice that would create two new Innovation Zones for Program Experimental Licenses and the expansion of an existing Innovation Zone.
2	WIRELINE COMPETITION	*Title:* Numbering Policies for Modern. Communications (WC Docket No. 13–97); Telephone Number Requirements for IP-Enabled Service Providers (WC Docket No. 07–243); Implementation of TRACED Act Section 6(a)—Knowledge of Customers by Entities with Access to Numbering Resources (WC Docket No. 20–67); and Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership (IB Docket No. 16–155). *Summary:* The Commission will consider a Further Notice of Proposed Rulemaking to update the Commission's rules regarding direct access to numbers by interconnected Voice over Internet Protocol providers to safeguard the nation's finite numbering resources, curb illegal robocalls, protect national security, and further promote public safety.
3	WIRELINE COMPETITION	*Title:* Call Authentication Trust Anchor (WC Docket No. 17–97); Appeals of the STIR/SHAKEN Governance Authority Token Revocation Decisions (WC Docket No. 21–291). *Summary:* The Commission will consider a Report and Order that would establish a process for the Commission to review decisions of the private STIR/SHAKEN Governance Authority that would have the effect of placing voice service providers out of compliance with the Commission's STIR/SHAKEN implementation rules.
4	CONSUMER & GOVERNMENTAL AFFAIRS.	*Title:* Modernizing Telecommunications Relay Service (TRS) Compensation (CG Docket No. 03–123; RM–11820). *Summary:* The Commission will consider a Notice of Proposed Rulemaking on TRS Fund compensation methodology for IP Relay service.
5	MEDIA	*Title:* Revisions to Political Programming and Record-Keeping Rules (MB Docket No. 21–293). *Summary:* The Commission will consider a Notice of Proposed Rulemaking to update outmoded political programming rules.
6	WIRELESS TELE–COMMUNICATIONS	*Title:* Review of the Commission's Part 95 Personal Radio Services Rules (WT Docket No. 10–119). *Summary:* The Commission will consider a Memorandum Opinion and Order on Reconsideration that would grant three petitions for reconsideration of the Commission's May 2017 Part 95 Personal Radio Services Rules Report and Order.

* * * * *

The meeting will be webcast with open captioning at: *www.fcc.gov/live.* Open captioning will be provided as well as a text only version on the FCC website. Other reasonable accommodations for people with disabilities are available upon request. In your request, include a description of the accommodation you will need and a way we can contact you if we need more information. Last minute requests will be accepted but may be impossible to fill. Send an email to: *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530.

Additional information concerning this meeting may be obtained from the Office of Media Relations, (202) 418–0500. Audio/Video coverage of the meeting will be broadcast live with open captioning over the internet from the FCC Live web page at *www.fcc.gov/live.*

Federal Communications Commission.

Cecilia Sigmund,

Associate Secretary.

[FR Doc. 2021–16868 Filed 8–5–21; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID 41735]

Privacy Act of 1974; System of Records

AGENCY: Federal Communications Commission.

ACTION: Notice of a new system of records.

SUMMARY: The Federal Communications Commission (FCC, Commission, or Agency) proposes to add a new system of records, IB–1, International Bureau Filing System, subject to the Privacy Act

of 1974, as amended. This action is necessary to meet the requirements of the Privacy Act to publish in the **Federal Register** notice of the existence and character of records maintained by the Agency. The Commission uses the information in this system to regulate and process applications for authorizations and licenses, as well as to enforce FCC regulations and the Communications Act of 1934, as amended.

DATES: This system of records will become effective on August 6, 2021. Written comments on the routine uses are due by September 7, 2021. The routine uses will become effective on September 7, 2021, unless written comments are received that require a contrary determination.

ADDRESSES: Send comments to Margaret Drake, at *privacy@fcc.gov,* or at Federal Communications Commission (FCC), 45 L Street NE, Washington, DC 20554 at (202) 418–1707.

FOR FURTHER INFORMATION CONTACT: Margaret Drake, (202) 418–1707, or *privacy@fcc.gov* (and to obtain a copy of the Narrative Statement and the Supplementary Document, which includes details of the modifications to this system of records).

SYSTEM NAME AND NUMBER:

IB–1, International Bureau Filing System

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Federal Communications Commission (FCC), 45 L Street NE, Washington, DC 20554.

SYSTEM MANAGER(S):

International Bureau, FCC.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

47 U.S.C. 34, 214, 307, 309, 310, 319, 325, and 332; Executive Order 10530 (May 10, 1954); 47 CFR 1.767, 1.768, 1.10000–1.10018, 1.5000–1.5004, 63.09–63.702 and parts 25 and 73 subparts F and H.

PURPOSES:

The International Bureau Filing System (IBFS) is utilized by the FCC to regulate and process applications and other filings involving authorizations, permits, and licenses, as well as to enforce FCC regulations and the Communications Act of 1934.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have an interest in or are otherwise connected to FCC authorizations, permits, and licenses, including those who submit filings connected with these FCC processes.

CATEGORIES OF RECORDS IN THE SYSTEM:

FCC Registration Number (FRN), name, address, phone number, email address, citizenship, and ownership interests, financial information, and other information relevant to a filing, or an application for or regulation of authorization or license.

RECORD SOURCE CATEGORIES:

Information in this system is provided by individuals, government agencies, or businesses, and from other FCC systems.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed to authorized entities, as is determined to be relevant and necessary, outside the FCC as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows.

1. Public Access—Application, authorization, and licensee records, including attachments, petitions, comments, and other filings, will be publicly available except for material that is afforded confidential treatment, in accordance with section 0.459 the FCC's rules. Even if afforded confidential treatment, confidential information may be shared with relevant parties to an application pursuant to a Protective Order issued by the FCC. Information filed with a request for confidentiality may be disclosed to other Federal government agencies pursuant to 47 CFR 0.442.

Names and other information about individuals connected to authorizations, permits, and licenses, including those who submit filings, may be disclosed to the public in Public Notices, Orders, Letters, requests for information, or other documents the Commission or an FCC Bureau or Office publishes as part of its duties to enforce the provisions of the Communications Act and the rules promulgated thereunder.

2. Due Diligence—To an FCC Bureau or Office or another government agency, or representative thereof, for purposes of obtaining information so long as it is relevant to the regulation of a license, authorization, or permit or a pending transaction of an FCC-issued license, authorization, or permit.

3. Debt Collection—To the Department of Treasury, State government, or a debt collection agency to collect a claim owed to the FCC.

4. Adjudication and Litigation—To disclose to the Department of Justice (DOJ), or to other administrative or adjudicative bodies before which the FCC is authorized to appear, when: (a) The FCC or any component thereof; or (b) any employee of the FCC in his or her official capacity; or (c) any employee of the FCC in his or her individual capacity where the DOJ or the FCC have agreed to represent the employee; or (d) the United States is a party to litigation or has an interest in such litigation, and the use of such records by the DOJ or the FCC is deemed by the FCC to be relevant and necessary to the litigation.

5. Law Enforcement and Investigation—To disclose pertinent information to the appropriate Federal, State, local, tribal agency, or component of an agency, such as the FCC's Enforcement Bureau, responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the FCC becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

6. Congressional Inquiries—To provide information to a Congressional office from the record of an individual in response to an inquiry from that Congressional office made at the written request of that individual.

7. Government-wide Program Management and Oversight—To provide information to the Department of Justice (DOJ) to obtain that department's advice regarding disclosure obligations under the Freedom of Information Act; or to the Office of Management and Budget (OMB) to obtain that office's advice regarding obligations under the Privacy Act.

8. Breach Notification—To appropriate agencies, entities, and persons when: (a) The Commission suspects or has confirmed that there has been a breach of PII maintained in the system of records; (b) the Commission has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Commission (including its information system, programs, and operations), the Federal Government, or national security; and; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Commission's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

9. Assistance to Federal Agencies and Entities—To another Federal agency or Federal entity, when the Commission determines that information from this system is reasonably necessary to assist

the recipient agency or entity in: (a) Responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, program, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

10. Non-Federal Personnel—To disclose information to non-federal personnel, including contractors, who have been engaged to assist the FCC in the performance of a contract service, grant, cooperative agreement, or other activity related to this system of records and who need to have access to the records in order to perform their activity.

In each of these cases, the FCC will determine whether disclosure of the records is compatible with the purpose for which the records were collected.

REPORTING TO A CONSUMER REPORTING AGENCIES:

In addition to the routine uses cited above, the Commission may share information from this system of records with a consumer reporting agency regarding an individual who has not paid a valid and overdue debt owed to the Commission, following the procedures set out in the Debt Collection Act, 31 U.S.C. 3711(e).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

This an electronic system of records that resides on the FCC's network.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system of records can be retrieved by any category field, *e.g.,* name or email address.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL:

The information in this system is maintained and disposed of in accordance with the National Archives and Records Administration (NARA) Records Schedule N1–173–11–007.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

The electronic records, files, and data are stored within FCC's accreditation boundaries and maintained in a database housed in the FCC's computer network databases. Access to the electronic files is restricted to authorized employees and contractors; and to IT staff, contractors, and vendors who maintain the IT networks and services. Other employees and contractors may be granted access on a need-to-know basis. The electronic files and records are protected by the FCC privacy safeguards, a comprehensive and dynamic set of IT safety and security protocols and features that are designed to meet all Federal privacy standards, including those required by the Federal Information Security Modernization Act of 2014 (FISMA), the Office of Management and Budget (OMB), and the National Institute of Standards and Technology (NIST).

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to and/or amendment of records about themselves should follow the Notification Procedure below.

CONTESTING RECORD PROCEDURES:

Individuals wishing to request access to and/or amendment of records about themselves should follow the Notification Procedure below.

NOTIFICATION PROCEDURE:

Individuals wishing to determine whether this system of records contains information about themselves may do so by writing *Privacy@fcc.gov.* Individuals requesting access must also comply with the FCC's Privacy Act regulations regarding verification of identity to gain access to records as required under 47 CFR part 0, subpart E.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

HISTORY:

This is a new system of records.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer.

[FR Doc. 2021–16872 Filed 8–5–21; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of Intent To Terminate Receivership

Notice is hereby given that the Federal Deposit Insurance Corporation (FDIC or Receiver) as Receiver for the institution listed below intends to terminate its receivership for said institution.

NOTICE OF INTENT TO TERMINATE RECEIVERSHIP

Fund	Receivership name	City	State	Date of appointment of receiver
10024	PFF Bank and Trust	Pomona	CA	11/21/2008

The liquidation of the assets for the receivership has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing, identify the receivership to which the comment pertains, and sent within thirty days of the date of this notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 34.6, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Authority: 12 U.S.C. 1819.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on August 3, 2021.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2021–16805 Filed 8–5–21; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Termination of Receiverships

The Federal Deposit Insurance Corporation (FDIC or Receiver), as Receiver for each of the following insured depository institutions, was

charged with the duty of winding up the affairs of the former institutions and liquidating all related assets. The Receiver has fulfilled its obligations and made all dividend distributions required by law.

Notice of termination of receiverships

Fund	Receivership name	City	State	Termination date
10476	Douglas County Bank	Douglasville	GA	8/1/2021
10493	The Bank of Union	El Reno	OK	8/1/2021
10514	Edgebrook Bank	Chicago	IL	8/1/2021

The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary, including but not limited to releases, discharges, satisfactions, endorsements, assignments, and deeds. Effective on the termination dates listed above, the Receiverships have been terminated, the Receiver has been discharged, and the Receiverships have ceased to exist as legal entities.

(Authority: 12 U.S.C. 1819)

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on August 3, 2021.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2021–16804 Filed 8–5–21; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

TIME AND DATE: Wednesday, August 11, 2021 at 10:00 a.m.

PLACE: Virtual Meeting. *Note:* Because of the COVID–19 pandemic, we will conduct the open meeting virtually. If you would like to access the meeting, see the instructions below.

STATUS: This meeting will be open to the public. To access the virtual meeting, go to the Commission's website *www.fec.gov* and click on the banner to be taken to the meeting page.

MATTERS TO BE CONSIDERED:

Draft Advisory Opinion 2021–08: Congressman Scott Fitzgerald, Management and Administrative Matters.

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Authority: Government in the Sunshine Act, 5 U.S.C. 552b.

Laura E. Sinram,

Acting Secretary and Clerk of the Commission.

[FR Doc. 2021–16932 Filed 8–4–21; 11:15 am]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Savings and Loan Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*) (HOLA), Regulation LL (12 CFR part 238), and Regulation MM (12 CFR part 239), and all other applicable statutes and regulations to become a savings and loan holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a savings association.

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 whether the proposed transaction complies with the standards enumerated in the HOLA (12 U.S.C. 1467a(e)).

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 September 3, 2021.

A. Federal Reserve Bank of Philadelphia (William Spaniel, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521. Comments can also be sent electronically to *Comments.applications@phil.frb.org:*

1. *Rhodium BA Holdings, LLC, New York, New York;* to become a savings and loan holding company by acquiring Sunnyside Bancorp, Inc., and thereby indirectly acquiring Sunnyside Federal Savings and Loan Association of Irvington, both of Irvington, New York.

Board of Governors of the Federal Reserve System.

Ann Misback,

Secretary of the Board.

[FR Doc. 2021–16793 Filed 8–5–21; 8:45 am]

BILLING CODE 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 September 7, 2021.

A. Federal Reserve Bank of Kansas City (Jeffrey Imgarten, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Community Capital Bancorp, Inc., Sour Lake, Texas;* to become a bank holding company by acquiring First Security Bank, Beaver, Oklahoma.

B. Federal Reserve Bank of San Francisco (Sebastian Astrada, Director, Applications) 101 Market Street, San Francisco, California 94105–1579:

1. *Columbia Banking System, Inc., Tacoma, Washington;* to acquire Bank of Commerce Holdings, and thereby indirectly acquire Merchants Bank of Commerce, both of Sacramento, California.

Board of Governors of the Federal Reserve System, August 3, 2021.

Ann Misback,

Secretary of the Board.

[FR Doc. 2021–16823 Filed 8–5–21; 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 August 19, 2021.

A. Federal Reserve Bank of St. Louis (Holly A. Rieser, Manager) P.O. Box 442, St. Louis, Missouri 63166–2034. Comments can also be sent electronically to *Comments.applications@stls.frb.org:*

1. *The Peter Mahurin Revocable Trust, Peter Mahurin, Trustee, both of Bowling Green, Kentucky, and Sarah J. Mahurin, New Haven, Connecticut;* as a group acting in concert, to retain voting shares of Boyle Bancorp, Inc., and thereby indirectly retain voting shares of The Farmers National Bank of Danville, both of Danville, Kentucky.

Board of Governors of the Federal Reserve System.

Ann Misback,

Secretary of the Board.

[FR Doc. 2021–16795 Filed 8–5–21; 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 August 23, 2021.

A. Federal Reserve Bank of Minneapolis (Chris P. Wangen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *The Beth S. Schnell Revocable Trust, Beth S. Schnell, as trustee, both of Orono, Minnesota;* as a member of the Sparboe family shareholder group, a group acting in concert, to retain voting shares of CNB Financial Corporation, and thereby indirectly retain voting shares of Center National Bank, both of Litchfield, Minnesota.

B. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *The Steven C. Bell 2021 Investment Trust, Wisconsin Rapids, Wisconsin; Paula Bell, individually and as trustee of the Steven C. Bell 2021 Investment Trust, Wisconsin Rapids, Wisconsin; and the Linda J. Growney Investment Trust, Madison, Wisconsin, Chad Kane, as trustee, Wausau, Wisconsin;* to join the Bell Family Control Group, a group acting in concert, to acquire voting shares of WoodTrust Financial Corporation and thereby indirectly acquire voting shares of WoodTrust Bank, both of Wisconsin Rapids, Wisconsin.

Board of Governors of the Federal Reserve System, August 3, 2021.

Ann Misback,

Secretary of the Board.

[FR Doc. 2021–16820 Filed 8–5–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–21–0607; Docket No. CDC–2021–0078]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995.

This notice invites comment on a proposed information collection project titled The National Violent Death Reporting System (NVDRS). NVDRS is a state-based surveillance system developed to monitor the occurrence of violent deaths in the United States.

DATES: CDC must receive written comments on or before October 5, 2021.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2021–0078 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov*.

Please note: *Submit all comments through the Federal eRulemaking portal (regulations.gov) or by U.S. mail to the address listed above.*

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

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. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected;
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses; and
5. Assess information collection costs.

Proposed Project

The National Violence Death Reporting System (NVDRS) (OMB Control No. 0920–0607, Exp. 7/31/2023)—Revision—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

This is a Revision request for the National Violent Death Reporting System (NVDRS, OMB Control No. 0920–0607). All 50 states, the District of Columbia, and Puerto Rico participate in the system. NVDRS is a state-based surveillance system developed to monitor the occurrence of violent deaths (*i.e.,* homicide, suicide, deaths due to legal intervention, deaths of undetermined intent, and unintentional firearm deaths) in the United States (U.S.) by collecting comprehensive data from multiple sources (*e.g.,* death certificates, coroner/medical examiner reports, law enforcement reports) into a useable, anonymous database.

CDC received initial OMB approval in November 2004 and renewals in January 2007, November 2009, September 2012, June 2013, October 2014, November 2017, and July 2020. The last revision request that was approved in July 2020 was to; (1) implement updates to the web-based system to improve performance, functionality, and accessibility, (2) add new data elements to the system, and (3) make minimal revisions to the NVDRS coding manual.

This revision request is for several changes to the system; (1) Implementation of updates to the web-based system to improve performance, functionality, and accessibility, (2) Adding thirteen new data elements to the web-based system (housing instability, history of non-suicidal self injury/self harm, household known to local authorities, caregiver use of corporal punishment contributed to child death, children present and/or witnessed fatal incident, prior child protective services report on child victim's household, substance abuse in child victim's household, caregiver burden, history of traumatic brain injury, family stressor, life transition/loss of independent living, non-adherence to mental health/substance abuse treatment, and disaster exposure (revisions to existing variable), (3) Adding the School Associated Violent Death (SAVD) module (only applicable to school-related incidents meeting certain inclusion criteria) to NVDRS Software 2.2 in order to capture such incidents. To address duplication, SAVD will be phased out and the SAVD module in NVDRS will capture in depth information about such incidents. This change was made as NVDRS has almost achieved full nationwide coverage, (4) Adding new variables that have been incorporated into NVDRS 2.3 software, anticipated to be rolled out in July/August 2021 (victim known to local authorities, no substance(s) given as cause of death (on toxicology tab), and type of physical health problem, and (5) Adding the Public Safety Officer Suicide Reporting module, in January 2022, to capture more detailed information on suicides among public safety officers.

A software update, version 2.3, is in testing and scheduled for release early in August 2021 that includes; (1) capability to transfer cases from one state to another (to assist collaboration on border-crossing incidents), (2) generation of custom data export files on demand, and (3) very slight modifications to School-Associated Violent Death (SAVD) data elements based on feedback since launch of that module. The new variables described in the updates above were needed in response to feedback from VDRS abstractors and discussions among NVDRS scientific and Information Technology staff about how to better capture this information.

CDC requests approval for an estimated 41,827 annual burden hours. The estimated change in burden from the last OMB submission is 4,027 hours. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
Public Agencies	Web-based Data Entry	56	1,350	30/60	37,800
	School Associated Violent Death Module.	45	1	30/60	23
	Public Safety Officer Suicide Reporting Module.	56	429	10/60	4,004
Total					41,827

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2021–16821 Filed 8–5–21; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–21–21GY; Docket No. CDC–2021–0079]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled ''Performance Monitoring of CDC's Comprehensive Suicide Prevention Program''. The proposed collection will allow award recipients to report progress and activity information to CDC on an annual schedule using a web-based Partners' Portal.

DATES: CDC must receive written comments on or before October 5, 2021.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2021–0079 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov.*

Please note: *Submit all comments through the Federal eRulemaking portal (regulations.gov) or by U.S. mail to the address listed above.*

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

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. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected;
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses; and
5. Assess information collection costs.

Proposed Project

Performance Monitoring of CDC's Comprehensive Suicide Prevention Program—New—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention (CDC) seeks OMB approval to collect information from recipients funded under the Comprehensive Suicide Prevention Program cooperative agreement (CE20–2001), hereafter known as CSP. OMB approval is requested for three years of the five-year funding period. The electronic collection of information for program and performance monitoring aligns with three of CDC's Data Modernization Initiative Key Objectives to:

- Develop and implement cloud-based approaches for automating data collection and supporting multi-directional data flows among STLT partners and CDC.
- Reduce burden for data providers and public health agencies.
- Ensure systems and services are scalable, interoperable, and adaptable to meet evolving needs.

Recipients will report progress and activity information to CDC on an annual schedule using a web-based Partners' Portal. The Partners' Portal allows recipients to fulfill their annual reporting obligations efficiently by

employing user-friendly, easily accessible web-based instruments to collect necessary information for both progress reports and continuation applications including work plans. This approach enables recipients to save pertinent information from one reporting period to the next and reduces the administrative burden on the annual continuation application and the performance monitoring process. Awardee program staff can review the completeness of data needed to generate required reports, enter basic summary data for reports annually, and finalize and save required reports for upload into other reporting systems as required.

Information to be collected will provide crucial data for program performance monitoring and provide CDC with the capacity to respond in a timely manner to requests for information about the program from the Department of Health and Human Services (HHS), the White House, Congress, and other sources. Information to be collected will also strengthen CDC's ability to monitor awardee progress, provide data-driven technical assistance, and disseminate the most current surveillance data on suicide and suicide attempts. CDC requests approval for an estimated 132 annual burden hours. There is no cost to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
CSP Program Recipients	Annual Progress Report	11	1	12	132
Total					132

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2021–16824 Filed 8–5–21; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Temporary Halt in Residential Evictions in Communities With Substantial or High Transmission of COVID–19 To Prevent the Further Spread of COVID–19

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Agency Order.

SUMMARY: The Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS) announces a new Order under Section 361 of the Public Health Service Act to temporarily halt residential evictions in communities with substantial or high transmission of COVID–19 to prevent the further spread of COVID–19.

DATES: This Order is effective August 3, 2021 through October 3, 2021.

FOR FURTHER INFORMATION CONTACT: Tiffany Brown, Deputy Chief of Staff, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–10, Atlanta, GA 30329. Phone: 404–639–7000. Email: *cdcregulations@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Background

On September 4, 2020, the CDC Director issued an Order temporarily halting evictions in the United States for the reasons described therein. That Order was set to expire on December 31, 2020, subject to further extension, modification, or rescission. Section 502 of Title V, Division N of the Consolidated Appropriations Act, 2021 extended the Order until January 31, 2021, and approved the Order as an exercise of the CDC's authority under Section 361 of the Public Health Service Act (42 U.S.C. 264). With the extension of the Order, Congress also provided $25 billion for emergency rental assistance for the payment of rent and rental arrears. Congress later provided an additional $21.55 billion in emergency rental assistance when it passed the American Rescue Plan. The Order was extended multiple times due to the changing public health landscape and expired on July 31, 2021 after what was intended to be the final extension.[1] Absent an unexpected change in the trajectory of the pandemic, CDC did not plan to extend the Order further.

Following the recent surge in cases brought forth by the highly transmissible Delta variant, the CDC Director now issues a new Order temporarily halting evictions for persons in counties or U.S. territories experiencing substantial or high rates of transmission, for the reasons described herein. It is more limited in scope than prior orders, intended to target specific areas of the country where cases are rapidly increasing, which likely would be exacerbated by mass evictions.

Accordingly, subject to the limitations listed in the new Order, a landlord, owner of a residential property, or[2] person with a legal right to pursue eviction or possessory action, shall not evict any covered person from any residential property in any county or U.S. territory while the county or territory is experiencing substantial or high levels of community transmission levels of SARS–CoV–2. This Order will expire on October 3, 2021, but is subject to further extension, modification, or rescission based on public health circumstances.[3]

A copy of the Order is provided below. A copy of the signed Order and Declaration form can be found at *https://www.cdc.gov/coronavirus/2019-ncov/covid-eviction-declaration.html.*

[1] The CDC Director renewed the Order until March 31, 2021. On March 28, 2021, the CDC Director modified and extended the Order until June 30, 2021. On June 24, 2021 the CDC Director extended the Order until July 31, 2021.

[2] For purposes of this Order, ''person'' includes corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals.

[3] To the extent any provision of this Order conflicts with prior Orders, this Order is controlling, as this is a new order.

Centers for Disease Control and Prevention, Department of Health and Human Services

Order Under Section 361 of the Public Health Service Act (42 U.S.C. 264) and 42 Code of Federal Regulations 70.2

Temporary Halt in Residential Evictions in Communities With Substantial or High Levels of Community Transmission of COVID–19 To Prevent the Further Spread of COVID–19

Summary

The U.S. Centers for Disease and Control (CDC) is issuing a new order temporarily halting evictions in counties with heightened levels of community transmission in order to respond to recent, unexpected developments in the trajectory of the COVID–19 pandemic, including the rise of the Delta variant. It is intended to target specific areas of the country where cases are rapidly increasing, which likely would be exacerbated by mass evictions. Accordingly, subject to the limitations under ''Applicability,'' a landlord, owner of a residential property, or other person [4] with a legal right to pursue eviction or possessory action, shall not evict any covered person from any residential property in any county or U.S. territory while the county or territory is experiencing substantial or high levels of community transmission of SARS–CoV–2.

Definitions

''*Available government assistance*'' means any governmental rental or housing payment benefits available to the individual or any household member.

''*Available housing*'' means any available, unoccupied residential property, or other space for occupancy in any seasonal or temporary housing, that would not violate federal, state, or local occupancy standards and that would not result in an overall increase of housing cost to such individual.

''*Covered person*'' [5] means any tenant, lessee, or resident of a residential property who provides to their landlord, the owner of the residential property, or other person with a legal right to pursue eviction or a possessory action,[6] a declaration [7] under penalty of perjury indicating that:

(1) The individual has used best efforts to obtain all available governmental assistance for rent or housing;

(2) The individual either (i) earned no more than $99,000 (or $198,000 if filing jointly) in Calendar Year 2020 or expects to earn no more than $99,000 in annual income for Calendar Year 2021 (or no more than $198,000 if filing a joint tax return),[8] (ii) was not required to report any income in 2020 to the U.S. Internal Revenue Service, or (iii) received an Economic Impact Payment (stimulus check).[9] [10]

(3) The individual is unable to pay the full rent or make a full housing payment due to substantial loss of household income, loss of compensable hours of work or wages, a lay-off, or extraordinary [11] out-of-pocket medical expenses;

(4) The individual is using best efforts to make timely partial rent payments that are as close to the full rent payment as the individual's circumstances may permit, taking into account other nondiscretionary expenses;

(5) Eviction would likely render the individual homeless—or force the individual to move into and reside in close quarters in a new congregate or shared living setting—because the individual has no other available housing options; and

(6) The individual resides in a U.S. county experiencing substantial [12] or high [13] rates of community transmission levels of SARS–CoV–2 as defined by CDC.

''*Evict*'' and ''*Eviction*'' means any action by a landlord, owner of a residential property, or other person with a legal right to pursue eviction or possessory action, to remove or cause the removal of a covered person from a

[4] For purposes of this Order, ''person'' includes corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals.

[5] This definition is based on factors that are known to contribute to evictions and thus increase the need for individuals to move into close quarters in new congregate or shared living arrangements or experience homelessness. Individuals who suffer job loss, have limited financial resources, are low income, or have high out-of-pocket medical expenses are more likely to be evicted for nonpayment of rent than others not experiencing these factors. See Desmond, M., Gershenson, C., Who gets evicted? Assessing individual, neighborhood, and network factors, *Soc Sci Res.* 2017;62:362–377. doi:10.1016/j.ssresearch.2016.08.017, (identifying job loss as a possible predictor of eviction because renters who lose their jobs experience not only a sudden loss of income but also the loss of predictable future income). According to one survey, over one quarter (26%) of respondents also identified job loss as the primary cause of homelessness. See *2019 San Francisco Homeless Count & Survey Comprehensive Report,* Applied Survey Research, at 22, *https://hsh.sfgov.org/wp-content/uploads/2020/01/2019HIRDReport_SanFrancisco_FinalDraft-1.pdf.* (last viewed Mar. 24, 2021).

[6] As used throughout this Order, this would include, without limitation, an agent or attorney acting on behalf of the landlord or the owner of the residential property.

[7] A person who previously filed a declaration under prior CDC eviction moratoria issued on September 4, 2020, January 29, 2021, March 28, 2021, or June 24, 2021 may be eligible for protection under this Order and does not need to file a new declaration, if they live in a county experiencing substantial or high rates of transmission of community levels of SARS–CoV–2 and meet the definition of a covered person under this Order.

[8] According to one study, the national two-bedroom housing wage in 2020 was $23.96 per hour (approximately, $49,837 annually), meaning that an hourly wage of $23.96 was needed to afford a modest two-bedroom house without spending more than 30% of one's income on rent. The hourly wage needed in Hawaii (the highest cost U.S. State for rent) was $38.76 (approximately $80,621 annually). See *Out of Reach: How Much do you Need to Earn to Afford a Modest Apartment in Your State?,* National Low Income Housing Coalition, *https://reports.nlihc.org/oor* (last visited Mar. 23, 2021). As further explained herein, because this Order is intended to serve the critical public health goal of preventing evicted individuals from potentially contributing to the interstate spread of COVID–19 through movement into close quarters in new congregate, shared housing settings, or through homelessness, the higher income thresholds listed here have been determined to better serve this goal.

[9] ''Stimulus check'' includes payments made pursuant to Section 2201 of the CARES Act, to Section 9601 of the American Rescue Plan Act of 2021, or to any similar federally authorized payments made to individual natural persons in 2020 and 2021. Eligibility for the 2020 or 2021 stimulus checks has been based on an income that is equal to or lower than the income thresholds described above and does not change or expand who is a covered person under this Order since it was entered into on September 4, 2020.

[10] A person is likely to qualify for protection under this Order if they receive the following benefits: (a) Temporary Assistance for Needy Families (TANF); (b) Supplemental Nutrition Assistance Program (SNAP); (c) Supplemental Security Income (SSI); or (d) Social Security Disability Insurance (SSDI) to the extent that income limits for these programs are less than or equal to the income limits for this Order. However, it is the individual's responsibility to verify that their income is within the income limits described.

[11] Extraordinary expenses are defined as those that prevented you from paying some or all of your rent or providing for other basic necessities like food security. To qualify as an extraordinary medical expense, the unreimbursed medical expense is one that is likely to exceed 7.5% of one's adjusted gross income for the year.

[12] Counties experiencing substantial transmission levels are experiencing (1) 50.99–99.99 new cases in the county in the past 7 days divided by the population in the county multiplied by 100,000; and (2) 8.00–9.99% positive nucleic acid amplification tests in the past 7 days (number of positive tests in the county during the past 7 days divided by the total number of tests performed in the county during the past 7 days). Christie A, Brooks JT, Hicks LA, et al. Guidance for Implementing COVID–19 Prevention Strategies in the Context of Varying Community Transmission Levels and Vaccination Coverage. MMWR Morb Mortal Wkly Rep 2021;70:1044–1047. DOI: *http://dx.doi.org/10.15585/mmwr.mm7030e2.* See COVID–19 Integrated County View, Centers for Disease Control and Prevention; *https://covid.cdc.gov/covid-data-tracker/#county-view* (last updated August 1, 2021).

[13] *Id.* (defining high transmission levels as (1) ≥100 new cases in the county in the past 7 days divided by the population in the county multiplied by 100,000; and (2) ≥10.00% positive nucleic acid amplification tests in the past 7 days (number of positive tests in the county during the past 7 days divided by the total number of tests performed in the county during the past 7 days)).

residential property. This definition also does not prohibit foreclosure on a home mortgage.

''*Residential property*'' means any property leased for residential purposes, including any house, building, mobile home or land in a mobile home park,[14] or similar dwelling leased for residential purposes, but shall not include any hotel, motel, or other guest house rented to a temporary guest or seasonal tenant as defined under the laws of the state, territorial, tribal, or local jurisdiction.

''*State*'' shall have the same definition as under 42 CFR 70.1, meaning ''any of the 50 states, plus the District of Columbia.''

''*U.S. territory*'' shall have the same definition as under 42 CFR 70.1, meaning ''any territory (also known as possessions) of the United States, including American Samoa, Guam, the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands.''

Statement of Intent

This Order shall be interpreted and implemented in a manner as to achieve the following objectives:

- Mitigating the spread of COVID–19 within crowded, congregate or shared living settings, or through unsheltered homelessness;
- Mitigating the further spread of COVID–19 from one state or territory into any other state or territory;
- Mitigating the further spread of COVID–19 by temporarily suspending the eviction of covered persons from residential property for nonpayment of rent; and
- Supporting response efforts to COVID–19 at the federal, state, local, territorial, and tribal levels.

Background

COVID–19 in the United States

Since January 2020, the respiratory disease known as ''COVID–19,'' caused by a novel coronavirus (SARS–COV–2), has spread globally, including cases reported in all fifty states within the United States, plus the District of Columbia and U.S. territories. As of August 3, 2021, there have been almost 200 million cases of COVID–19 globally, resulting in over 4,240,000 deaths.[15] Almost 35,000,000 cases have been identified in the United States, with new cases reported daily, and almost 610,000 deaths have been attributed to the disease.[16] A renewed surge in cases in the United States began in early July 2021; case counts rose from 19,000 cases on July 1, 2021 to 103,000 cases on July 30, 2021. Forecasted case counts predict that cases will continue to rise over the next four weeks.[17]

The virus that causes COVID–19 spreads very easily and sustainably between people, particularly those who are in close contact with one another (within about 6 feet, but occasionally over longer distances), mainly through respiratory droplets produced when an infected person coughs, sneezes, or talks. Individuals without symptoms can also spread the virus.[18] Among adults, the risk for severe illness from COVID–19 increases with age, with older adults at highest risk. Severe illness means that persons with COVID–19 may require hospitalization, intensive care, or a ventilator to help them breathe, and may be fatal. People of any age with certain underlying medical conditions (*e.g.,* cancer, obesity, serious heart conditions, or diabetes) are at increased risk for severe illness from COVID–19.[19]

New variants of SARS–CoV–2 have emerged globally,[20] several of which have been identified as variants of concern,[21] including the Alpha, Beta, Gamma, and Delta variants. These variants of concern have evidence of an increase in transmissibility, which may lead to higher incidence.[22]

Currently, the Delta variant is the predominant SARS–CoV–2 strain circulating in the United States, estimated to account for over 82% of cases as of July 17, 2021.[23] The Delta variant has demonstrated increased levels of transmissibility compared to other variants.[24] Furthermore, early evidence suggests that people who are vaccinated and become infected with the Delta variant may transmit the virus to others.[25]

Transmission of the Delta variant has led to accelerated community transmission in the United States. CDC recommends assessing the level of community transmission using, at a minimum, two metrics: new COVID–19 cases per 100,000 persons in the last 7 days and percentage of positive SARS–CoV–2 diagnostic nucleic acid amplification tests in the last 7 days. For each of these metrics, CDC classifies transmission values as low, moderate, substantial, or high. As of August 1, 2021, over 80% of the U.S. counties were classified as experiencing substantial or high levels of community transmission.[26] In areas of substantial or high transmission, CDC recommends community leaders encourage vaccination and universal masking in indoor public spaces in addition to other layered prevention strategies to prevent further spread.

COVID–19 vaccines are now widely available in the United States, and vaccination is recommended for all people 12 years of age and older. Three COVID–19 vaccines are currently authorized by the U.S. Food and Drug Administration (FDA) for emergency use: Two mRNA vaccines and one viral vector vaccine, each of which has been determined to be safe and effective against COVID–19. As of July 28, 2021, over 163 million people in the United States (57.6% of the population 12 years or older) have been fully vaccinated and

[14] Mobile home parks may also be referred to as manufactured housing communities.

[15] *COVID–19 Dashboard by the Center for Systems Science and Engineering (CSSE) at Johns Hopkins University (JHU),* Johns Hopkins Coronavirus Resource Center, *https://coronavirus.jhu.edu/map.html* (last updated August 3, 2021).

[16] *COVID Data Tracker,* Centers for Disease Control and Prevention, *https://covid.cdc.gov/covid-data-tracker/#datatracker-home* (last updated August 1, 2021).

[17] United States Forecasting, Centers for Disease Control and Prevention, *https://covid.cdc.gov/covid-data-tracker/#forecasting_weeklycases* (updated July 28, 2021) (citing data an estimated 608,569 weekly COVID–19 cases by early September 2021).

[18] Kimball A., Hatfield K.M., Arons M., et al. Asymptomatic and Presymptomatic SARS–CoV–2 Infections in Residents of a Long-Term Care Skilled Nursing Facility—King County, Washington, March 2020. MMWR Morb Mortal Wkly Rep 2020;69:377–381. DOI: *http://dx.doi.org/10.15585/mmwr.mm6913e1.*

[19] Razzaghi H., Wang Y., Lu H., et al. Estimated County-Level Prevalence of Selected Underlying Medical Conditions Associated with Increased Risk for Severe COVID–19 Illness—United States, 2018. MMWR Morb Mortal Wkly Rep 2020;69:945–950. DOI: *http://dx.doi.org/10.15585/mmwr.mm6929a1.*

[20] Abdool Karim S.S., de Oliveira T. New SARS–CoV–2 Variants—Clinical, Public Health, and Vaccine Implications [published online ahead of print, 2021 Mar 24]. *N Engl J Med.* 2021;10.1056/NEJMc2100362. doi:10.1056/NEJMc2100362.

[21] *Id.*

[22] Dougherty K., Mannell M., Naqvi O., Matson D., Stone J. SARS–CoV–2 B.1.617.2 (Delta) Variant COVID–19 Outbreak Associated with a Gymnastics Facility—Oklahoma, April–May 2021. MMWR Morb Mortal Wkly Rep 2021;70:1004–1007. DOI: *http://dx.doi.org/10.15585/mmwr.mm7028e2* (describing a B.1.617.2 (Delta) Variant COVID–19 outbreak associated with a gymnastics facility and finding that the Delta variant is highly transmissible in indoor sports settings and households, which might lead to increased incidence rates).

[23] *Variant Proportions,* Centers for Disease Control and Prevention, *https://covid.cdc.gov/covid-data-tracker/#variant-proportions* (citing data for the two-week interval ending July 17, 2021).

[24] *About Variants of the Virus that Causes COVID–19,* Centers for Disease Control and Prevention, *https://www.cdc.gov/coronavirus/2019-ncov/variants/variant.html* (last updated June 28, 2021).

[25] Riemersma et al. Vaccinated and unvaccinated individuals have similar viral loads in communities with a high prevalence of the SARS–CoV–2 Delta variant. Pre-print. Available at *https://www.medrxiv.org/content/10.1101/2021.07.31.21261387v1.*

[26] *COVID–19 Integrated County View,* Centers for Disease Control and Prevention, *https://covid.cdc.gov/covid-data-tracker/#county-view* (last updated July 28, 2021).

over 189 million people in the United States (66.8% of the population 12 years or older) have received at least one dose.[27] Changes in vaccine uptake and the extreme transmissibility of the Delta variant have resulted in rising numbers of COVID–19 cases, primarily and disproportionately affecting the unvaccinated population.

The COVID–19 vaccination effort has a slower rate of penetration among the populations most likely to experience eviction.[28] [29] In combination with the continued underlying COVID–19 spread, and the overlapping factors described above, this creates considerable risk for rapid transmission of COVID–19 in high-risk settings.

In the context of a pandemic, eviction moratoria—like quarantine, isolation, and social distancing—can be an effective public health measure utilized to prevent the spread of communicable disease. Eviction moratoria facilitate self-isolation and self-quarantine by people who become ill or who are at risk of transmitting COVID–19.

Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act (Pub. L. 116–136) to aid individuals and businesses adversely affected by COVID–19 in March 2020. Section 4024 of the CARES Act provided a 120-day moratorium on eviction filings as well as other protections for tenants in certain rental properties with federal assistance or federally related mortgage financing. These protections helped alleviate the public health consequences of tenant displacement during the COVID–19 pandemic. The CARES Act eviction moratorium expired on July 24, 2020. The protections in the CARES Act supplemented temporary eviction moratoria and rent freezes implemented by governors and other local officials using emergency powers.

Researchers estimated that this temporary federal moratorium provided relief to over one-quarter a material portion of the nation's roughly 43 million renters.[30] The CARES act also provided funding streams for emergency rental assistance; surveys estimate that this assistance became available to the public through rental assistance programs by July 2020.[31]

The Federal moratorium provided by the CARES Act, however, did not reach all renters. Many renters who fell outside the scope of the Federal moratorium were instead protected under state and local moratoria. In early March 2021, the Census Household Pulse Survey estimated that 6.4 million households were behind on rent and just under half fear imminent eviction.[32] In 2016, research showed that there were 3.6 million eviction filings and 1.5 million eviction judgments over the span of a whole year,[33] meaning that the pandemic would cause a wave of evictions on a scale that would be unprecedented in modern times. A large portion of those who are evicted may move into close quarters in shared housing or, as discussed below, become homeless, thus becoming at higher risk of COVID–19.

On September 4, 2020, the CDC Director issued an Order temporarily halting evictions in the United States for the reasons described therein. That Order was set to expire on December 31, 2020, subject to further extension, modification, or rescission. Section 502 of Title V, Division N of the Consolidated Appropriations Act, 2021 extended the Order until January 31, 2021, and approved the Order as an exercise of the CDC's authority under Section 361 of the Public Health Service Act (42 U.S.C. 264). With the extension of the Order, Congress also provided $25 billion for emergency rental assistance for the payment of rent and rental arrears. Congress later provided an additional $21.55 billion in emergency rental assistance when it passed the American Rescue Plan Act of 2021. The Order was extended multiple times due to the changing public health landscape and expired on July 31, 2021 after what was intended to be the final extension.[34] Absent an unexpected change in the trajectory of the pandemic, CDC did not plan to extend the Order further.

Following the recent surge in cases brought forth by the highly transmissible Delta variant, the CDC Director now issues a new Order temporarily halting evictions for persons in counties experiencing substantial or high rates of transmission, for the reasons described herein. This Order will expire on October 3, 2021, but is subject to further extension, modification, or rescission based on public health circumstances.

Researchers estimate that, in 2020, Federal, state, and local eviction moratoria led to over 1.5 million fewer evictions filings than the previous year.[35] Additional research shows that, despite the CDC eviction moratorium leading to an estimated 50% decrease in eviction filings compared to the historical average,[36] there have still been over 450,000 eviction filings during the pandemic just within approximately 31 cities and six states with more readily available data. This data covers approximately 1 in 4 renter households in the country, suggesting high demand and likelihood of mass evictions nationwide.[37]

Eviction, Crowding, and Interstate Transmission of COVID–19

By February 10, 2021, the U.S. Department of the Treasury had paid all of the $25 billion made available by the Consolidated Appropriations Act, 2021 to states, territories, localities and tribes for the purpose of providing emergency rental assistance to eligible households in their jurisdictions. Additionally, as directed in the Act, Treasury has also made available 40 percent—more than $8.6 billion—of the additional funding to states, territories and localities for emergency rental assistance provided in the American Rescue Plan Act of 2021. While some emergency rental assistance programs were slow to open, every State program had opened by early June. Based on data collected from grantees, Treasury reports that over 85,000 renter households received rental and utility

[27] *COVID–19 Vaccinations in the United States,* Centers for Disease Control and Prevention, *https://covid.cdc.gov/covid-data-tracker/#vaccinations* (last updated July 28, 2021).

[28] Barry V., Dasgupta S., Weller D.L., et al. Patterns in COVID–19 Vaccination Coverage, by Social Vulnerability and Urbanicity—United States, December 14, 2020–May 1, 2021. MMWR Morb Mortal Wkly Rep 2021;70:818–824. DOI: *http://dx.doi.org/10.15585/mmwr.mm7022e1.*

[29] Centers for Disease Control and Prevention. COVID–19 Vaccination Equity. Accessed 8/3/21. Available at: *https://covid.cdc.gov/covid-data-tracker/#vaccination-equity.*

[30] Laurie Goodman, Karan Kaul, and Michael Neal. *The CARES Act Eviction Moratorium Covers All Federally Financed Rentals—That's One in Four US Rental Units.* The Urban Institute. April 2, 2020. *https://www.urban.org/urban-wire/cares-act-eviction-moratorium-covers-all-federally-financed-rentals-thats-one-four-us-rental-units.*

[31] Vincent Reina et al, *COVID–19 Emergency Rental Assistance: Analysis of a National Survey of Programs,* Research Brief, *https://nlihc.org/sites/default/files/HIP_NLIHC_Furman_Brief_FINAL.pdf* (last visited Mar. 26, 2021).

[32] *Census Household Pulse Survey: Key Phase 3 Housing Payment Findings.* Office of Policy Development and Research, HUDUser (April 26, 2021). *https://www.huduser.gov/portal/pdredge/pdr-edge-trending-042621.html.*

[33] Ashley Gromis. *Eviction: Intersection of Poverty, Inequality, and Housing.* Eviction Lab, Princeton University (May 2019). *https://www.un.org/development/desa/dspd/wp-content/uploads/sites/22/2019/05/GROMIS_Ashley_Paper.pdf.*

[34] The CDC Director renewed the Order until March 31, 2021. On March 28, 2021, the CDC Director modified and extended the Order until June 30, 2021. On June 24, 2021 the CDC Director extended the Order until July 31, 2021.

[35] Hepburn P., Louis R., Fish J., et al. U.S. Eviction Filing Patterns in 2020. Socius. January 2021. doi:10.1177/23780231211009983.

[36] Peter Hepburn and Renee Louis. *Preliminary Analysis: Six Months of the CDC Eviction Moratorium* (March 8, 2021). *https://evictionlab.org/six-months-cdc/.*

[37] Eviction Lab. Accessed 8/2/21. Available at: *https://evictionlab.org/eviction-tracking/.*

assistance to support their housing stability by the end of March and this number increased to more than 100,000 in April, more than 156,000 in May and over 290,000 in June. Though emergency rental assistance has clearly started to reach increasing numbers of families over recent months, state and local agencies have hundreds of thousands of applications for assistance that currently remain outstanding as programs accelerate their activity. The level of assistance continued to increase in June, with nearly 300,000 households served. Based on analysis of grantee reporting, Treasury believes that the monthly deployment of rental assistance by state and local emergency rental assistance programs will continue to increase from the significant deployment in June. In addition to Emergency Rental Assistance, there are coordinated efforts across Federal agencies to—in partnership with states and localities—promote eviction prevention strategies.

Recent data from the U.S. Census Household Pulse Survey demonstrates that just under half of households behind on rent believe that an eviction is likely in the next two months.[38] A surge in evictions could lead to the immediate and significant movement of large numbers of persons from lower density to higher density housing at a time in the United States when the highly transmissible Delta variant is driving COVID–19 cases at an unprecedented rate.

Evicted renters must move, which leads to multiple outcomes that increase the risk of COVID–19 spread. Specifically, many evicted renters move into close quarters in shared housing or other congregate settings. These moves may require crossing state borders. According to the 2017 Census Bureau American Housing Survey, 32% of renters reported that they would move in with friends or family members upon eviction, which would introduce new household members and potentially increase household crowding. Studies show that COVID–19 transmission occurs readily within households. The secondary attack rate in households has been estimated to be 17%, and household contacts are estimated to be 6 times more likely to become infected by an index case of COVID–19 than other close contacts.[39] A study of pregnant women in New York City showed that women in large households (greater number of residents per household) were three times as likely to test positive for SARS–CoV–2 than those in smaller households, and those in neighborhoods with greater household crowding (>1 resident per room) were twice as likely to test positive.[40] Throughout the United States, counties with the highest proportion of crowded households have experienced COVID–19 mortality rates 2.6 times those of counties with the lowest proportion of crowded households.

Shared housing is not limited to friends and family. It includes a broad range of settings, including transitional housing and domestic violence and abuse shelters. Special considerations exist for such housing because of the challenges of maintaining social distance. Residents often gather closely or use shared equipment, such as kitchen appliances, laundry facilities, stairwells, and elevators. Residents may have unique needs, such as disabilities, chronic health conditions, cognitive decline, or limited access to technology, and thus may find it more difficult to take actions to protect themselves from COVID–19. CDC recommends that shelters provide new residents with a clean mask, keep them isolated from others, screen for symptoms at entry, or arrange for medical evaluations as needed depending on symptoms. Accordingly, an influx of new residents at facilities that offer support services could potentially overwhelm staff and, if recommendations are not followed, lead to exposures.

Modeling studies and observational data from the pre-vaccine phase of the COVID–19 pandemic comparing incidence between states that implemented and lifted eviction moratoria indicate that evictions substantially contribute to COVID–19 transmission. In mathematical models where eviction led exclusively to sharing housing with friends or family, lifting eviction moratoria led to a 30% increased risk of contracting COVID–19 among people who were evicted and those with whom they shared housing after eviction.[41] Compared to a scenario where no evictions occurred, the models also predicted a 4%–40% increased risk of infection, even for those who did not share housing, as a result of increased overall transmission. The authors estimated that anywhere from 1,000 to 100,000 excess cases per million population could be attributable to evictions depending on the eviction and infection rates.

An analysis of observational data from state-based eviction moratoria in 43 states and the District of Columbia showed significant increases in COVID–19 incidence and mortality approximately 2–3 months after eviction moratoria were lifted.[42] Specifically, the authors compared the COVID–19 incidence and mortality rates in states that lifted their moratoria with the rates in states that maintained their moratoria. In these models, the authors accounted for time-varying indicators of each state's test count as well as major public-health interventions including lifting stay-at-home orders, school closures, and mask mandates. After adjusting for these other changes, they found that the incidence of COVID–19 in states that lifted their moratoria was 1.6 times that of states that did not at 10 weeks post-lifting (95% CI 1.0, 2.3), a ratio that grew to 2.1 at ≥16 weeks (CI 1.1, 3.9). Similarly, they found that mortality in states that lifted their moratoria was 1.6 times that of states that did not at 7 weeks post-lifting (CI 1.2, 2.3), a ratio that grew to 5.4 at ≥16 weeks (CI 3.1, 9.3). The authors estimated that, nationally, over 433,000 cases of COVID–19 and over 10,000 deaths could be attributed to lifting state moratoria.[43]

Although data are limited, available evidence suggests evictions lead to interstate spread of COVID–19 in two ways. First, an eviction may lead the evicted members of a household to move across state lines. Of the 35 million people in America who move each year, 15% move to a new state. Second, even if a particular eviction, standing alone, would not always result in interstate displacement, the mass

[38] Household Pulse Survey Interactive Tool. U.S. Census Bureau. *https://www.census.gov/data-tools/demo/hhp/#/* (last visited June 23, 2021).

[39] Qin-Long Jing, et al. Household secondary attack rate of COVID–19 and associated determinants in Guangzhou, China: a retrospective cohort study. The Lancet. 2020 June 17; vol. 20.10; doi: *https://doi.org/10.1016/S1473-3099(20)30471-0.*

[40] Ukachi N. Emeruwa, et al. Associations Between Built Environment, Neighborhood Socioeconomic Status, and SARS–CoV–2 Infection Among Pregnant Women in New York City. JAMA. 2020;324(4):390–392. doi:10.1001/jama.2020.11370.

[41] Nande A, Sheen J, Walters EL, Klein B, Chinazzi M, Gheorghe AH, Adlam B, Shinnick J, Tejeda MF, Scarpino SV, Vespignani A, Greenlee AJ, Schneider D, Levy MZ, Hill AL. The effect of eviction moratoria on the transmission of SARS–CoV–2. Nat Commun. 2021 Apr 15;12(1):2274. doi: 10.1038/s41467–021–22521–5. PMID: 33859196; PMCID: PMC8050248.

[42] Leifheit KM, Linton SL, Raifman J, Schwartz GL, Benfer EA, Zimmerman FJ, Pollack CE. Expiring Eviction Moratoriums and COVID–19 Incidence and Mortality. Am J Epidemiol. 2021 Jul 26:kwab196. doi: 10.1093/aje/kwab196. Epub ahead of print. PMID: 34309643.

[43] Leifheit, Kathryn M. and Linton, Sabriya L. and Raifman, Julia and Schwartz, Gabriel and Benfer, Emily and Zimmerman, Frederick J and Pollack, Craig, Expiring Eviction Moratoriums and COVID–19 Incidence and Mortality (November 30, 2020). Available at SSRN: *https://ssrn.com/abstract=3739576* or *http://dx.doi.org/10.2139/ssrn.3739576.*

evictions that would occur in the absence of this Order would inevitably increase the interstate spread of COVID–19. This Order cannot effectively mitigate interstate transmission of COVID–19 without covering intrastate evictions (evictions occurring within the boundaries of a state or territory), as the level of spread of SARS–CoV–2 resulting from these evictions can lead to SARS–CoV–2 transmission across state borders.

Moreover, intrastate spread facilitates interstate spread in the context of communicable disease spread, given the nature of infectious disease. In the aggregate, the mass-scale evictions that will likely occur in the absence of this Order in areas of substantial or high transmission will inevitably increase interstate spread of COVID–19.

Eviction, Homelessness, and COVID–19 Transmission

Evicted individuals without access to support or other assistance options may become homeless, including older adults or those with underlying medical conditions, who are more at risk for severe illness from COVID–19 than the general population. In Seattle-King County, 5–15% of people experiencing homelessness between 2018 and 2020 cited eviction as the primary reason for becoming homeless.[44] Additionally, some individuals and families who are evicted may originally stay with family or friends, but subsequently seek homeless services. Data collection by an emergency shelter in Columbus, Ohio, showed that 35.4% of families and 11.4% of single adults reported an eviction as the primary or secondary reason for their seeking shelter.[45]

Extensive outbreaks of COVID–19 have been identified in homeless shelters. In Seattle, Washington, a network of three related homeless shelters experienced an outbreak that led to 43 cases among residents and staff members. In Boston, Massachusetts, universal COVID–19 testing at a single shelter revealed 147 cases, representing 36% of shelter residents. COVID–19 testing in a single shelter in San Francisco led to the identification of 101 cases (67% of those tested). Data from 634 universal diagnostic testing events at homeless shelters in 21 states show an average of 6% positivity among shelter clients. Data comparing the incidence or severity of COVID–19 among people experiencing homelessness directly to the general population are limited. However, during the 15-day period of the outbreak in Boston, MA, researchers estimated a cumulative incidence of 46.3 cases of COVID–19 per 1000 persons experiencing homelessness, as compared to 1.9 cases per 1000 among Massachusetts adults (pre-print).

Among other things, CDC guidance recommends increasing physical distance between beds in homeless shelters, which is likely to decrease capacity, while community transmission of COVID–19 is occurring. To adhere to this guidance, shelters have limited the number of people served throughout the United States. In many places, considerably fewer beds are available to individuals who become homeless. Shelters that do not adhere to the guidance, and operate at ordinary or increased occupancy, are at greater risk for the types of outbreaks described above.

Application of COVID–19 Prevention Strategies Based on Community Transmission

CDC recommends strengthening or adding effective COVID–19 mitigation strategies in communities with considerable transmission risk. As discussed above, CDC guidance specifies that everyone, regardless of vaccination status, should wear masks in indoor and public settings in communities experiencing substantial or high rates of community transmission. Similarly, CDC guidance for homeless shelters recommends maintaining layered COVID–19 precautions as long as community transmission is occurring and provides options for scaling back precautions when community transmission is low.[46]

Eviction moratoria represent a COVID–19 transmission prevention measure that can similarly be applied when the epidemiological context is appropriate, for example in communities with substantial or high transmission of COVID–19.[47] Prevention strategies like these should only be relaxed or lifted after two weeks of continuous sustained improvement in the level of community transmission. In areas with low or no SARS–CoV–2 transmission and with testing capacity in place to detect early introduction or increases in spread of the virus, layered prevention strategies might be removed one at a time while monitoring closely for any evidence that COVID–19 cases are increasing. Decisions to add or remove prevention strategies should be based on local data and public health recommendations. The emergence of more transmissible SARS–CoV–2 variants, including Delta, increases the urgency for public health agencies and other organizations to collaboratively monitor the status of the pandemic in their communities and continue to apply layered prevention strategies.

Persons at Higher Risk of Eviction May Also Be at Higher Risk of Being Unvaccinated

Communities with high rates of eviction have been shown to have lower coverage of COVID–19 vaccination—a focus for current vaccination campaigns. A study in the spring of 2021 showed that counties with high social vulnerability (*i.e.,* social and structural factors associated with adverse health outcome inclusive of socioeconomic indicators related to risk of eviction) had lower levels of COVID–19 vaccination.[48]

CDC Eviction Moratorium

The Department of the Treasury has made funding available to states, territories, localities, and Tribal governments, which continue to distribute emergency rental assistance funds that may help mitigate spikes in COVID–19 transmission due to increases in evictions. Alongside other federal and state efforts to prevent evictions, these funds are expected to make a meaningful difference for hundreds of thousands of people who are expected to receive the rental assistance.[49]

On September 4, 2020, the CDC Director issued an Order temporarily halting evictions in the United States for the reasons described therein. That Order was set to expire on December 31, 2020, subject to further extension, modification, or rescission. Section 502 of Title V, Division N of the

[44] *Count Us In 2020.* KCRHA (July 2020). *https://kcrha.org/wp-content/uploads/2020/07/Count-Us_In-2020-Final_7.29.2020.pdf.*

[45] Chester Hartman and David Robinson. ''Evictions: The Hidden Housing Problem'' in *Housing Policy Debate.* 2003.

[46] Centers for Disease Control and Prevention. Interim Guidance for Homeless Service Providers to Plan and Respond to Coronavirus Disease 2019 (COVID–19). Available at: *https://www.cdc.gov/coronavirus/2019-ncov/community/homeless-shelters/plan-prepare-respond.html.*

[47] Of course, eviction moratoria are only effective to the degree that consumers know about them and to the degree they are complied with by landlords, owners of residential property, others who have a right to evict, or their agents.

[48] Barry V, Dasgupta S, Weller DL, Kriss JL, Cadwell BL, Rose C, Pingali C, Musial T, Sharpe JD, Flores SA, Greenlund KJ, Patel A, Stewart A, Qualters JR, Harris L, Barbour KE, Black CL. Patterns in COVID–19 Vaccination Coverage, by Social Vulnerability and Urbanicity—United States, December 14, 2020–May 1, 2021. MMWR Morb Mortal Wkly Rep. 2021 Jun 4;70(22):818–824. doi: 10.15585/mmwr.mm7022e1. PMID: 34081685; PMCID: PMC8174677.

[49] *Treasury Emergency Rental Assistance Programs in 2021: Analysis of a National Survey.* National Low Income Housing Coalition. June 2021. *https://nlihc.org/sites/default/files/HIP_NLIHC_Furman_2021_6-22_FINAL_v2.pdf.*

Consolidated Appropriations Act, 2021 extended the Order until January 31, 2021. With the extension of the Order, Congress also provided $25 billion for emergency rental assistance for the payment of rent and rental arrears. Congress later provided an additional $21.55 billion in emergency rental assistance when it passed the American Rescue Plan.

On January 29, 2021, following an assessment of the ongoing pandemic, the CDC Director renewed the Order until March 31, 2021. On March 28, the CDC Director renewed the Order until June 30, 2021. On June 24, the CDC Director renewed the Order until July 31, 2021 (July Order). The CDC Director indicated that the July Order would be the final extension of the nationwide eviction moratorium absent an unexpected change in the trajectory of the pandemic. Unfortunately, the rise of the Delta variant and corresponding rise in cases in numerous counties in the United States have altered the trajectory of the pandemic. As a result, CDC is issuing this narrower, more targeted Order to temporarily halt evictions in the hardest hit areas. Without this Order, evictions in these areas would likely exacerbate the increase in cases. To the extent any provision of this Order conflicts with prior Orders, this Order is controlling.

Applicability

This Order applies in U.S. counties [50] experiencing substantial [51] and high [52] levels of community transmission levels of SARS–CoV–2 as defined by CDC, as of August 3, 2021. If a U.S. county that is not covered by this Order as of August 3, 2021 later experiences substantial or high levels of community transmission while this Order is in effect, then that county will become subject to this Order as of the date the county begins experiencing substantial or high levels of community transmission. If a U.S. county that is covered by this Order no longer experiences substantial or high levels of community transmission for 14 consecutive days, then this Order will no longer apply in that county, unless and until the county again experiences substantial or high levels of community transmission while this Order is in effect.

This Order does not apply in any state, local, territorial, or tribal area with a moratorium on residential evictions that provides the same or greater level of public-health protection than the requirements listed in this Order or to the extent its application is prohibited by Federal court order. In accordance with 42 U.S.C. 264(e), this Order does not preclude state, local, territorial, and tribal authorities from imposing additional requirements that provide greater public-health protection and are more restrictive than the requirements in this Order.

This Order is a temporary eviction moratorium to prevent the further spread of COVID–19. This Order does not relieve any individual of any obligation to pay rent, make a housing payment, or comply with any other obligation that the individual may have under a tenancy, lease, or similar contract. Nothing in this Order precludes the charging or collecting of fees, penalties, or interest as a result of the failure to pay rent or other housing payment on a timely basis, under the terms of any applicable contract.

Nothing in this Order precludes evictions based on a tenant, lessee, or resident: (1) Engaging in criminal activity while on the premises; (2) threatening the health or safety of other residents; [53] (3) damaging or posing an immediate and significant risk of damage to property; (4) violating any applicable building code, health ordinance, or similar regulation relating to health and safety; or (5) violating any other contractual obligation, other than the timely payment of rent or similar housing-related payment (including non-payment or late payment of fees, penalties, or interest).

Any evictions for nonpayment of rent initiated prior to issuance of this Order but not yet completed, are subject to this Order. Any tenant, lessee, or resident of a residential property who previously submitted a Declaration, still qualifies as a ''Covered Person'' and is still present in a rental unit is entitled to protections under this Order. Any eviction that was completed before issuance of this Order including from August 1 through August 3, 2021 is not subject to this Order, as it does not operate retroactively.

Under this Order, covered persons may be evicted for engaging in criminal activity while on the premises. But covered persons may not be evicted on the sole basis that they are alleged to have committed the crime of trespass (or similar state-law offense) where the underlying activity is a covered person remaining in a residential property for nonpayment of rent. Permitting such evictions would result in substantially more evictions overall, thus increasing the risk of disease transmission as otherwise covered persons move into congregate settings or experience homelessness. This result would be contrary to the stated objectives of this Order, and therefore would diminish their effectiveness. Moreover, to the extent such criminal trespass laws are invoked to establish criminal activity solely based on a tenant, lessee, or resident of a residential property remaining in a residential property despite the nonpayment of rent, such invocation conflicts with this Order and is preempted pursuant to 42 U.S.C. 264(e).

Individuals who are confirmed to have, who have been exposed to, or who might have COVID–19 and take reasonable precautions to not spread the disease may not be evicted on grounds that they may pose a health or safety threat to other residents.

This Order is in effect through October 3, 2021, based on the current and projected epidemiological context of SARS–CoV–2 transmission throughout the United States. This timeframe will allow the assessment of natural changes to COVID–19 incidence, the influences of new variants, additional distribution of emergency rental assistance funds, and the expansion of COVID–19 vaccine uptake.

Declaration Forms

To qualify for the protections of this Order, a tenant, lessee, or resident of a residential property must provide a completed and signed copy of a declaration with the elements listed in the definition of ''Covered person'' to their landlord, owner of the residential property where they live, or other person who has a right to have them evicted or removed from where they live. To assist tenants and landlords, the CDC created a standardized declaration form that can be downloaded here: *https://www.cdc.gov/coronavirus/2019-ncov/downloads/declaration-form.pdf.*

Tenants, lessees, and residents of residential property are not obligated to use the CDC form. Any written document that an eligible tenant, lessee, or resident of residential property presents to their landlord will comply with this Order, as long as it contains the required elements of ''Covered person'' as described in this Order. In

[50] As used in this Order, the term ''county'' refers to both counties in the United States and U.S. territories.

[51] *Supra* note 7.

[52] *Supra.* note 8.

[53] Individuals who might have COVID–19 are advised to stay home except to get medical care. Accordingly, individuals who might have COVID–19 and take reasonable precautions to not spread the disease should not be evicted on the ground that they may pose a health or safety threat to other residents. See *What to Do if You are Sick,* Centers for Disease Control and Prevention, *https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/steps-when-sick.html* (last updated Mar. 17, 2021).

addition, tenants, lessees, and residents of residential property are allowed to declare in writing that they meet the elements of ''Covered person'' in other languages.

All declarations, regardless of form used, must be signed, and must include a statement that the tenant, lessee, or resident of a residential property understands that they could be liable for perjury for any false or misleading statements or omissions in the declaration. This Order does not preclude a landlord challenging the truthfulness of a tenant's, lessee's, or resident's declaration in court, as permitted under state or local law.

In certain circumstances, such as individuals filing a joint tax return, it may be appropriate for one member of the residence to provide an executed declaration on behalf of the other adult residents party to the lease, rental agreement, or housing contract. The declaration may be signed and transmitted either electronically or by hard copy.

As long as the information in a previously signed declaration submitted under a previous order remains truthful and accurate, covered persons do not need to submit a new declaration under this Order. However, eligibility for protection will be based on the terms of this Order.

Findings and Action

Determination

For the reasons described herein, I have determined based on the information below that issuing a temporary halt in evictions in counties experiencing substantial or high levels of COVID–19 transmission constitutes a reasonably necessary measure under 42 CFR 70.2 to prevent the further spread of COVID–19 throughout the United States. I have further determined that measures by states, localities, or territories that do not meet or exceed these minimum protections are insufficient to prevent the interstate spread of COVID–19.

State and local jurisdictions continue to distribute emergency rental assistance funds, provided by the Department of Treasury, that will help avert a spate of evictions and thus mitigate corresponding spikes in COVID–19 transmission. Trends have dramatically worsened since June 2021 and transmission is rapidly accelerating in the United States.[54]

Congress has appropriated approximately $46 billion—of which almost three-quarters is currently available to state and local grantees—to help pay rent and rental arrears for tenants who may otherwise be at high risk of eviction. According to estimates based on the U.S. Census Household Pulse Survey, approximately 6.9 million renter households were behind on their rent in late June. At that time, about 4.6 million renter households were concerned that they could not pay next month's rent. The successful delivery of those funds by states and localities should greatly reduce the incidence of eviction that would occur in the absence of that support. However, many states and localities are still ramping up the collection and processing of applications and the delivery of assistance and putting in place other eviction prevention strategies. It was only in the beginning of June that all state-run emergency rental assistance programs had opened for applications. If the moratorium is not in place, a wave of evictions, on the order of hundreds of thousands, could occur in late summer and early fall, exacerbating the spread of COVID–19 among the significant percentage of the population that remains unvaccinated. In appropriating these emergency rental assistance funds, Congress intended that the funding would work in concert with the eviction moratorium, providing time for rental assistance to reach eligible tenants and landlords to sustainably reduce the threat of an eviction wave after an eviction moratorium was no longer in effect. While the pace of assistance is continuing to increase, without additional time for states and localities to deliver this needed relief and engage in other efforts to prevent evictions, a surge of evictions would occur upon the conclusion of the national moratorium. A surge in evictions would lead to immediate movement, crowding, and increased stress on the homeless service system. In combination with surging COVID–19 rates across the country, and the overlapping factors described above, this would create considerable risk for the rapid transmission of COVID–19 in high-risk settings.

Based on the convergence of these issues, I have determined that issuing a new Order temporarily halting evictions is appropriate.

Accordingly, a landlord, owner of a residential property, or other person with a legal right to pursue eviction or possessory action shall not evict any covered person from any residential property in any county or U.S. territory while COVID–19 transmission is substantial or high and the relevant state, county, locality, or territory has provided a level of public-health protections below the requirements listed in this Order.

This Order is not a rule within the meaning of the Administrative Procedure Act (APA) but rather an emergency action taken under the existing authority of 42 CFR 70.2. The purpose of section 70.2, which was promulgated through notice-and-comment rulemaking, is to enable CDC to take swift steps to prevent contagion without having to seek a second round of public comments and without a delay in effective date.[55]

Good Cause

In the event this Order qualifies as a rule under the APA, there is good cause to dispense with prior public notice and comment and a delay in effective date. See 5 U.S.C. 553(b)(B), (d)(3). Good cause exists, in sum, because the public health emergency caused by the COVID–19 pandemic and the unpredictability of the trajectory of the pandemic make it impracticable and contrary to the public health, and by extension the public interest, to delay the issuance and effective date of this Order.

I have determined that good cause exists because the public health emergency caused by COVID–19 makes it impracticable and contrary to the public health, and by extension the public interest, to delay the issuance and effective date of the Order. A delay in the effective date of the Order would permit the occurrence of evictions—potentially on a mass scale—that would have potentially significant public health consequences. I conclude that the delay in the effective date of the Order would defeat the purpose of the Order and endanger the public health and, therefore, determine that immediate action is necessary.

The rapidly changing nature of the pandemic requires not only that CDC act swiftly, but also deftly to ensure that its actions are commensurate with the threat. This necessarily involves assessing evolving conditions that inform CDC's determinations. Despite promising trends in the spring of 2021, the surge of cases spurred by the Delta variant has confirmed that the fundamental public health threat—of the risk of large numbers of residential evictions contributing to the spread of COVID–19 throughout the United States—continues to exist. Without this Order, there is every reason to expect that evictions will increase dramatically

[54] COVID Data Tracker, Centers for Disease Control and Prevention, *https://covid.cdc.gov/covid-data-tracker/#trends_dailytrendscases* (last updated June 22, 2021).

[55] *Chambless Enters., LLC* v. *Redfield,* No. 20–1455, 2020 WL 7588849 (W.D. La. 2020).

at a time when COVID–19 infections in the United States are increasing sharply. It is imperative that public health authorities act quickly to mitigate such an increase of evictions, which could increase the likelihood of new spikes in SARS–CoV–2 transmission. Such mass evictions and the attendant public health consequences would be very difficult to reverse.

For all of these reasons, I hereby conclude that immediate action is again necessary and that notice-and-comment rulemaking and a delay in effective date would be impracticable and contrary to the public interest.

Miscellaneous

Similarly, if this Order qualifies as a rule under the APA, the Office of Information and Regulatory Affairs (OIRA) has determined that it would be an economically significant regulatory action pursuant to Executive Order 12866 and a major rule under Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (the Congressional Review Act or CRA), 5 U.S.C. 804(2). Thus, this action has been reviewed by OIRA. CDC has determined that for the same reasons given above, there would be good cause under the CRA to make the requirements herein effective immediately. 5 U.S.C. 808(2).

If any provision of this Order, or the application of any provision to any persons, entities, or circumstances, shall be held invalid, the remainder of the provisions, or the application of such provisions to any persons, entities, or circumstances other than those to which it is held invalid, shall remain valid and in effect.

This Order shall be enforced by federal authorities and cooperating state and local authorities through the provisions of 18 U.S.C. 3559, 3571; 42 U.S.C. 243, 268, 271; and 42 CFR 70.18. However, this Order has no effect on the contractual obligations of renters to pay rent and shall not preclude charging or collecting fees, penalties, or interest as a result of the failure to pay rent or other housing payment on a timely basis, under the terms of any applicable contract.

Criminal Penalties

Under 18 U.S.C. 3559, 3571; 42 U.S.C. 271; and 42 CFR 70.18, a person violating this Order may be subject to a fine of no more than $100,000 or one year in jail, or both, if the violation does not result in a death, or a fine of no more than $250,000 or one year in jail, or both if the violation results in a death, or as otherwise provided by law. An organization violating this Order may be subject to a fine of no more than $200,000 per event if the violation does not result in a death or $500,000 per event if the violation results in a death or as otherwise provided by law. The U.S. Department of Justice may initiate criminal proceedings as appropriate seeking imposition of these criminal penalties.

Notice to Cooperating State and Local Officials

Under 42 U.S.C. 243, the U.S. Department of Health and Human Services is authorized to cooperate with and aid state and local authorities in the enforcement of their quarantine and other health regulations and to accept state and local assistance in the enforcement of Federal quarantine rules and regulations, including in the enforcement of this Order.

Notice of Available Federal Resources

While this Order to prevent eviction is effectuated to protect the public health, the states and units of local government are reminded that the Federal Government has deployed unprecedented resources to address the pandemic, including housing assistance.

The Department of Housing and Urban Development (HUD), the Department of Agriculture, and the Department of the Treasury have informed CDC that unprecedented emergency resources have been appropriated through various Federal agencies that assist renters and landlords during the pandemic, including $46.55 billion to the Treasury through the Consolidated Appropriations Act of 2021 and the American Rescue Plan (ARP). Furthermore, in 2020 44 states and 310 local jurisdictions allocated about $3.9 billion toward emergency rental assistance, largely from funds appropriated to HUD from the Coronavirus Aid, Relief, and Economic Security (CARES).[56] These three rounds of federal appropriations also provided substantial resources for homeless services, homeowner assistance, and supplemental stimulus and unemployment benefits that low-income renters used to pay rent.

Visit *https://covid.cdc.gov/covid-data-tracker/#county-view* for an integrated, county view of levels of community transmission for monitoring the COVID–19 pandemic in the United States. Visit *https://home.treasury.gov/policy-issues/cares/state-and-local-governments* for more information about the Coronavirus Relief Fund and *https://home.treasury.gov/policy-issues/cares/emergency-rental-assistance-program* for more information about the Emergency Rental Assistance Program. Visit *www.consumerfinance.gov/renthelp* to access the Rental Assistance Finder that connects renters and landlords with the state and local programs that are distributing billions of dollars in federal assistance. Relevant agencies have informed CDC that forbearance policies for mortgages backed by the federal government provide many landlords, especially smaller landlords, with temporary relief as new emergency rental assistance programs are deployed.

Treasury, HUD, and USDA grantees and program participants play a critical role in prioritizing efforts to support this goal. All communities should assess what resources have already been allocated to prevent evictions and homelessness through temporary rental assistance and homelessness prevention, particularly to the most vulnerable households.

Treasury, HUD, and USDA stand at the ready to support American communities in taking these steps to reduce the spread of COVID–19 and maintain economic prosperity.

For program support, including technical assistance, please visit *www.hudexchange.info/program-support.* For further information on HUD resources, tools, and guidance available to respond to the COVID–19 pandemic, state and local officials are directed to visit *https://www.hud.gov/coronavirus.* These tools include toolkits for Public Housing Authorities and Housing Choice Voucher landlords related to housing stability and eviction prevention, as well as similar guidance for owners and renters in HUD-assisted multifamily properties. Furthermore, tenants can visit *consumerfinance.gov/housing* for up-to-date information on rent relief options, protections, and key deadlines.

Effective Date

This Order is effective on August 3, 2021 and will remain in effect through October 3, 2021, subject to revision based on the changing public health landscape.

Authority: The authority for this Order is Section 361 of the Public Health Service Act (42 U.S.C. 264) and 42 CFR 70.2.

Sherri Berger,

Chief of Staff, Centers for Disease Control and Prevention.

[FR Doc. 2021–16945 Filed 8–4–21; 2:00 pm]

BILLING CODE 4163–18–P

[56] Vincent Reina et al, *COVID–19 Emergency Rental Assistance: Analysis of a National Survey of Programs,* Research Brief, *https://nlihc.org/sites/default/files/HIP_NLIHC_Furman_Brief_FINAL.pdf* (last visited Mar. 26, 2021).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–21–0953]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on May 7, 2021 to obtain comments from the public and affected agencies. CDC received did not receive comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. 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. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery (OMB Control No. 0920–0953, Exp. 8/31/2021)—Extension—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The information collection activities provide a means to garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Federal government's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study.

This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

The solicitation of feedback will target areas such as: Timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders on the Agency's services will be unavailable.

CDC will only submit a collection for approval under these generic clearances if they meet the following conditions:

- The collections are voluntary;
- The collections are low-burden for respondents (based) on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;
- The collections are noncontroversial and do not raise issues of concern to other Federal agencies;
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
- Personally identifiable information (PII) is collected only to the extent necessary and is not retained;
- Information gathered is intended to be used only internally for general service improvement and program management purposes and is not intended for release outside of the agency (if released, the agency must indicate the qualitative nature of the information);
- Information gathered will not be used for the purpose of substantially informing influential policy decisions; and
- Information gathered will yield qualitative information; the collections will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.

Feedback collected under CDC generic clearances provides useful information, but it does not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential nonresponse bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

As a general matter, information collections will not result in any new system of records containing privacy

information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. The total estimated burden hours requested are 13,075. There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Type of collections	Number of respondents	Annual frequency per response	Hours per response
Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.	Print Surveys	50,000	1	15/60
	Focus Groups	100	1	2
	Online Surveys	1500	1	15/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2021–16822 Filed 8–5–21; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–21–1314; Docket No. CDC–2021–0077]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on the Understanding important issues in ovarian cancer survivorship (OCS) project. The OCS project aims to better understand the needs of ovarian cancer survivors and how to more effectively develop interventions targeted to this population.

DATES: CDC must receive written comments on or before October 5, 2021.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2021–0077 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov.*

Please note: *Submit all comments through the Federal eRulemaking portal (regulations.gov) or by U.S. mail to the address listed above.*

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7118; Email: *omb@cdc.gov.*

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. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected;
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses; and
5. Assess information collection costs.

Proposed Project

Understanding the needs of ovarian cancer survivors. (OMB Control No. 0920–1314, Exp. 12/31/2021)—Extension—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Ovarian cancer is the ninth most common cancer, and the fifth leading cause of cancer death among women in the United States. Over 20,000 women are diagnosed with ovarian cancer each year. Due to the lack of a recommended screening test, ovarian cancer is often diagnosed at late stages, leading to low five-year survival rates. While previous studies are able to identify some of the needs of ovarian cancer survivors, particularly related to physical complications and side effects, additional research is needed to further understand the experiences and needs of survivors.

The National Academies of Sciences, Engineering, and Medicine released their report, Ovarian Cancers: Evolving Paradigms in Research and Care, which identified key priorities for researchers, including recommending research on the ''supportive care needs of ovarian cancer survivors throughout the disease trajectory.'' In order to address these research gaps and supplement current knowledge of the ongoing needs of survivors, including how to implement

programs and interventions to improve their health, CDC has supported a survey of ovarian cancer survivors.

The goal of this project is to better understand the needs of ovarian cancer survivors and how to more effectively develop interventions targeted to this population. To achieve this goal, multiple recruitment methods will be utilized to recruit this unique population of women for the study. By using state cancer registries, social media advertisements, and respondent-driven sampling (RDS), the study will ensure recruit of a diverse population of women.

This study will focus on the following research questions:

1. What physical and mental conditions do ovarian cancer survivors experience?
2. What kinds of pharmacologic and non-pharmacologic interventions do ovarian cancer survivors utilize to manage their conditions?
3. What barriers do ovarian cancer survivors have in accessing and receiving appropriate diagnostic care, treatment, and follow-up care?
4. What unmet needs do ovarian cancer survivors have?

The overall sample design targets 1,200 completed interviews. Completed surveys will come from more traditional sampling utilizing lists from the state cancer registries (n = 1,200). This is a request for an extension of two years to the data collection period. Participation in this study is voluntary. The total estimated annual burden hours are 1,000. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Avg. burden per response (in hrs)	Total burden (in hours)
Ovarian cancer survivors—state cancer registries.	Mail-in or web-based questionnaire	1,200	1	50/60	1,000
Total					1,000

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2021–16825 Filed 8–5–21; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10653]

Agency Information Collection Activities: Proposed Collection; 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 (the 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 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates 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 must be received by October 5, 2021.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

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:

CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number: _____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html.*

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10653 Coverage of Certain Preventive Services Under the Affordable Care Act

Under the 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 requires federal agencies to publish a 60-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.

Information Collection

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Coverage of Certain Preventive Services Under the Affordable Care Act; *Use:* The 2018 final regulations titled ''Religious Exemptions and Accommodations for Coverage of Certain Preventive Services Under the Affordable Care Act'' (83 FR 57536) and ''Moral Exemptions and Accommodations for Coverage of Certain Preventive Services Under the Affordable Care Act'' (83 FR 57592) expand exemptions for religious beliefs and moral convictions for certain entities or individuals whose health plans may otherwise be subject to a mandate of contraceptive coverage through guidance issued pursuant to the Patient Protection and Affordable Care Act. The final regulations extend the exemption to health insurance issuers that hold religious or moral objections in certain circumstances, as well as to additional categories of group health plan sponsors.

The 2018 final regulations also leave the accommodation process in place as an optional process for objecting entities who wish to use it, and expand the categories of group health plan sponsors that may avail themselves of the accommodation. To avoid contracting, arranging, paying, or referring for contraceptive coverage, an organization seeking to be treated as an eligible organization may self-certify (by using EBSA Form 700), prior to the beginning of the first plan year to which an accommodation is to apply, that it meets the definition of an eligible organization. The eligible organization must provide a copy of its self-certification to each health insurance issuer that would otherwise provide such coverage in connection with the health plan (for insured group health plans or student health insurance coverage). The issuer that receives the self-certification must provide separate payments for contraceptive services for plan participants and beneficiaries (or students and dependents). For a self-insured group health plan, the self-certification must be provided to its third party administrator. An eligible organization may submit a notification to HHS as an alternative to submitting EBSA Form 700 to the eligible organization's health insurance issuer or third party administrator. A health insurance issuer or third party administrator providing or arranging payments for contraceptive services for participants and beneficiaries in plans (or student enrollees and covered dependents in student health insurance coverage) of eligible organizations must provide a written notice to such plan participants and beneficiaries (or such student enrollees and covered dependents) informing them of the availability of such payments.

Under the 2018 final regulations, eligible organizations can revoke the accommodation process if participants and beneficiaries (or student enrollees and covered dependents) receive written notice of such revocation from the issuer or third party administrator, and such revocation will be effective on the first day of the first plan year that begins on or after thirty days after the date of revocation. Final regulations were published in the **Federal Register** on July 14, 2015 (80 FR 41318) under which qualifying closely held, for-profit entities may avail themselves of the accommodation. Previously, this accommodation had been available only to non-profit eligible organizations. The 2015 final regulations also finalized the 2014 interim final regulations that permit an eligible organization to notify HHS directly that it will not contract, arrange, pay, or refer for all or a subset of contraceptive services. These information collection requirements (ICRs) are intended for use under whichever accommodation process is in effect at the time an entity avails of it (for example, the 2018 final regulations, or the 2015 final regulations). HHS will only implement the ICRs under regulations that are legally in effect at the time the ICRs are used. *Form Number:* CMS–10653 (OMB Control number 0938–1344); *Frequency:* On Occasion; *Affected Public:* Private Sector; *Number of Respondents:* 60; *Number of Responses:* 595,312; *Total Annual Hours:* 72. (For policy questions regarding this collection, contact Usree Bandyopadhyay at 410–786–6650.)

Dated: August 2, 2021.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2021–16797 Filed 8–5–21; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10775]

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 *September 7, 2021.*

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html.*

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:* New collection (Request for a new OMB control number); *Title of Information Collection:* Medicare Severity Diagnosis Related Groups Reclassification Request (MS–DRGs); *Use:* Section 1886(d)(4) of the Act establishes a classification system, referred to as DRGs, for inpatient discharges and adjusts payments under the IPPS based on appropriate weighting factors assigned to each MS–DRG. Section 1886(d)(4)(C)(i) of the Act specifies adjustments to the classification and weighting factors shall occur ''at least annually to reflect changes in treatment patterns, technology, and other factors which may change the relative use of hospital resources.''

The requests are evaluated in the Division of Coding and DRGs (DCDRG) by the DRG and Coding Team and the clinical advisors (medical officers) in both the Technology, Coding and Pricing Group (TCPG) and the Hospital and Ambulatory Policy Group (HAPG), along with the CMS contractor(s). This team participates via conference calls in the review of MedPAR claims data to analyze and perform clinical review of the requested changes. Based on the examination of claims data and clinical judgment, the team provides recommendations to CMS and HHS leadership for proposed changes. Per the statue, proposed MS–DRG changes and payment adjustments must go through notice and comment rulemaking giving the opportunity for the public to comment. Finalized MS–DRG changes are effective with discharges on and after October 1, consistent with the beginning of the fiscal year. CMS makes the updated MS–DRG Grouper software and related materials that reflects the changes available to the public for free via download at: *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/MS-DRG-Classifications-and-Software.*

When an application is submitted in MEARIS™, the DRG and Coding Team in DCDRG will have instant access to the application request and accompanying materials to facilitate a more-timely review of the request, including the ability to efficiently inform other team members involved in the process that information is available for their review and input. *Form Number:* CMS–10775 (OMB control number 0938–New); *Frequency:* Occasionally; *Affected Public:* Private Sector, Business or other for-profits, Not-for-profits institutions; *Number of Respondents:* 50; *Total Annual Responses:* 50; *Total Annual Hours:* 48,000. (For policy questions regarding this collection contact Marilu Hue at 410–786–4510.)

Dated: August 3, 2021.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2021–16865 Filed 8–5–21; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Request for Public Comment: 60 Day Notice for Extension of the Indian Health Service Loan Repayment Program (LRP)

AGENCY: Indian Health Service, HHS.

ACTION: Notice and request for comments. Request for extension of approval.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Indian Health Service (IHS) invites the general public to take this opportunity to comment on the information collection Office of Management and Budget (OMB) Control Number 0917–0014, titled, ''IHS Loan Repayment Program (LRP).''

DATES: Consideration will be given to all comments received by October 5, 2021.

ADDRESSES: *For Comments:* Submit comments to Jackie Santiago by one of the following methods:

- *Email: Jackie.Santiago@ihs.gov.*

Comments submitted in response to this notice will be made available to the public by publishing them in the 30 day **Federal Register** notice for this information collection. For this reason, please do not include information of a confidential nature, such as sensitive personal information or proprietary information. If comments are submitted via email, the email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public notwithstanding the inclusion of the routine notice.

A copy of the draft supporting statement is available at *www.regulations.gov* (see Docket ID (IHS_FRDOC_0001)).

FOR FURTHER INFORMATION CONTACT: To request additional information, please contact Evonne Bennett, Information Collection Clearance Officer at: *Evonne.Bennett@ihs.gov* or 301–443–4750.

SUPPLEMENTARY INFORMATION: This previously approved information collection project was last published in the **Federal Register** (83 FR 6601) on February 14, 2018, and allowed 30 days for public comment. No public comment was received in response to the notice. This notice announces our intent to submit this collection, which expires November 30, 2021, to OMB for approval of an extension and solicit comments on specific aspects for the proposed information collection.

The IHS is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995, as amended, and its implementing regulations. This notice is soliciting comments from members of the public and affected agencies as required by 44 U.S.C. 3506(c)(2)(A) and 5 CFR 1320.8(d) concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including

through the use of appropriate automated collection techniques of other forms of information technology, *e.g.,* permitting electronic submission of responses.

Title: 0917–0014, ''Indian Health Service Loan Repayment Program.''

Type of Information Collection Request: Three year extension approval of this information collection.

OMB Control Number: 0917–0014.

Forms: Educational and Professional Background, Financial Information, and General Applicant Information (*i.e.,* all forms are part of the LRP application). The LRP application is available in an electronically fillable and fileable format.

Need and Use of Information Collection: The IHS LRP identifies health professionals with pre-existing financial obligations for education expenses that meet program criteria and who are qualified and willing to serve at, often remote, IHS health care facilities. Under the program, eligible health professionals sign a contract through which the IHS agrees to repay part or all of their indebtedness in exchange for an initial two-year service commitment to practice fulltime at an eligible Indian health program. This program is necessary to augment the critically low health professional staff at IHS health care facilities.

Eligible health professionals wishing to have their health education loans repaid may apply to the IHS LRP. A two-year contract obligation is signed by both parties, and the individual agrees to work at an eligible Indian health program location and provide health services to American Indian and Alaska Native individuals.

The information collected via the on-line application from individuals is analyzed and a score is given to each applicant. This score will determine which applicants will be awarded each fiscal year. The administrative scoring system assigns a score to the geographic location according to vacancy rates for that fiscal year and also considers whether the location is in an isolated area. When an applicant accepts employment at a location, the applicant in turn ''picks-up'' the score of that location.

Status of the Proposed Information Collection: Renewal of a current collection.

Affected Public: Individuals and households.

Type of Respondents: Individuals.

The table below provides: Types of data collection instruments, estimated number of respondents, Number of responses per respondent, annual number of responses, Average burden hour per response, and Total annual burden hour(s).

ESTIMATED BURDEN HOURS

Data collection instrument(s)	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual responses (in hours)
LRP Application ..... LRP Application (3 forms in total)	1,999	1	1.5	2,998.5

There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

Elizabeth A. Fowler,

Acting Director, Indian Health Service.

[FR Doc. 2021–16837 Filed 8–5–21; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request; Post-Award Reporting Requirements Including Research Performance Progress Report Collection (Office of the Director)

AGENCY: National Institutes of Health, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Ms. Mikia P. Currie, Program Analyst, Office of Policy for Extramural Research Administration, 6705 Rockledge Drive, Suite 350, Bethesda, Maryland 20892, or call a non-toll-free number 301–435–0941 or Email your request, including your address to *ProjectClearanceBranch@mail.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** on April 12, 2021, pages 18994–18995 (86 FR 18994) and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The Office of the Director (OD) Office of Policy and Extramural Research Administration (OPERA), National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

Proposed Collection: Public Health Service (PHS) Post-award Reporting Requirements Including Research Performance Progress Report Collection, Revision, OMB 0925–0002, Expiration Date 2/28/2023, Office of the Director (OD), National Institutes of Health (NIH).

Need and Use of Information Collection: This collection is being revised to omit the Inclusion Enrollment

Report form, which is being converted to a Common form to include the Department of Defense (DoD). The Inclusion Enrollment Report is used for all applications involving NIH-defined clinical research. This form is used to report both planned and cumulative (or actual) enrollment, and describes the sex/gender, race, and ethnicity of the study participants. Starting in January 2022, NIH will require will applicants and recipients to provide their Unique Entity Identifier (UEI) instead of the Data Universal Number System (DUNS) number. Also, the application forms will be updated to align with the *Grants.gov* updated Country and State lists. NIH also anticipates adding an optional field to the end of our forms and applications to get a more accurate assessment of the time it takes our applicants to complete the various forms and applications. The RPPR is required to be used by all NIH, Food and Drug Administration, Centers for Disease Control and Prevention, and Agency for Healthcare Research and Quality (AHRQ) grantees. Interim progress reports are required to continue support of a PHS grant for each budget year within a competitive segment. The phased transition to the RPPR required the maintenance of dual reporting processes for a period of time. Continued use of the PHS Non-competing Continuation Progress Report (PHS 2590), exists for a small group of grantees. This collection also includes other PHS post-award reporting requirements: PHS 416–7 NRSA Termination Notice, PHS 2271 Statement of Appointment, 6031–1 NRSA Annual Payback Activities Certification, HHS 568 Final Invention Statement and Certification, iEdison, and PHS 3734 Statement Relinquishing Interests and Rights in a PHS Research Grant. The PHS 416–7, 2271, and 6031–1 is used by NRSA recipients to activate, terminate, and provide for payback of a NRSA. Closeout of an award requires a Final Invention Statement (HHS 568) and Final Progress Report. iEdison allows grantees and Federal agencies to meet statutory requirements for reporting inventions and patents. The PHS 3734 serves as the official record of grantee relinquishment of a PHS award when an award is transferred from one grantee institution to another. Pre-award reporting requirements are simultaneously consolidated under 0925–0001 and the changes to the collection here are related. Clinical trials are complex and challenging research activities. Oversight systems and tools are critical for NIH to ensure participant safety, data integrity, and accountability of the use of public funds. NIH has been engaged in a multi-year effort to examine how clinical trials are supported and the level of oversight needed. The collection of more structured information in the PHS applications and pre-award reporting requirements as well as continued monitoring and update during the post-award reporting requirements will facilitate NIH's oversight of clinical trials. In addition, some of the data reported in the RPPR will ultimately be accessible to investigators to update certain sections of forms when registering or reporting their trials with *ClinicalTrials.gov. Frequency of response:* Applicants may submit applications for published receipt dates. For NRSA awards, fellowships are activated, and trainees appointed.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 532,249.

ESTIMATED ANNUALIZED BURDEN HOURS

Information collection forms	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hours
Reporting				
PHS 416–7	12,580	1	30/60	6,290
PHS 6031–1	1,778	1	20/60	593
PHS 568	11,180	1	5/60	932
iEdison	5,697	1	15/60	1,424
PHS 2271	22,035	1	15/60	5,509
PHS 2590	243	1	18	4,374
RPPR—Core Data	32,098	1	8	256,784
Biosketch (Part of RPPR)	2,544	1	2	5,088
Data Tables (Part of RPPR)	758	1	4	3,032
Trainee Diversity Report (Part of RPPR)	480	1	15/60	120
PHS Human Subjects and Clinical Trial Information (Part of RPPR, includes inclusion enrollment report)	6,420	1	4	25,680
Publication Reporting	97,023	3	5/60	24,256
Final RPPR—Core Data	18,000	1	10	180,000
Data Tables (Part of Final RPPR)	758	1	4	3,032
Trainee Diversity Report (Part of Final RPPR)	480	1	15/60	120
PHS Human Subjects and Clinical Trial Information (Part of RPPR, includes inclusion enrollment report))	3,600	1	4	14,400
PHS 374	479	1	30/60	240
Reporting Burden Total				531,874
Recordkeeping				
SBIR/STTR Life Cycle Certification	1,500	1	15/60	375
Grand Total	217,653	411,699		532,249

Dated: July 30, 2021.

Lawrence A. Tabak,

Principal Deputy Director, National Institutes of Health.

[FR Doc. 2021–16849 Filed 8–5–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Insulin Resistance and Alzheimer's Disease pathology.

Date: September 3, 2021.

Time: 1:30 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Video Meeting).

Contact Person: Maurizio Grimaldi, MD, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Gateway Building, Suite 2W200, Bethesda, MD 20892, 301–496–9374, *grimaldim2@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: August 2, 2021.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–16803 Filed 8–5–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Advancing Translational Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Advancing Translational Sciences Special Emphasis Panel; Rare Diseases.

Date: September 14, 2021.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Center for Advancing Translational Sciences, National Institutes of Health, 6701 Democracy Boulevard, Room 1037, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Alumit Ishai, Ph.D., Scientific Review Officer, Office of Grants Management and Scientific Review, National Center for Advancing Translational Sciences, National Institutes of Health, 6701 Democracy Boulevard, Room 1037, Bethesda, MD 20817, 301–827–5819, *alumit.ishai@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.350, B—Cooperative Agreements; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–16866 Filed 8–5–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel; Request for Proposals 75N98021R00006: Development, Statistical Design, Monitoring and Coordination of Vision Clinical Trials and Epidemiology Research.

Date: August 30, 2021.

Time: 1:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Eye Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 3400, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Brian Hoshaw, Ph.D., Designated Federal Official, Division of Extramural Research, National Eye Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 3400, Bethesda, MD 20892, 301–451–2020, *hoshawb@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: August 3, 2021.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–16863 Filed 8–5–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR 6277–N–01]

Fair Market Rents for the Housing Choice Voucher Program, Moderate Rehabilitation Single Room Occupancy Program, and Other Programs Fiscal Year 2022

AGENCY: Office of the Assistant Secretary for Policy Development and Research, Housing and Urban Development (HUD).

ACTION: Notice of Fiscal Year (FY) 2022 Fair Market Rents (FMRs).

SUMMARY: Section 8(c)(1) of the United States Housing Act of 1937 (USHA), as amended by the Housing Opportunities Through Modernization Act of 2016 (HOTMA), requires the Secretary to publish FMRs not less than annually, adjusted to be effective on October 1 of each year. This notice describes the

methods used to calculate the FY 2022 FMRs and enumerates the procedures for Public Housing Agencies (PHAs) and other interested parties to request reevaluations of their FMRs as required by HOTMA.

DATES:

Comment Due Date: September 30, 2021.

Effective Date: October 1, 2021 unless HUD receives a valid request for reevaluation of specific area FMRs as described below.

ADDRESSES: HUD invites interested persons to submit comments regarding the FMRs and to request reevaluation of the FY 2022 FMRs through the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW, Room 10276, Washington, DC 20410–0001. Communications must refer to the above docket number and title and should contain the information specified in the ''Request for Comments/Request for Reevaluation'' section. There are two methods for submitting public comments:

1. Electronic Submission of Comments. Interested persons may submit comments or reevaluation requests electronically through the Federal eRulemaking Portal at *https://www.regulations.gov.* HUD strongly encourages commenters to submit comments or reevaluation requests electronically. Electronic submission of comments or reevaluation requests allows the author maximum time to prepare and submit a comment or reevaluation request, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments or reevaluation requests submitted electronically through the *https://www.regulations.gov* website can be viewed by other submitters and interested members of the public. Commenters or reevaluation requestors should follow instructions provided on that site to submit comments or reevaluation requests electronically.

2. Submission of Comments by Mail. Members of the public may submit comments or requests for reevaluation by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500. Due to security measures at all federal agencies, however, submission of comments by standard mail often results in delayed delivery. To ensure timely receipt of comments or reevaluation requests, HUD recommends that comments or requests submitted by standard mail be submitted at least two weeks in advance of the deadline. HUD will make all comments or reevaluation requests received by mail available to the public at *https://www.regulations.gov.*

Note: To receive consideration as public comments or reevaluation requests, comments or requests must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the notice.

No Facsimile Comments or Reevaluation Requests. HUD does not accept facsimile (FAX) comments or requests for FMR reevaluation.

FOR FURTHER INFORMATION CONTACT: For technical information on the methodology used to develop FMRs or a listing of all FMRs, please call the HUD USER information line at 800–245–2691 or access the information on the HUD USER website *https://www.huduser.gov/portal/datasets/fmr.html.*

Questions related to use of FMRs or voucher payment standards should be directed to the respective local HUD program staff or the Office of Public and Indian Housing Customer Service Center at *https://www.hud.gov/program_offices/public_indian_housing/about/css.* Questions on how to conduct FMR surveys may be addressed to the mailbox for the Program Parameters and Research Division at *pprd@hud.gov.*

For any additional questions, you can contact Adam Bibler, Program Parameters and Research Division, Office of Policy Development and Research, telephone number 202–402–6057. Persons with a hearing- or speech-impairment may contact the Federal Relay Service at 800–877–8339 (TTY). (Other than the ''800'' TTY number, the above-listed telephone numbers are not toll free.)

Electronic Data Availability. This **Federal Register** notice will be available electronically from the HUD User page at *https://www.huduser.gov/portal/datasets/fmr.html.* **Federal Register** notices also are available electronically from *https://www.federalregister.gov/* the U.S. Government Printing Office website. Complete documentation of the methods and data used to compute each area's FY 2022 FMRs is available at *https://www.huduser.gov/portal/datasets/fmr.html#2022_query.* FY 2022 FMRs are available in a variety of electronic formats at *https://www.huduser.gov/portal/datasets/fmr.html,* including in PDF and Microsoft Excel. Small Area FMRs for all metropolitan FMR areas are available in Microsoft Excel format at: *https://www.huduser.gov/portal/datasets/fmr/smallarea/index.html.* For informational purposes, HUD also publishes 50th percentile rents for all FMR areas at *https://www.huduser.gov/portal/datasets/50per.html.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 8 of the USHA (42 U.S.C. 1437f) authorizes housing assistance to aid lower-income families in renting safe and decent housing. Housing assistance payments are limited by FMRs established by HUD for different geographic areas. In the Housing Choice Voucher (HCV) program, the FMR is the basis for determining the ''payment standard amount'' used to calculate the maximum monthly subsidy for an assisted family. See 24 CFR 982.503. HUD also uses the FMRs to determine initial renewal rents for some expiring project-based Section 8 contracts, initial rents for housing assistance payment contracts in the Moderate Rehabilitation Single Room Occupancy program, rent ceilings for rental units in both the HOME Investment Partnerships program and the Emergency Solution Grants program, calculation of maximum award amounts for Continuum of Care recipients and the maximum amount of rent a recipient may pay for property leased with Continuum of Care funds, and calculation of flat rents in Public Housing units. In general, the FMR for an area is the amount that a tenant would need to pay the gross rent (shelter rent plus utilities) of privately owned, decent, and safe rental housing of a modest (non-luxury) nature with suitable amenities. HUD's FMR calculations represent HUD's best effort to estimate the 40th percentile gross rent [1] paid by recent movers into standard quality units in each FMR area. In addition, all rents subsidized under the HCV program must meet reasonable rent standards.

The FY 2022 FMRs incorporate revisions to metropolitan area definitions released by the Office of Management and Budget in September 2018 (see section III).[2] PHAs and other users of FMRs should ensure that they look up the FY 2022 FMRs using the county, county equivalent, or town in the case of New England states, as the relationship between these areas and their respective metropolitan areas has changed in some instances.

[1] HUD also calculates and posts 50th percentile rent estimates for the purposes of Success Rate Payment Standards as defined at 24 CFR 982.503(e) (estimates available at: *https://www.huduser.gov/portal/datasets/50per.html*).

[2] See OMB Bulletin 18–04.

II. Procedures for the Development of FMRs

Section 8(c)(1) of the USHA, as amended by HOTMA (Pub. L. 114–201, enacted July 29, 2016), requires the Secretary of HUD to publish FMRs not less than annually. Section 8(c)(1)(A) states that each FMR ''shall be adjusted to be effective on October 1 of each year to reflect changes, based on the most recent available data trended so the rentals will be current for the year to which they apply . . .'' Section 8(c)(1)(B) requires that HUD publish, not less than annually, new FMRs on the World Wide Web or in any other manner specified by the Secretary, and that HUD must also notify the public of when it publishes FMRs by **Federal Register** notice. After notification, the FMRs ''shall become effective no earlier than 30 days after the date of such publication,'' and HUD must provide a procedure for the public to comment and request a reevaluation of the FMRs in a jurisdiction before the FMRs become effective. Consistent with the statute, HUD is issuing this notice to notify the public that FY 2022 FMRs are available at *https://www.huduser.gov/portal/datasets/fmr.html and will become effective on October 1, 2021. This notice also provides procedures for FMR reevaluation requests.*

III. FMR Methodology

This section provides a brief overview of how HUD computes the FY 2022 FMRs. HUD is making no changes to the estimation methodology for FMRs as used by HUD for the FY 2021 FMRs. For complete information on how HUD derives each area's FMRs, see the online documentation at *https://www.huduser.gov/portal/datasets/fmr.html#2022_query.*

The FY 2022 FMRs are based on the updated metropolitan area definitions published by the Office of Management and Budget (OMB) on September 14, 2018 and incorporated by the Census Bureau into the 2019 American Community Survey (ACS) data. Following the methodology first established in FY 2016 to incorporate such revisions, HUD treats counties that OMB removed from metropolitan areas as nonmetropolitan counties. HUD treats counties that OMB added to metropolitan areas as metropolitan county subareas. They receive rents based on their own data if the local data is statistically reliable (with an error that is less than one-half of the estimate) or receive the metropolitan rent if their subarea estimate does not exist or is statistically unreliable. HUD treats new multi-county metropolitan areas as individual county metropolitan subareas using county-based gross rent estimates (if statistically reliable); otherwise, HUD uses a metropolitan, area-wide gross rent estimate. The goal of this policy is to minimize year-to-year changes in FMR values that are solely due to area definition revisions.

In FY 2022, HUD is making the following additional area definition changes:

HUD is adding Oliver County, ND to the Bismarck, ND Metropolitan Statistical Area. Since FY 2016, Oliver County has comprised the Oliver County, ND HUD Metro FMR Area (HMFA), a separate area from the Bismarck, ND HUD Metro FMR Area. However, in each year from FY 2017 through FY 2021, Oliver County did not have reliable gross rent data from the 5-year ACS, and HUD used the data for the Bismarck, ND MSA in its FMR calculation.

HUD is adding Maunabo Municipio, PR to the San Juan-Guaynabo, PR HUD Metro FMR Area. Since FY 2006, Maunabo has been part of the Barranquitas-Aibonito, PR HUD Metro FMR Area. However, Maunabo is not contiguous with the other municipios that comprise the Barranquitas-Aibonito, PR HUD Metro FMR Area. HUD FMR areas generally consist of contiguous counties or county equivalents.

HUD is adding Utuado Municipio to the Aguadilla-Isabela, PR HUD Metro FMR Area. Prior to FY 2016, no FMR area in Puerto Rico consisted of a single municipio. Unlike Counties in the United States, HUD groups non-metropolitan Puerto Rico Municipios to form the ''Puerto Rico HUD Nonmetro Area'' because Municipios are often smaller than counties in the United States. Similarly, HUD is adding Quebradillas Municipio to the Arecibo, PR HUD Metro FMR Area, which is retitled as Arecibo, PR MSA. Following these two changes, there are no single municipio FMR areas remaining in Puerto Rico.

A. Base Year Rents

For FY 2022 FMRs, HUD uses the U.S. Census Bureau's 5-year ACS data collected between 2015 and 2019 as the ''base rents'' for the FMR calculations. These data are the most current ACS data available at the time that HUD calculates the FY 2022 FMRs. HUD pairs a ''margin of error'' test [3] with an additional requirement based on the number of survey observations supporting the estimate to improve the statistical reliability of the ACS data used in the FMR calculations. The Census Bureau does not provide HUD with an exact count of the number of observations supporting the ACS estimate; rather, the Census Bureau provides HUD with categories of the number of survey responses underlying the estimate, including whether the estimate is based on more than 100 observations. Using these categories, HUD requires that, in addition to the ''margin of error'' test, ACS rent estimates must be based on at least 100 observations to be used as base rents.

For areas in which the 5-year ACS data for two-bedroom, standard quality gross rents do not pass the statistical reliability tests (*i.e.,* have a margin of error ratio greater than 50 percent or fewer than 100 observations), HUD will use an average of the base rents over the three most recent years [4] (provided that there is data available for at least two of these years),[5] or if such data are not available, using the two-bedroom rent data within the next largest geographic area. For a metropolitan subarea, the next largest area is its containing metropolitan area. For a non-metropolitan area, the next largest area is the state non-metropolitan portion.

B. Recent-Mover Factors

Following the assignment of the standard quality two-bedroom rent described above, HUD applies a recent-mover factor to these rents. HUD calculates the recent-mover factor as the change between the 5-year 2015–2019 standard quality two-bedroom gross rent and the 1-year 2019 recent mover gross rent for the recent mover factor area. HUD does not allow recent-mover factors to lower the standard quality base rent; therefore, if the 5-year standard quality rent is larger than the comparable 1-year recent mover rent, HUD sets the recent-mover factor to 1. When the recent-mover factor is greater than one, HUD is, in effect, replacing the base rent with the recent-mover rent for that area.

The calculation of the recent-mover factor for FY 2022 continues to use statistical reliability requirements that are similar to those for base rents. That is, for a recent-mover gross rent estimate

[3] HUD's margin of error test requires that the margin of error of the ACS estimate is less than half the size of the estimate itself.

[4] For FY 2022, the three years of ACS data in question are 2017, 2018 and 2019. HUD adjusts the 2017 and 2018 data to be denominated in 2019 dollars using the growth in Consumer Price Index (CPI)-based gross rents measured between 2017, 2018, and 2019.

[5] To be used in the three-year average calculation, the 5-year estimates must be minimally statistically qualified; that is, the margin of error of the estimates must be less than half the size of the estimate.

to be considered statistically reliable, the estimate must have a margin of error ratio that is less than 50 percent, and the estimate must be based on 100 or more observations.

When an FMR area does not have statistically reliable two-bedroom recent-mover data, the ''all-bedroom'' 1-year recent-mover ACS data for the FMR area is tested for statistical reliability.[6] HUD will use an ''all-bedroom'' recent-mover factor from the FMR area, if statistically reliable, before substituting a two-bedroom recent-mover factor from the next larger geography. Incorporating ''all-bedroom'' rents into the recent-mover factor calculation when statistically reliable two-bedroom data are not available preserves the use of local information to the greatest extent possible.

However, where statistically reliable ''all-bedroom'' data are not available, HUD will continue to base FMR areas' recent-mover factors on larger geographic areas. HUD tests data from differently sized geographic areas in the following order (from small to large), and bases the recent-mover factor on the first statistically reliable recent-mover rent estimate in the geographic hierarchy listed below.

- For metropolitan areas that are sub-areas of larger metropolitan areas, the order is the FMR area, metropolitan area, aggregated metropolitan parts of the state, and state.
- For metropolitan areas that are not divided, the order is the FMR area, aggregated metropolitan parts of the state, and state.
- In non-metropolitan areas, the order is the FMR area, aggregated non-metropolitan parts of the state, and state.

Applying the recent-mover factor to the standard quality base rent produces an ''as of'' 2019 recent mover two-bedroom gross rent for the FMR area.

C. Other Rent Survey Data

HUD calculates base rents for the insular areas using data collected during the 2010 decennial census of American Samoa, the Northern Mariana Islands, and the Virgin Islands beginning with the FY 2016 FMRs.[7] HUD updates the 2010 base year data to 2019 using the growth in national ACS data for the FY 2022 FMRs. Note that while the 2010 decennial census also included Guam, HUD uses the result of a more recent rent survey in calculating the FMRs for Guam, as discussed in the following paragraph.

HUD does not use ACS data to establish the base rent or recent-mover factor where the FY 2021 FMRs are based on locally collected survey data which are more recent than the 2019 ACS. For larger metropolitan areas that have valid ACS one-year recent-mover data, survey data may not be any older than the mid-point of the calendar year for the ACS one-year data. Since the ACS one-year data used for the FY 2022 FMRs is from 2019, larger areas with valid one-year recent mover data may not use other survey data collected before June 30, 2019 for the FY 2022 FMRs. Areas without statistically reliable 1-year ACS data may continue to use local survey data until the mid-point of the 5-year ACS data is more recent than the local survey. For FY 2022 FMRs, there are 18 areas that are based on local ad hoc surveys:

- HUD uses survey data from 2017 to calculate the FMRs for Hood River County, OR; Wasco County, OR; Hawaii County, HI; and the Jonesboro, AR HMFA.
- HUD uses survey data from 2018 to calculate the FMRs for Coos County, OR; Curry County, OR; and Douglas County, OR.
- HUD uses survey data from 2019 to calculate the FMRs for Kauai County, HI; Eugene-Springfield, OR MSA; Portland, ME HUD Metro FMR Area; Santa Maria-Santa Barbara, CA MSA; Worcester, MA HUD Metro FMR Area; and Guam.
- HUD uses survey data from 2020 to calculate the FMRs for Santa Cruz-Watsonville, CA MSA; Houston-The Woodlands-Sugar Land, TX HUD Metro FMR Area, Knox County, ME; Lincoln County, ME; and Waldo County, ME.

D. CPI Gross Rent Adjustment Factors

HUD updates the ACS-based ''as of'' 2019 rent through 2020 using the annual change in gross rents measured through the Consumer Price Index (CPI) from 2019 to 2020 (CPI update factor). HUD uses local CPI data for FMR areas within Class A metropolitan areas covered by local CPI data. HUD uses CPI data aggregated at the Census region level for all Class B and C size metropolitan areas and non-metropolitan areas. Additionally, HUD uses CPI data collected locally in Puerto Rico as the basis for CPI adjustments from 2019 to 2020 for all Puerto Rico FMR areas.

E. Trend Factor Forecasts

Following the application of the appropriate CPI update factor, HUD trends the gross rent estimate from 2020 to FY 2022 using a trend factor which is based on local or regional forecasts of CPI gross rent data. HUD derived a trend factor for each Class A CPI area and Class B/C CPI region using time series models based on national inputs (National Input Model or NIM), local inputs (Local Input Model or LIM) and historical values of the predicted series (Pure Time Series—PTS). HUD chose the actual model used for each CPI area's trend factor based on which model generates the lowest Root Mean Square Error (RMSE) statistic and applied the trend factors to the corresponding FMR areas. HUD is holding the type of model selected (NIM, LIM, or PTS) constant for 5 years and will reassess the model selections during the calculation of the FY 2025 FMRs. More details on the trend factor forecasts are available in the June 5, 2019 **Federal Register** notice (84 FR 26141) and are available at *https://www.federalregister.gov/documents/2019/06/05/2019-11763/proposed-changes-to-the-methodology-used-for-estimating-fair-market-rents.*

E. Bedroom Rent Adjustments

HUD updates the bedroom ratios used in the calculation of FMRs annually. The bedroom ratios used in the calculation of FY 2022 FMRs are calculated from three five-year ACS data series (2013–2017, 2014–2018, and 2015–2019). HUD only uses estimates with a margin of error ratio of less than 50 percent. If an area does not have reliable estimates in at least two of the previous three ACS releases, HUD uses the bedroom ratios for the area's larger parent geography.

HUD uses two-bedroom units for its primary calculation of FMR estimates. This is generally the most common size of rental unit and, therefore, the most reliable to survey and analyze. After estimating two-bedroom FMRs, HUD calculates bedroom ratios for each FMR area which relate the prices of smaller and larger units to the cost of two-bedroom units. To ensure an adequate distributional fit in these bedroom ratio calculations for individual FMR areas, HUD establishes bedroom interval ranges which set upper and lower limits for bedroom ratios nationwide, based on an analysis of the range of such intervals for all areas with large enough samples to permit accurate bedroom ratio determinations.

In the calculation of FY 2022 FMR estimates, HUD sets the bedroom

[6] ''All-bedroom'' refers to estimates aggregated together regardless of the number of bedrooms in the dwelling unit.

[7] The ACS is not conducted in the Pacific Islands (Guam, Northern Mariana Islands and American Samoa) or the U.S. Virgin Islands. As part of the 2010 Decennial Census, the Census Bureau conducted ''long-form'' sample surveys for these areas. HUD uses the results gathered by this long form survey for the FY 2022 FMRs.

interval ranges as follows: Efficiency FMRs are constrained to fall between 0.66 and 0.86 of the two-bedroom FMR; one-bedroom FMRs must be between 0.76 and 0.88 of the two-bedroom FMR; three-bedroom FMRs (prior to the adjustments described below) must be between 1.14 and 1.31 of the two-bedroom FMR; and four-bedroom FMRs (again, prior to adjustment) must be between 1.26 and 1.59 of the two-bedroom FMR. Given that these interval ranges partially overlap across unit bedroom counts, HUD further adjusts bedroom ratios for a given FMR area, if necessary, to ensure that higher bedroom-count units have higher rents than lower bedroom-count units within that area.

HUD also further adjusts the rents for three-bedroom and larger units to reflect HUD's policy to set higher rents for these units.[8] This adjustment is intended to increase the likelihood that the largest families, who have the most difficulty in leasing units, will be successful in finding eligible program units. The adjustment adds 8.7 percent to the unadjusted three-bedroom FMR estimates and adds 7.7 percent to the unadjusted four-bedroom FMR estimates.

HUD derives FMRs for units with more than four bedrooms by adding 15 percent to the four-bedroom FMR for each extra bedroom. For example, the FMR for a five-bedroom unit is 1.15 times the four-bedroom FMR, and the FMR for a six-bedroom unit is 1.30 times the four-bedroom FMR. Similarly, HUD derives FMRs for single-room occupancy units by subtracting 25 percent from the zero-bedroom FMR (*i.e.,* they are set at 0.75 times the zero-bedroom (efficiency) FMR).[9]

F. Minimum FMRs

All FMRs are subject to a state or national minimum. HUD calculates a population-weighted median two-bedroom FMR across all non-metropolitan counties or county-equivalents of each state, which, for the purposes of FMRs, is the state minimum rent. State-minimum rents for each FMR area are available in the FY 2022 FMR Documentation System, available at *https://www.huduser.gov/portal/datasets/fmr.html#2022_query.* HUD also calculates the population-weighted median FMR rent across all non-metropolitan areas of the country, which, for the purposes of FMRs, is the national minimum rent. For FY 2022, the national minimum rent is $757. The applicable minimum rent for a particular area is the *lower* of the state or national minimum. Each area's two-bedroom FMR must be no less than the applicable minimum rent.

G. Limit on FMR Decreases

Within the Small Area FMR final rule published on November 16, 2016, HUD amended 24 CFR 888.113 to include a limit on the amount that FMRs may annually decrease. The current year's FMRs resulting from the application of the bedroom ratios, as discussed in section (E) above, may be no less than 90 percent of the prior year's FMRs for units with the same number of bedrooms. Accordingly, if the current year's FMRs are less than 90 percent of the prior year's FMRs as calculated by the above methodology, HUD sets the current year's FMRs equal to 90 percent of the prior year's FMRs. For areas where use of Small Area FMRs in the administration of their voucher programs is required, the FY 2022 Small Area FMRs may be no less than 90 percent of the FY 2021 Small Area FMRs. For all other metropolitan areas, the FY 2022 Small Area FMRs may be no less than 90 percent of the greater of the FY 2021 metropolitan area wide FMRs or the applicable FY 2021 Small Area FMR.

PHAs operating in areas where the calculated FMR is lower than the published FMR (*i.e.,* those areas where HUD has limited the decrease in the annual change in the FMR to 10 percent) may request payment standards below the basic range (24 CFR 982.503(d)) and reference the ''unfloored'' rents (*i.e.,* the unfinalized FMRs calculated by HUD prior to application of the 10-percent-decrease limit) depicted in the FY 2022 FMR Documentation System (available at: *https://www.huduser.gov/portal/datasets/fmr.html#2022_query).*

IV. Small Area FMRs

HUD lists Small Area FMRs for all metropolitan areas in the Small Area FMR Schedule. Metropolitan PHAs operating in areas where the use of Small Area FMRs are not mandated should contact their local HUD field office to request approval for using Small Area FMRs in the operation of their Housing Choice Voucher program.

HUD calculates Small Area FMRs directly from the standard quality gross rents provided to HUD by the Census Bureau for ZIP Code Tabulation Areas (ZCTAs) when such data are statistically reliable. The ZCTA two-bedroom equivalent 40th percentile gross rent is analogous to the standard quality base rents set for metropolitan areas and non-metropolitan counties. For each ZCTA with statistically reliable gross rent estimates, using the expanded test of statistical reliability first used in FY 2018 (*i.e.,* estimates with margins of error ratios below 50 percent and based on at least 100 observations), HUD calculates a two-bedroom equivalent 40th percentile gross rent using the first statistically reliable gross rent distribution data from the following data sets (in this order): Two-bedroom gross rents, one-bedroom gross rents, and three-bedroom gross rents. If either the one-bedroom or three-bedroom gross rent data are used because the two-bedroom gross rent data are not statistically reliable, HUD converts the one-bedroom or three-bedroom 40th percentile gross rent to a two-bedroom equivalent rent using the bedroom ratios for the ZCTA's parent metropolitan area. To increase stability to these Small Area FMR estimates, HUD averages the latest three years of gross rent estimates.[10]

For ZCTAs without usable gross rent data by bedroom size, HUD calculates Small Area FMRs using the rent ratio method. To calculate Small Area FMRs using a rent ratio, HUD divides the median gross rent across all bedrooms for the ZCTA by the similar median gross rent for the metropolitan area of the ZCTA. If a ZCTA does not have reliable rent data at the all-bedroom level, HUD will then check to see if the ZCTA borders other ZCTAs that themselves have reliable rent data. If at least half of a ZCTA's ''neighbors'' have such data, HUD will use the weighted average of those estimates as the basis for the SAFMR rather than a county proxy, where the weight is the length of the shared boundary between the ZCTA and its neighbor. In small areas where the neighboring ZCTA median gross rents are not statistically reliable, HUD substitutes the median gross rent for the county containing the ZIP code in the numerator of the rent ratio calculation. HUD multiplies this rent ratio by the current two-bedroom FMR for the metropolitan area containing the small area to generate the current year two-bedroom FMR for the small area.

HUD continues to use a rolling average of ACS data in calculating the

[8] As mentioned above, HUD applies the interval ranges for the three-bedroom and four-bedroom FMR ratios prior to making these adjustments. In other words, the adjusted three- and four-bedroom FMRs can exceed the interval ranges, but the unadjusted FMRs cannot.

[9] As established in the interim rules implementing the provisions of the Quality Housing and Work Responsibility Act of 1998 (Title V of the FY 1999 HUD Appropriations Act; Pub. L. 105–276). In 24 CFR 982.604.

[10] For example, for FY 2022 Small Area FMRs, HUD averages the gross rents from 2017, 2018, and 2019 5-Year ACS estimates. The 2017 and 2018 gross rent estimates would be adjusted to 2019 dollars using the metropolitan area's gross rent CPI adjustment factors.

Small Area FMR rent ratios. HUD believes coupling the most current data with previous year's data minimizes excessive year-to-year variability in Small Area FMR rent ratios due to sampling variance. Therefore, for FY 2022 Small Area FMRs, HUD has updated the rent ratios to use an average of the rent ratios calculated from the 2013–2017, 2014–2018, and 2015–2019 5-year ACS estimates.

HUD limits each two-bedroom Small Area FMR to be no more than 150 percent of the two-bedroom FMR for the metropolitan area where the ZIP code is located.

V. Request for Public Comments and FMR Reevaluations

HUD accepts public comments on the methods HUD uses to calculate FY 2022 FMRs and requests for reevaluation of FMRs for specific areas prior to the effective date of this notice. HUD lacks the resources to conduct local surveys of rents to address comments filed regarding the FMR levels for specific areas. PHAs may continue to fund such surveys independently, as specified below, using ongoing administrative fees or their administrative fee reserve if they so choose. HUD continually strives to calculate FMRs that meet the statutory requirement of using ''the most recent available data'' while also serving as an effective program parameter.

FMR Reevaluations

42 U.S.C. 1437f (c)(1)(B) includes the following: ''The Secretary shall establish a procedure for public housing agencies and other interested parties to comment on such fair market rentals and to request, within a time specified by the Secretary, reevaluation of the fair market rentals in a jurisdiction before such rentals become effective.''

PHAs or other parties interested in requesting HUD's reevaluation of their area's FY 2022 FMRs, as provided for under section 8(c)(1)(B) of USHA, must follow the following procedures:

1. Prior to the effective date of this notice, PHAs or other parties must submit reevaluation requests through *https://www.regulations.gov/* or directly to HUD as described above. The area's PHA or, in multi-jurisdictional areas, PHA(s) representing at least half of the voucher tenants in the FMR area, must agree that the reevaluation is necessary.

2. The requestor(s) must supply HUD with data more recent than the 2019 ACS data used in the calculation of the FY 2022 FMRs. HUD requires data on gross rents paid in the FMR area for occupied standard quality rental housing units. Occupied recent mover units (defined as those who moved in the past 24 months) provide the best data. The data delivered must be sufficient for HUD to calculate a 40th and 50th percentile two-bedroom gross rent.[11] Should this type of data not be available, requestors may gather this information using the survey guidance available at *https://www.huduser.gov/portal/datasets/fmr/NoteRevisedAreaSurveyProcedures.pdf* and *https://www.huduser.gov/portal/datasets/fmr/PrinciplesforPHA-ConductedAreaRentSurveys.pdf*.

3. Areas where valid reevaluation requests are submitted must continue to use FY 2021 FMRs whether the FY 2022 FMRs are lower or higher than the FY 2021 FMRs. Following the comment period, HUD will post a list, at *https://www.huduser.gov/portal/datasets/fmr.html*, of the areas requesting reevaluations and where FY 2021 FMRs remain in effect.

4. PHAs or other parties must supply data for reevaluations to HUD no later than Friday January 7, 2022. All survey responses of rental units gathered as part of the survey efforts should be delivered to HUD. In addition to the survey data, HUD requires a current utility schedule in order to evaluate the survey responses. Finally, HUD encourages PHAs to evaluate their survey data to ensure the survey supports their request. Should PHAs or their contractors undertake this evaluation, HUD requests that this analysis also be submitted.

HUD will use the data delivered by January 7, 2022 to reevaluate the FMRs and following the reevaluation, will post revised FMRs in April of 2022 with an accompanying **Federal Register** notice stating the revised FMRs are available, which will include HUD's responses to comments filed during the comment period for this notice. On Monday January 10, 2022, HUD will post at *https://www.huduser.gov/portal/datasets/fmr.html* a listing of the areas that requested FMR reevaluations but did not deliver data and making the FY 2022 FMRs effective in these areas. HUD will incorporate any data supporting a change in FMRs supplied after January 7, 2022 into FY 2023 FMRs. Questions on how to conduct FMR surveys may be addressed to the Program Parameters and Research Division at *pprd@hud.gov*.

For small metropolitan areas without one-year ACS data and non-metropolitan counties, HUD has developed a method using mail surveys that is discussed on the FMR web page: *https://www.huduser.gov/portal/datasets/fmr.html#survey_info*. This method allows for the collection of as few as 100 one-bedroom, two-bedroom, and three-bedroom units.

Other survey methods are acceptable in providing data to support reevaluation requests if the survey method can provide statistically reliable, unbiased estimates of gross rents paid of the entire FMR area. In general, recommendations for FMR changes and supporting data must reflect the rent levels that exist within the entire FMR area and should be statistically reliable.

PHAs in non-metropolitan areas are required to get 100 eligible survey responses which means they should have at least 5,000 rental units. PHAs may conduct surveys of groups of non-metropolitan counties to increase the number of rental units that are surveyed, but HUD must approve all county-grouped surveys in advance. HUD cautions that the resulting FMRs may not be identical for the counties surveyed; each individual FMR area will have a separate FMR based on the relationship of rents in that area to the combined rents in the cluster of FMR areas. In addition, HUD advises that in counties where FMRs are based on the combined rents in the cluster of FMR areas, HUD will not revise their FMRs unless the grouped survey results show a revised FMR statistically different from the combined rent level.

Survey samples should preferably be randomly drawn from a complete list of rental units for the FMR area. If this is not feasible, the selected sample must be drawn to be statistically representative of the entire rental housing stock of the FMR area. Surveys must include units at all rent levels and be representative by structure type (including single-family, duplex, and other small rental properties), age of housing unit, and geographic location. The current 5-year ACS data should be used as a means of verifying if a sample is representative of the FMR area's rental housing stock. Staff from HUD's Program Parameters and Research Division will work with PHAs in areas requesting re-evaluations to provide the minimum number of survey cases required to ensure that data submitted for re-evaluation represent a statistically valid sample.

A PHA or contractor that cannot obtain the recommended number of sample responses after reasonable efforts should consult with HUD before abandoning its survey; in such situations, HUD may find it appropriate to relax normal sample size

[11] Although there are no longer 50th percentile FMRs, HUD must calculate 50th percentile rents for the Success Rate Payment Standard under 24 CFR 982.503(e).

requirements, but in no case will fewer than 100 eligible cases be considered.

Calculating Small Area FMRs Using Rent Distributions

HUD has developed guidance on how to provide data-supported comments on Small Area FMRs using HUD's special tabulations of the distribution of gross rents by unit bedroom count for ZIP Code Tabulation Areas. This guidance is available at *https://www.huduser.gov/portal/datasets/fmr.html* in the FY 2022 FMR section under the ''Documents'' tab and should be used by interested parties in commenting on whether or not the level of Small Area FMRs are too high or too low (*i.e.,* Small Area FMRs that are larger than the gross rent necessary to make 40 percent of the units accessible for an individual zip code or that are smaller than the gross rent necessary to make 40 percent of the units accessible for a given zip code). HUD will post revised Small Area FMRs after confirming commenters' calculations.

VI. Environmental Impact

This Notice involves the establishment of FMR schedules, which do not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this Notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Accordingly, the Fair Market Rent Schedules, which will not be codified in 24 CFR part 888, are available at *https://www.huduser.gov/portal/datasets/fmr.html*.

Todd Richardson,

General Deputy Assistant Secretary for Policy Development and Research.

Fair Market Rents for the Housing Choice Voucher Program

Schedule B—General Explanatory Notes

Arrangement of FMR Areas and Identification of Constituent Parts

a. The Metropolitan and Non-Metropolitan FMR Area Schedule lists FMRs alphabetically by state, by metropolitan area and by non-metropolitan county within each state and are available at *https://www.huduser.gov/portal/datasets/fmr.html*.

b. The schedule lists the constituent counties (and New England towns and cities) included in each metropolitan FMR area immediately following the listings of the FMR dollar amounts. All constituent parts of a metropolitan FMR area that are in more than one state can be identified by consulting the listings for each applicable state.

c. The schedule lists two non-metropolitan counties alphabetically on each line of the non-metropolitan county listings.

d. Similarly, the schedule lists the New England towns and cities included in a non-metropolitan county immediately following the county name.

[FR Doc. 2021–16148 Filed 8–5–21; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[L14400000 PN0000 HQ350000 212; OMB Control No. 1004–0153]

Agency Information Collection Activities; Conveyance of Federally-Owned Mineral Interests

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) proposes to renew an information collection.

DATES: Interested persons are invited to submit comments on or before September 7, 2021.

ADDRESSES: Written comments and recommendations for the proposed Information Collection Request (ICR) 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: To request additional information about this ICR, contact Susie Greenhalgh by email at *lgreenhalgh@blm.gov,* or by telephone at 202–302–4288. Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on April 1, 2021 (86 FR 17188). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: Section 209(b) of the Federal Land Policy and Management Act (43 U.S.C. 1719) authorizes the Secretary of the Interior to convey Federally owned mineral interests to non-Federal owners of the surface estate. The respondents in this information collection are non-Federal owners of surface estates who apply for underlying Federally owned mineral interests. This information collection enables the BLM to determine

if the applicants are eligible to receive title to the Federally owned mineral interests beneath their lands. Regulations at 43 CFR part 2720 establish guidelines and procedures for the processing of these applications. OMB's approval for the information collections approved under OMB control number 1004–0153 is scheduled to expire on August 31, 2021. In accordance with OMB's regulations at 5 CFR 1320.12, *Clearance of collections of information in current rules,* this request is for OMB to renew this OMB control number for an additional three years.

Title of Collection: Conveyance of Federally Owned Mineral Interests (43 CFR part 2720).

OMB Control Number: 1004–0153.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Owners of surface estates (*i.e.,* individuals, businesses, or state, local, or tribal governments) that want to obtain underlying Federally owned mineral estates.

Total Estimated Number of Annual Respondents: 5.

Total Estimated Number of Annual Responses: 5.

Estimated Completion Time per Response: 1 hour.

Total Estimated Number of Annual Burden Hours: 5.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: $250.

An agency may not conduct or sponsor and, notwithstanding any other provision of law, a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Darrin King,

Information Collection Clearance Officer.

[FR Doc. 2021–16785 Filed 8–5–21; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVL0000–L51100000–GN0000–LVEMF2105850–21X MO #4500151979]

Notice of Availability of the Final Environmental Impact Statement for the Robinson Mine Plan of Operations Amendment, White Pine County, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the Bureau of Land Management (BLM) Ely District (EYDO), Nevada, has prepared a Final Environmental Impact Statement (EIS) for the Robinson Mine Plan of Operations Amendment project and by this notice is announcing its availability.

DATES: The BLM will not issue a final decision on the proposal for a minimum of 30 days after the Environmental Protection Agency publishes its notice of availability of the Robinson Mine Plan of Operations Amendment Final EIS DOI–BLM–NV–L060–2020–0008–EIS in the **Federal Register**.

ADDRESSES: Copies of Robinson Mine Plan of Operations Amendment and the Final EIS are available for public inspection on the internet at *https://go.usa.gov/xvYad.*

FOR FURTHER INFORMATION CONTACT: For questions about the proposed project contact Ms. Tiera Arbogast, Planning & Environmental Coordinator, Bureau of Land Management Ely District Office, telephone 775–289–1872, email: *tarbogast@blm.gov,* or address: 702 North Industrial Way, Ely, Nevada 89301. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact Ms. Arbogast 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. Normal business hours are 7:30 a.m. to 4:30 p.m., Monday through Friday, except for Federal holidays.

SUPPLEMENTARY INFORMATION: This document provides notice that the BLM EYDO, Ely, Nevada, has published a Final EIS for the Robinson Mine Plan of Operations Amendment project. The Robinson Mine is an 8,887-acre copper mining operation adjacent to Ruth, Nevada, seven miles west of Ely, Nevada, via U.S. Route 50.

KGHM Robinson Nevada Mining Company (KGHM Robinson) is proposing additional development at the Robinson Mine to extend mine life approximately four additional years beyond its currently anticipated permanent closure in 2024. To accomplish this, the company is proposing renewed mining in the eastern portions of its privately-owned Liberty Pit and an authorization by the BLM to access and develop two specific areas of nearby BLM-managed public land on which to dispose newly generated waste rock.

Under the BLM Preferred Alternative, KGHM Robinson would be permitted to develop approximately 260 acres of BLM-managed lands immediately south of the Robinson Mine to serve as the King Waste Rock Dump. This alternative would also include renewed dewatering and expanded mining operations in the eastern portions of KGHM Robinson's privately owned Liberty Pit area as well as approval to develop approximately 545 acres of BLM-managed land and 94 acres of private land adjacent to the Giroux Wash Tailings Storage Facility (TSF). These areas would be used for obtaining borrow material for the previously approved increase in height of the TSF main impoundment and perimeter dams, as well as for growth media (*i.e.,* topsoil) storage for final reclamation. Approval of this alternative would result in an additional 793 acres of new disturbance on BLM-managed lands as well as disturbance on approximately 170 acres of KGHM Robinson-owned private lands, for a total of 963 acres of new surface disturbance. Active life of the Robinson Mine would be extended to 2028. The resource impacts for Alternative B were considered the most environmentally preferred when compared to impacts associated with cultural resources, geochemistry and groundwater, waste rock dump construction, and Greater sage-grouse habitat under other alternatives.

Under the No Action Alternative (Alternative A) the BLM would not approve the 2019 Robinson Mine Plan of Operations Amendment as written. Although KGHM Robinson could continue mining on its own private lands, no additional expansion onto BLM-managed public lands would be permitted. Without additional areas on which to dispose waste rock generated by continued mining, or the ability to obtain substantial additional volumes of soil to use in increasing the height of the primary impoundment and perimeter

dams at the Giroux Wash Tailings Storage Facility (TSF), KGHM Robinson estimates that active operations at the Robinson Mine would cease in 2024.

The Reduced King Waste Rock Dump (WRD) and North Tripp WRD (Alternative C) would keep all project elements described in the 2019 Plan Amendment, including both the North Tripp and King WRDs; however, the allowable footprint of the King WRD would be reduced from the 260 acres under the BLM Preferred Alternative to 234 acres under this alternative. Specifically, Alternative C would eliminate all proposed King WRD development east of County Road 44A. The North Tripp WRD would be expanded onto approximately 102 acres of BLM-managed public lands and 67 private acres. As with the BLM Preferred Alternative, this alternative would include dewatering and renewed mining in the eastern portions of the Liberty Pit and development of approximately 545 acres of BLM-managed public land and 94 private acres adjacent to the Giroux Wash TSF. This alternative would result in approximately 869 acres of new disturbance on BLM-managed public lands and 237 acres of KGHM-owned private lands, for a total of approximately 1,106 acres of new surface disturbance. As with the BLM Preferred Alternative, mine life would be extended to 2028.

The Ruth East Backfill and Reduced King WRD Alternative (Alternative D) is similar to Alternative B, the BLM Preferred Alternative. Alternative D would include renewed dewatering and expanded mining operations in the eastern portions of the Liberty Pit as well as approval for KGHM Robinson to develop a total of approximately 639 acres of mixed public and private land adjacent to the Giroux Wash TSF. Alternative D, like Alternative C, would include the reduced 234-acre King WRD. Alternative D would not, however, include development of the North Tripp WRD. Rather, additional waste rock generated during continued mining would be disposed within approximately 160 acres of KGHM-owned lands within the Ruth East Pit. Approval of Alternative D would therefore result in approximately 767 acres of new surface disturbance on BLM-managed lands and 330 acres of KGHM-owned private lands, for a total of approximately 1,097 acres. As with the BLM Preferred Alternative and Alternative C, mine life would be extended to 2028.

The Notice of Intent for this project also included the BLM's proposal to amend the Ely District Resource Management Plan for Visual Resource Management classes. During scoping, however, the BLM determined that a Resource Management Plan amendment is not required, and therefore it is no longer being analyzed as part of this Final EIS. On September 14, 2020, the Council on Environmental Quality's revision to the NEPA Regulations went into effect. The final rule does not apply to the NEPA analysis for the Robinson Mine Plan of Operations Amendment, as it began prior to September 14, 2020.

A Notice of Availability of the Draft EIS for the proposed project was published in the **Federal Register** on December 4, 2020 (85 FR 78351). A virtual public meeting was held during the comment period. The BLM received 18 public comment documents during the 45-day comment period. The documents contained 56 unique and substantive comments which included concerns on mine closure and reclamation planning, greater sage grouse protection, general wildlife issues, mitigation measures, and geochemistry issues primarily related to pit lakes and assumed contaminant seepage. Comments on the Draft EIS received from the public and internal BLM review were considered and incorporated, as appropriate, into the Final EIS. Public comments resulted in corrections or the addition of clarifying text but did not change the proposed action.

The BLM has consulted with the Nevada State Historic Preservation Office (SHPO) on the Project in accordance with the 2014 State Protocol Agreement between the BLM and Nevada SHPO for Implementing the National Historic Preservation Act. The BLM has determined that the Project would cause adverse effects to eight historic properties and five unevaluated archaeological resources. The BLM and Nevada SHPO executed a Programmatic Agreement in 2016 to resolve adverse effects to cultural resources in the Robinson Nevada Mining Company Area of Potential Effect. The 2016 programmatic agreement outlines the process by which these resources will be evaluated and mitigated. BLM has consulted with SHPO on the mitigation measures for these sites and concurred upon the treatment. The specific actions necessary to resolve adverse effects to historic properties will be carried out prior to Project implementation.

The BLM has initiated ongoing consultation with Indian tribes on a government-to-government basis in accordance with Executive Order 13175 and other policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be given due consideration and have been analyzed in the Final EIS.

(Authority: 40 CFR 1502)

Robbie McAboy,

District Manager, Ely District Office.

[FR Doc. 2021–16548 Filed 8–5–21; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[212.LLIDT02000.L12200000.JX0000 .241A0.4500154358]

Notice of Availability of the Cedar Fields Plan Amendment Draft Environmental Impact Statement for the Monument Resource Management Plan, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the Bureau of Land Management (BLM) has prepared the Draft Monument Resource Management Plan (RMP) Amendment and Draft Environmental Impact Statement (EIS) for the Cedar Fields Project Area and by this notice is announcing the opening of the public comment period.

DATES: To ensure that comments will be considered, the BLM must receive written comments on the Draft RMP Amendment/Draft EIS within 90 days following the date the Environmental Protection Agency publishes its Notice of Availability in the **Federal Register**. The BLM will announce future meetings or hearings at least 15 days in advance through public notices, media releases, and/or mailings.

ADDRESSES: You may submit comments related to the Draft RMP Amendment/Draft EIS by any of the following methods:

- *Website: https://eplanning.blm.gov/eplanning-ui/project/36660/510.*
- *Email: blm_id_monumentcassiarmpamend@blm.gov.*
- *Fax:* 208–677–6699.
- *Mail:* BLM Burley Field Office, 15 East 200 South, Burley, ID 83318.

Copies of the Draft RMP Amendment/Draft EIS are available in the Burley Field Office at the above address.

FOR FURTHER INFORMATION CONTACT: Lisa Cresswell, Assistant Field Manager, Shoshone Field Office, telephone 208–732–7270; address BLM Burley Field

Office, 15 East 200 South, Burley, ID 83318; email *blm_id_monumentcassiarmpamend@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 Ms. Cresswell. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question for Ms. Cresswell. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Draft RMP Amendment/Draft EIS for the Cedar Fields is now available. The BLM prepared this document in consultation with cooperating agencies and in accordance with NEPA, FLPMA, implementing regulations, the BLM's Land Use Planning Handbook (H–1601–1) and National Environmental Policy Handbook (H–1790–1), and other applicable law and policy.

The Draft RMP Amendment/Draft EIS analyzes management options for the BLM-managed portions of Cedar Fields that were not evaluated in the EIS for the 1985 Monument Resource Management Plan. Its purpose is to consider a range of reasonable alternatives for managing recreation use while providing cultural resource protection on BLM-managed lands and adjacent U.S. Bureau of Reclamation (USBR)-managed lands in Cedar Fields. This will be done in a manner that maintains the values identified in the 1985 Monument RMP and the 1999 American Falls Archaeological District (Archaeological District) listing on the National Register of Historic Places. The five alternatives range from reducing the area available for rock climbing and off-highway vehicle use, to limiting the type of rock climbing allowed in the Archaeological District to traditional climbing only.

The BLM initiated the land use planning process on August 23, 2011, through a Notice of Intent published in the **Federal Register**, notifying the public of a formal scoping period and soliciting public participation in the planning process. The BLM held three scoping meetings in September and October 2011 in Pocatello, Burley, and American Falls, Idaho. Based on public input gathered during initial scoping, and from stakeholders throughout the process, the BLM formulated the five alternatives considered and analyzed in the Draft RMP Amendment/Draft EIS. Because nominations for the designation of Areas of Critical Environmental Concern were previously analyzed for the RMP, the BLM did not solicit new nominations during scoping for the amendment.

Following the close of the public review and comment period, the Draft RMP Amendment/Draft EIS will be revised in preparation for its release as the Proposed RMP Amendment and Final EIS. The BLM will respond to substantive comments by making appropriate revisions to the document or explain why a comment did not warrant a change.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1506.6, 40 CFR 1506.10, 43 CFR 1610.2.

John F. Ruhs,

BLM Idaho State Director.

[FR Doc. 2021–16628 Filed 8–5–21; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR85672000, 21XR0680A2, RX.31480001.0040000; OMB Control Number 1006–0002]

Agency Information Collection Activities; Recreation Use Data Reports

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Bureau of Reclamation (Reclamation) are proposing to renew an information collection with revisions.

DATES: Interested persons are invited to submit comments on or before October 5, 2021.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to Ronnie Baca, Bureau of Reclamation, P.O. Box 25007, Denver, CO 80225–0007; or by email to *rbaca@usbr.gov.* Please reference Office of Management and Budget (OMB) Control Number 1006–0002 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Ronnie Baca by email at *rbaca@usbr.gov,* or by telephone at (303) 445–3257. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: Reclamation collects agency-wide recreation and concession information to fulfill congressional

reporting requirements pursuant to current public laws, including the Federal Water Project Recreation Act (16 U.S.C. 460I), and the Federal Lands Recreation Enhancement Act (16 U.S.C. 87). In addition, collected information will permit relevant program assessments of resources managed by Reclamation, its recreation managing partners, and/or concessionaires for the purpose of contributing to the implementation of Reclamation's mission. More specifically, the collected information enables Reclamation to (1) evaluate the effectiveness of program management based on existing recreation and concessionaire resources and facilities, and (2) validate the efficiency of resources for public use within partner managed recreation resources, located on Reclamation project lands in the 17 Western States.

Title of Collection: Recreation Use Data Report.

OMB Control Number: 1006–0002.

Form Number: Form 7–2534—Recreation Use Data Report.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: State, local, or tribal governments; agencies who manager Reclamation's recreation resources and facilities; and commercial concessions, subconcessionaires, and nonprofit organizations located on Reclamation lands with associated recreation services.

Total Estimated Number of Annual Respondents: 212.

Total Estimated Number of Annual Responses: 212.

Estimated Completion Time per Response: 25 minutes.

Total Estimated Number of Annual Burden Hours: 88 hours.

Respondent's Obligation: Mandatory.

Frequency of Collection: Annually.

Total Estimated Annual Nonhour Burden Cost: 0.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Karen Knight,

Director, Dam Safety and Infrastructure.

[FR Doc. 2021–16845 Filed 8–5–21; 8:45 am]

BILLING CODE 4332–90–P

INTERNATIONAL TRADE COMMISSION

Certain Balanced Armature Devices, Products Containing Same, and Components Thereof

[Investigation No. 337–TA–1186]

Notice of a Commission Determination To Review in Part a Summary Determination Finding a Violation of Section 337; Request for Written Submissions on the Issues Under Review and on Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part a summary determination (''ID'') (Order No. 50) of the presiding administrative law judge (''ALJ''), finding a violation of section 337. The Commission requests written submissions from the parties on the issues under review and submissions from the parties, interested government agencies, and other interested persons on the issues of remedy, the public interest, and bonding, under the schedule set forth below.

FOR FURTHER INFORMATION CONTACT: Amanda Pitcher Fisherow, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2737. 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 November 29, 2019, the Commission instituted this investigation based on a complaint filed by Knowles Corporation and Knowles Electronics, LLC of Itasca, Illinois, and Knowles Electronics (Suzhou) Co., Ltd. of Suzhou, China (collectively, ''Knowles''). 84 FR 65840 (Nov. 29, 2019). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, due to the importation into the United States, sale for importation, or sale in the United States after importation of certain balanced armature devices, products containing same, and components thereof by reason of misappropriation of trade secrets, the threat or effect of which is to destroy or substantially injure a domestic industry. *Id.* The notice of investigation named twelve (12) respondents, including Shenzhen Bellsing Acoustic Technology Co. Ltd. of Shenzhen, China, Suzhou Bellsing Acoustic Technology Co. Ltd. of Suzhou, China, Dongguan Bellsing Precision Device Co., Ltd. of Dongguan, China, and Bellsing Corporation of Lisle, Illinois (collectively, ''Bellsing''); Liang Li (a/k/a Ryan Li) of Suzhou City, China (''Mr. Li''); Dongguan Xinyao Electronics Industrial Co., Ltd. of Dongguan, China (''Xinyao''); Soundlink Co., Ltd. of Suzhou, China (''Soundlink''); Magnatone Hearing Aid Corporation d/b/a Persona Medical and lnEarz Audio of Casselberry, Florida (''Persona''); Jerry Harvey Audio LLC of Orlando, Florida (''Harvey''); Magic Dynamics, LLC d/b/a MagicEar of Clearwater, Florida (''MagicEar''); Campfire Audio, LLC of Portland, Oregon (''Campfire''); and Clear Tune Monitors, Inc. of Orlando, Florida (''Clear Tune''). *Id.* The Office of Unfair Import Investigations (''OUII'') is also a party in this investigation. *Id.*

Xinyao, Soundlink, MagicEar, CampFire, Persona, Clear Tune, and Harvey were all terminated from the investigation based on the issuance of consent orders. *See* Order Nos. 37–40, *unreviewed by* Comm'n Notice (Nov. 23, 2020); Order Nos. 34–35, *unreviewed by* Comm'n Notice (Nov. 19, 2020); and Order No. 28, *unreviewed by* Comm'n Notice (Sept. 20, 2020).

On June 1, 2021, the ALJ issued the subject ID. On June 11, 2021, Bellsing and Mr. Li filed a joint petition for review. On June 21, 2021, OUII and Knowles filed responses.

Having reviewed the record of the investigation, the ID, and the parties' submissions to the ALJ and the Commission, the Commission has determined to review the ID in part. Specifically, the Commission has determined to review (1) whether Bellsing can participate in briefing on remedy and bonding before the ALJ (ID at 4) and in briefing on remedy, the public interest, and bonding before the Commission; (2) importation; (3) use by Mr. Li of Representative Trade Secret Nos. (''RTS'') 1–10 (ID at 35–36, 41–42, 49, 56–57, 61, 72–73, and 84–85); (4) all findings related to RTS No. 6; and (5) domestic industry. The Commission also reviews the issues raised in the

parties' arguments relating to due process, comity, and collateral estoppel.

In connection with its review, the Commission requests responses to the following questions. The parties are requested to brief their positions with reference to the applicable law and the existing evidentiary record. The response to each question should include citations to the record and identify when the issue/evidence was previously raised before the ALJ.

(1) Should briefing on remedy, bonding, and the public interest be considered from a defaulting party (assuming that the briefing presented by the defaulting party is not related to issues concerning a finding of violation)? Are there any policy considerations that the Commission should take into account?

(2) Did Mr. Li waive the issue of whether the importation requirement has been met by Mr. Li? When was the issue first raised?

(3) Please discuss whether the importation requirement has been met with respect to Mr. Li. Can Bellsing's actions be imputed to Mr. Li, and if so, under what theory? Please address the record evidence and applicable case law.

(4) Has Mr. Li used or disclosed each of the RTS Nos. 1–10? Can Bellsing's actions be imputed to Mr. Li, and if so, under what theory? Please address the record evidence and applicable case law.

The parties are invited to brief only the discrete issues requested above (in their briefs, the parties should also address remedy, bonding, and the public interest, as requested below). The parties are not to brief other issues, which are adequately presented in the parties' existing filings.

In connection with the final disposition of this investigation, the statute authorizes issuance of, *inter alia,* (1) an exclusion order that could result in the exclusion of the subject articles from entry into the United States; and/or (2) cease and desist orders that could result in the respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843, Comm'n Op. at 7–10 (Dec. 1994). In particular, the written submissions regarding cease and desist orders should address the request for a cease and desist order in the context of recent Commission opinions. The Commission asks that any submissions on remedy address the following:

(1) General exclusion order questions:

(a) Can the Commission issue a general exclusion order covering downstream products of non-respondents that incorporate articles found to be in violation of section 337? If so, under what circumstances can downstream products be covered by a GEO?

(b) Should the Commission consider whether non-respondents are likely to circumvent the GEO in determining whether to cover downstream products in its order?

(c) Should the Commission consider the approach and factors set forth in *Certain Erasable Programmable Read Only Memories (EPROMs),* Inv. No. 337–TA–276, Comm'n Op. (May 1989), *aff'd sub nom., Hyundai Elec. Indus. Co.* v. *U.S. Int'l Trade Comm'n,* 899 F.2d 1204 (Fed. Cir. 1990)? Please discuss the relevant evidence in the record of this investigation and how that evidence supports the approach and factors that the Commission should use. Please also discuss the relevant statutory provisions of Section 337 and case law, including *Kyocera Wireless Corp.* v. *Int'l Trade Comm'n,* 545 F.3d 1340, 1357–58 (Fed. Cir. 2008).

(2) In relation to the accused products, please identify any information in the record, including allegations in the pleadings, that addresses the existence of any domestic inventory, any domestic operations, or any sales-related activity directed at the United States for each respondent against whom a cease and desist order is sought and whether the inventories, business operations, or sales activities are significant.

(3) Discuss any instances where the Commission has issued a cease and desist order to a respondent in his individual capacity and/or an individual respondent acting on behalf of a company? In what circumstance should the Commission issue a cease and desist order directed to an individual?

The statute requires the Commission to consider the effects of that remedy upon the public interest. The public interest factors the Commission will consider include the effect that an exclusion order and cease and desist orders would have on: (1) The public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve, disapprove, or take no action on the Commission's determination. *See* Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: The parties to the investigation are requested to file written submissions on the issues identified in this notice. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding.

In their initial submissions, Complainants are also requested to identify the remedy sought and Complainants and OUII are requested to submit proposed remedial orders for the Commission's consideration. Complainants are further requested to provide the HTSUS subheadings under which the accused products are imported, and to supply the identification information for all known importers of the products at issue in this investigation. The initial written submissions and proposed remedial orders must be filed no later than close of business on August 16, 2021. Reply submissions must be filed no later than the close of business on August 23, 2021. Opening submissions are limited to 50 pages. Reply submissions are limited to 30 pages. No further submissions on any of these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f)

are currently waived. 85 FR 15798 (March 19, 2020). Submissions should refer to the investigation number (Inv. No. 337–TA–1186) in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf*). Persons with questions regarding filing should contact the Secretary, (202) 205–2000.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All non-confidential written submissions will be available for public inspection on EDIS.

The Commission vote for this determination took place on August 2, 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: August 2, 2021.

Katherine Hiner,

Supervisory Attorney.

[FR Doc. 2021–16792 Filed 8–5–21; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1231]

Certain Digital Imaging Devices and Products Containing the Same and Components Thereof; Notice of a Commission Determination Not To Review an Initial Determination Terminating the Investigation in Its Entirety Based on Settlement; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (''Commission'') has determined not to review an initial determination (''ID'') (Order No. 23) of the presiding administrative law judge (''ALJ''), terminating the investigation in its entirety based on settlement. This investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Ronald A. Traud, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3427. 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: The Commission instituted this investigation on December 1, 2020, based on a complaint filed on behalf of Pictos Technologies, Inc. of San Jose, California (''Pictos''). 85 FR 77238–39 (Dec. 1, 2020). The complaint, as amended, alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain digital imaging devices and products containing the same and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 7,800,145, 6,838,651, 7,323,671, and 7,064,768. *Id.* The amended complaint further alleged violations of section 337 based upon the importation into the United States, or in the sale of certain digital imaging devices and products containing the same and components thereof by reason of misappropriation of trade secrets. *Id.* The complaint also alleged that an industry in the United States exists as required by section 337. *Id.* The Commission's notice of investigation named as respondents Samsung Electronics Co., Ltd. of Republic of Korea; Samsung Electronics America, Inc. of Ridgefield Park, New Jersey; and Samsung Semiconductor, Inc. of San Jose, California (collectively, ''Samsung''). *Id.* The Office of Unfair Import Investigations (''OUII'') is participating in the investigation. *Id.*

On June 21, 2021, Pictos and Samsung jointly moved pursuant to 19 CFR 210.21(a)(2) and (b) to terminate the investigation based on a settlement agreement (''the Agreement''). The motion attached public and confidential versions of the Agreement. On June 24, 2021, OUII filed a statement in support of the motion.

On July 16, 2021, the ALJ issued Order No. 23, the subject ID, which granted the motion. The ID found that the motion complied with the Commission's Rules and that there are no extraordinary circumstances that warrant denying the motion. The ID also found that there is no evidence indicating that terminating this investigation would be contrary to the public interest. No petitions for review of the ID were received.

The Commission has determined not to review the subject ID. The investigation is hereby terminated in its entirety.

The Commission vote for this determination took place on August 2, 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: August 2, 2021.

Katherine Hiner,

Supervisory Attorney.

[FR Doc. 2021–16791 Filed 8–5–21; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number: 1110–0065]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension Without Change of a Currently Approved Collection

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice, Federal Bureau of Investigation, Cyber Engagement & Intelligence Section, is submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: The Department of Justice encourages public comment and will accept input until October 5, 2021.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Kenneth Shelly, Management & Program Analyst, Federal Bureau of Investigation, 935 Pennsylvania Ave. NW, Washington, DC 20535, *kwshelly@fbi.gov,* 703–633–5772.

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 Federal Bureau of Investigation, Cyber Engagement & Intelligence Section, 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, without change, of a currently approved collection.

2. *The Title of the Form/Collection:* Private Industry Feedback Survey.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* There is no agency form number for this collection. The applicable component within the Department of Justice is the Federal Bureau of Investigation, Cyber Engagement & Intelligence Section.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Private sector partners from private industry, non-profit organizations, and state and local government entities are requested to voluntarily respond to the private industry feedback survey. Abstract: The FBI, Cyber Division, is requesting PRA approval of extending approval of an on-line survey to collect feedback information from private sector partners related to FBI cyber trend and threat reports. This collection will be the minimum amount of information needed to improve future reports to better serve the FBI's private sector partners. This collection was previously approved in 2018.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Expected annual responses are 150 and the survey will take 10 minutes to complete.

6. *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 25 total annual burden hours associated with this collection. Estimated time spent on reviewing the survey responses in 100 hours.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: August 3, 2021.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2021–16852 Filed 8–5–21; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Advisory Council on Employee Welfare and Pension Benefit Plans; Nominations for Vacancies

Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 88 Stat. 895, 29 U.S.C. 1142, provides for the establishment of an Advisory Council on Employee Welfare and Pension Benefit Plans (the Council), consisting of 15 members appointed by the Secretary of Labor (the Secretary) as follows:

- Three representatives of employee organizations (at least one of whom shall be a representative of an organization whose members are participants in a multiemployer plan);
- three representatives of employers (at least one of whom shall be a representative of employers maintaining or contributing to multiemployer plans);
- three representatives from the general public (one of whom shall be a person representing those receiving benefits from a pension plan); and
- one representative each from the fields of insurance, corporate trust, actuarial counseling, investment counseling, investment management, and accounting.

No more than eight members of the Council shall be members of the same political party.

Council members must be qualified to appraise the programs instituted under ERISA. Appointments are for three-year terms. The Council's prescribed duties are to advise the Secretary with respect to carrying out his functions under ERISA, and to submit to the Secretary, or his designee, related recommendations. The Council will meet at least four times each year.

The terms of five Council members expire at the end of this year. The groups or fields they represent are as follows:

(1) Employee organizations;
(2) employers;
(3) the general public;
(4) actuarial counseling; and
(5) investment counseling.

The Department of Labor is committed to equal opportunity in the workplace and seeks a broad-based and diverse Council.

If you or your organization wants to nominate one or more people for appointment to the Council to represent one of the groups or fields specified above, submit nominations to Christine Donahue, Council Executive Secretary, as email attachments to

donahue.christine@dol.gov or by mail to U.S. Department of Labor, 200 Constitution Ave. NW, Suite N–5700, Washington, DC 20210. Nominations must be received on or before September 20, 2021. If sending electronically, please use an attachment in rich text, Word, or pdf format. Please allow three weeks for regular mail delivery to the Department of Labor. Nominations may be in the form of a letter, resolution, or petition signed by the person making the nomination or, in the case of a nomination by an organization, by an authorized representative of the organization. The Department of Labor encourages you to include additional supporting letters of nomination. The Department of Labor will not consider self-nominees who have no supporting letters.

Nominations, including supporting letters, should:

- State the person's qualifications to serve on the Council (including any particular specialized knowledge or experience relevant to the nominee's proposed Council position);
- state that the candidate will accept appointment to the Council if offered;
- include which of the five positions (representing groups or fields) you are nominating the candidate to fill;
- include the nominee's full name, work affiliation, mailing address, phone number, and email address;
- include the nominator's full name, work affiliation, mailing address, phone number, and email address;
- include the nominator's signature, whether sent by email or otherwise.

Please do not include any information that you do not want publicly disclosed.

The Department of Labor will contact nominees for information on their political affiliation and their status as registered lobbyists. Anyone currently subject to federal registration requirements as a lobbyist is not eligible for appointment. Nominees should be aware of the time commitment for attending meetings and actively participating in the work of the Council. Historically, this has meant a commitment of at least 20 days per year. The Department of Labor has a process for vetting nominees under consideration for appointment.

Signed at Washington, DC, this 2nd day of August, 2021.

Ali Khawar,

Acting Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 2021–16814 Filed 8–5–21; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2021–040]

Draft FY 2022–2026 Strategic Plan

AGENCY: National Archives and Records Administration (NARA).

ACTION: Invitation to comment.

SUMMARY: We have posted our new draft Strategic Plan and are inviting feedback from staff, public and Government customers, stakeholders, and colleagues in the archival, historical, and records management communities.

DATES: Please provide your feedback by August 20, 2021.

Location: You can view the draft Strategic Plan in two places: On our website at *http://archives.gov/about/plans-reports/strategic-plan/draft-strategic-plan* and on GitHub at *https://usnationalarchives.github.io/strategic-plan.* You can submit feedback on GitHub or by email to *strategy@nara.gov.*

FOR FURTHER INFORMATION CONTACT: Carla Patterson, Director, Strategy and Performance Division, National Archives and Records Administration; 8601 Adelphi Road, College Park, Maryland 20740, by email at *strategy@nara.gov,* or by telephone at 301 837–0993.

SUPPLEMENTARY INFORMATION: The draft plan reaffirms our current Mission, Vision, Values, Transformational Outcomes, and Strategic Goals (see Strategic Plan (FY 2018–FY 2022) at *https://www.archives.gov/about/plans-reports/strategic-plan*). The draft plan updates the agency's strategic objectives to focus agency resources on improving equity, providing a world-class customer experience for all customers, and using our experiences during the pandemic to accelerate agency modernization.

Our draft Strategic Plan commits to new outreach to traditionally underserved communities and to work with these communities to identify the records in our holdings that are most important to them. Once identified, we'll prioritize those records for archival processing and describing, digitizing, and accessing online. We're at the beginning of a process to build new relationships with underserved communities, and this draft plan reflects our intent to maintain and foster those relationships over time.

The draft Strategic Plan also revitalizes our customer service activities by addressing the entire customer experience. We've proposed agency-wide objectives to better understand customer needs and expectations and modernize services and communications channels. These objectives will drive cross-agency activities to provide a unified, responsive experience for customers across all of our services lines.

And finally, the draft Strategic Plan challenges our programs and agency records management functions to continue modernizing activities that we started during the COVID–19 pandemic. We recognize that making more of our work processes electronic and online will allow us to fulfill more of our mission remotely, making the agency more resilient over time. We also commit to modernizing our records management policies to keep pace with changes in how Federal agencies create and manage a new generation of electronic records.

All Federal agencies must issue a new Strategic Plan every four years. We shared this draft plan with National Archives employees on July 28 and are now sharing the plan with stakeholders and the public for comment.

We'll collect and consider feedback, and then revise and share the draft plan with the Office of Management and Budget by September 13. We'll publish the final Strategic Plan in February 2022 and it will become the agency's official plan for fiscal years 2022 through 2026.

David S. Ferriero,

Archivist of the United States.

[FR Doc. 2021–16850 Filed 8–5–21; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Federal Council on the Arts and the Humanities

Arts and Artifacts Indemnity Panel Advisory Committee

AGENCY: Federal Council on the Arts and the Humanities; National Foundation on the Arts and the Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, notice is hereby given that the Federal Council on the Arts and the Humanities will hold a meeting of the Arts and Artifacts Domestic Indemnity Panel.

DATES: The meeting will be held on Wednesday, August 18, 2021, from 12:00 p.m. until adjourned.

ADDRESSES: The meeting will be held by videoconference originating at the National Endowment for the Arts, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Elizabeth Voyatzis, Committee Management Officer, 400 7th Street SW, Room 4060, Washington, DC 20506, (202) 606–8322; *evoyatzis@neh.gov*.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is for panel review, discussion, evaluation, and recommendation on applications for Certificates of Indemnity submitted to the Federal Council on the Arts and the Humanities, for exhibitions beginning on or after October 1, 2021. Because the meeting will consider proprietary financial and commercial data provided in confidence by indemnity applicants, and material that is likely to disclose trade secrets or other privileged or confidential information, and because it is important to keep the values of objects to be indemnified and the methods of transportation and security measures confidential, I have determined that the meeting will be closed to the public pursuant to subsection (c)(4) of section 552b of Title 5, United States Code. I have made this determination under the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated April 15, 2016.

Dated: August 2, 2021.

Elizabeth Voyatzis,

Committee Management Officer, Federal Council on the Arts and the Humanities & Deputy General Counsel, National Endowment for the Humanities.

[FR Doc. 2021–16762 Filed 8–5–21; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings

The National Science Board (NSB) hereby gives notice of the scheduling of meetings for the transaction of NSB business as follows:

TIME AND DATE: Tuesday, August 3, 2021, from 1:00 p.m. to 5:55 p.m., and Wednesday, August 4, 2021, from 11:00 a.m. to 5:55 p.m. EDT.

PLACE: These meetings will be held by videoconference. There will be no in-person meetings. The public may observe the public meetings, which will be streamed to the National Science Foundation YouTube channel. For meetings on Tuesday, August 3, go to: *https://www.youtube.com/watch?v=BtZZe7TMYqY.* For meetings on Wednesday, August 4, go to: *https://www.youtube.com/watch?v=q-sskuQSSuE.*

STATUS: Parts of these meetings will be open to the public. The rest of the meetings will be closed to the public. See full description below.

MATTERS TO BE CONSIDERED:

Tuesday, August 3, 2021

Plenary Board Meeting

Open Session: 1:00 p.m.–2:50 p.m.

- NSB Chair's Remarks
- NSF Director's Remarks
- NSB Chair Activity Summary
- Community Colleges: Opening Doors to STEM Talent Everywhere

Committee on National Science and Engineering Policy (SEP)

Open Session: 3:20 p.m.–3:55 p.m.

- Committee Chair's Remarks
- Approval of Prior Committee Minutes
- Update on *Indicators 2022*
- Update on Policy Products
- Themes and Messages for Indicators' Board Messages Document

Committee on Strategy (CS)

Open Session: 3:55 p.m.–4:20 p.m.

- Committee Chair's Remarks
- Approval of Prior Minutes
- FY 2021 and 2022 Budget Update
- CS TIP Subcommittee

Committee on Strategy (CS)

Closed Session: 4:30 p.m.–5:55 p.m.

- Committee Chair's Remarks
- Approval of Prior Minutes
- Strategic Plan 2022–2026 Update
- Follow-up on Strategic Budget Discussions
- FY 2023 Budget Submission Development

Wednesday, August 4, 2021

Plenary Board Meeting

Open Session: 11:00 a.m.–12:30 p.m.

- *Vision 2030* Year 1 Retrospective and Year 2 Priorities
- Strategies for Institutional Diversity, Equity, and Inclusion Accountability

Plenary Board

Closed Session: 1:10 p.m.–1:55 p.m.

- NSB Chair's Remarks
- Approval of Prior Minutes
- Director's Remarks
- Closed Committee Reports
- Awards & Facilities Closed Meeting Report Out and Discussion
  - Vote: Rubin Observatory Action
  - Vote: Arecibo Observatory Action
  - Vote to Enter Executive Session

Executive Closed Session: 1:55 p.m.–2:55 p.m.

- NSB Chair's Remarks
- Approval of Prior Minutes
- NSF Structural Elements Discussion
  - Personnel updates
  - Planning for Structural Changes
- Nominations for the NSB Class of 2022–2028

Committee on Oversight (CO)

Open Session: 3:25 p.m.–4:55 p.m.

- Committee Chair's Remarks
- Approval of Prior Minutes
- Merit Review Digest Discussion and Vote, and Overview Discussion
- Diversity, Equity, Inclusion, and Accessibility Updates
- Inspector General's Update
- Chief Financial Officer's Update

Plenary Board

Open Session: 5:05 p.m.–5:55 p.m.

- NSB Chair's Remarks
- Approval of Prior Minutes
- NSF Director's Remarks
  Senior Staff Updates
  Office of Legislative and Public Affairs Update
- EE Open Committee Report and Discussion
- Open Committee Reports
- Votes:
  - 2022 NSB Meeting Calendar
  - Merit Review Digest

Meeting Adjourns: 5:55 p.m.

MEETINGS THAT ARE OPEN TO THE PUBLIC:

Tuesday, August 3, 2021

1:00 p.m.–2:50 p.m. Plenary NSB
3:20 p.m.–3:55 p.m. SEP
3:55 p.m.–4:20 p.m. CS

Wednesday, August 4, 2021

11:00 a.m.–12:30 p.m. Plenary NSB
3:25 p.m.–4:55 p.m. CO
5:05 p.m.–5:55 p.m. Plenary

MEETINGS THAT ARE CLOSED TO THE PUBLIC:

Tuesday, August 3, 2021

4:30 p.m.–5:55 p.m. CS

August 4, 2021

1:10 p.m.–1:55 p.m. Plenary, including
1:55 p.m.–2:55 p.m. Executive closed session

CONTACT PERSONS FOR MORE INFORMATION: The NSB Office contact is Chris Blair, *cblair@nsf.gov,* 703–292–7000. The NSB Public Affairs contact is Nadine Lymn, *nlymn@nsf.gov,* 703–292–2490. The following persons will be available to provide technical support in accessing the YouTube video: Angel Ntumy (*antumy@associates.nsf.gov*); Phillip Moulden (*pmoulden@associates.nsf.gov*).

SUPPLEMENTAL INFORMATION: The authority for submitting this notice is

the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b). All open sessions of the meeting will be webcast live on the NSB YouTube channel. Please feel free to share these links with your colleagues:

Tuesday, August 3—*https://www.youtube.com/watch?v=BtZZe7TMYqY*

Wednesday, August 4—*https://www.youtube.com/watch?v=q-sskuQSSuE*

Please refer to the NSB website for additional information. You will find any updated meeting information and schedule updates (time, place, subject matter, or status of meeting) at *https://www.nsf.gov/nsb/meetings/notices.jsp.*

Members of the public are advised that the NSB provides some flexibility around its meeting times. A meeting may be allowed to run over by as much as 15 minutes if the Chair decides the extra time is warranted. The next meeting will start no later than 15 minutes after the noticed start time. If a meeting ends early, the next meeting may start up to 15 minutes earlier than the noticed start time. NSB and committee meetings will not vary from noticed times by more than 15 minutes. Open meetings can also be watched in their entirety later through the YouTube link.

Chris Blair,

Executive Assistant to the National Science Board Office.

[FR Doc. 2021–16896 Filed 8–4–21; 11:15 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2021–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of August 9, 16, 23, 30, September 6, 13, 2021.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Week of August 9, 2021

There are no meetings scheduled for the week of August 9, 2021.

Week of August 16, 2021—Tentative

There are no meetings scheduled for the week of August 16, 2021.

Week of August 23, 2021—Tentative

There are no meetings scheduled for the week of August 23, 2021.

Week of August 30, 2021—Tentative

There are no meetings scheduled for the week of August 30, 2021.

Week of September 6, 2021—Tentative

There are no meetings scheduled for the week of September 6, 2021.

Week of September 13, 2021—Tentative

Tuesday, September 14, 2021

10:00 a.m. Briefing on NRC International Activities (Closed—Ex. 1 & 9)

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Wesley Held at 301–287–3591 or via email at *Wesley.Held@nrc.gov.* The schedule for Commission meetings is subject to change on short notice.

The NRC Commission Meeting Schedule can be found on the internet at: *https://www.nrc.gov/public-involve/public-meetings/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at *Anne.Silk@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555, at 301–415–1969, or by email at *Wendy.Moore@nrc.gov.*

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: August 4, 2021.

For the Nuclear Regulatory Commission.

Monika G. Coflin,

Technical Coordinator, Office of the Secretary.

[FR Doc. 2021–16962 Filed 8–4–21; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–1151; NRC–2015–0039]

Westinghouse Electric Company, LLC; Columbia Fuel Fabrication Facility

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft environmental impact statement; request for comment and public comment meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft Environmental Impact Statement (EIS) for Westinghouse Electric Company, LLC's (WEC's) license renewal application to continue to operate its Columbia Fuel Fabrication Facility (CFFF) for an additional 40 years. The CFFF is located in Hopkins, South Carolina, and manufactures nuclear fuel assemblies for commercial nuclear power plants. The WEC's license renewal request, if granted as proposed, would allow the CFFF to continue to be a source of nuclear fuel for commercial nuclear power plants for 40 years from the date the NRC approves the renewal.

DATES: The NRC staff will hold a virtual public meeting through online webinar and teleconference call on the draft EIS at 6:00 p.m. (ET) on August 26, 2021. The NRC staff will present the preliminary findings documented in the draft EIS and receive public comments during this virtual, transcribed public meeting. Members of the public are invited to submit comments by September 20, 2021. Comments received after this date will be considered, if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

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

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov/* and search for Docket ID NRC–2015–0039. Address questions about Docket IDs 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.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.
- *Email comments to: WEC_CFFF_EIS@nrc.gov.*
- *Leave comments by voicemail at:* 1–800–216–0881.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Diana Diaz-Toro, telephone: 301–415–

0930; email: *Diana.Diaz-Toro@nrc.gov* or Jean Trefethen, telephone: 301–415–0867; email: *Jean.Trefethen@nrc.gov*. Both are staff of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2015–0039 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this action by the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2015–0039.
- *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 draft EIS can be found in ADAMS under Accession No. ML21209A213.
- *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. (ET), Monday through Friday, except Federal holidays.
- *Project Website:* Information related to the WEC project can be accessed on the NRC's WEC website at *https://www.nrc.gov/info-finder/fc/westinghouse-fuel-fab-fac-sc-lc.html.* Under the section titled ''Operating,'' scroll down to ''Key Documents'' and click on Draft EIS, NUREG–2248, Draft Report for Comment.
- *Public Libraries:* A copy of the NRC staff's draft EIS will be made accessible at the following public libraries (library access and hours are determined by local policy):
- Richland Public Library—Main: 1431 Assembly St., Columbia, SC 29201;
- Richland Public Library—Lower Richland: 9019 Garners Ferry Road, Hopkins, SC 29061; and
- Richland Public Library—Eastover: 608 Main Street, Eastover, SC 29044.

B. Submitting Comments

Please include Docket ID NRC–2015–0039. The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Meeting Information

The NRC is announcing that staff will hold a virtual public meeting as an online webinar and teleconference to receive comments on the draft EIS. Video of the staff's presentation will be accessible online at the webinar address and audio will only be accessible through the telephone line. The telephone line will also be used for the public to submit oral comments. A court reporter will be recording all comments received during the webinar and the transcript of the meeting will be made publicly available. The date and time for the public webinar is as follows:

Meeting	Date	Time	Webinar information
Virtual Public Meeting	August 26, 2021	6:00 p.m.–9:00 p.m. (ET)	*Webinar Access (Video):* Event address: https://usnrc.webex.com. Event number: 199 891 1794. Event password: WESTDEIS. *Telephone Access (Audio):* Phone number: 1–800–369–3311. Passcode: 5558821.

Persons interested in attending this meeting should check the NRC's Public Meeting Schedule web page at *https://www.nrc.gov/pmns/mtg* for additional information, agenda for the meeting, and access information for the webinar and telephone line.

III. Discussion

The NRC is issuing for public comment the draft EIS for WEC's license renewal application, which includes the NRC staff's analysis that evaluates the environmental impacts of the proposed action and alternatives to the proposed action. Based on the NRC staff's (i) review of the license renewal application request, which includes the environmental report, supplemental documents, and the licensee's responses to the NRC staff's requests for additional information; (ii) consultation with Federal, State, and Tribal agencies and input from other stakeholders; and (iii) independent review as documented in the assessments summarized in the draft EIS, the NRC staff has concluded that the proposed action would result in small impacts on all resource areas except for groundwater resources for which the impacts would be small to moderate.

Dated: July 30, 2021.

For the Nuclear Regulatory Commission.

Jessie M. Quintero,

Chief, Environmental Review Materials Branch, Division of Rulemaking, Environmental and Financial Support, Office of Nuclear Material Safety, and Safeguards.

[FR Doc. 2021–16595 Filed 8–5–21; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–1050; NRC–2016–0231]

Interim Storage Partners Consolidated Interim Storage Facility Project

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental impact statement; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing its final Environmental Impact Statement (FEIS) for Interim Storage Partners' (ISP's) license application to construct and operate a consolidated interim storage facility (CISF) for spent nuclear fuel (SNF) and Greater-Than-Class C (GTCC) waste, along with a small quantity of mixed oxide (MOX) fuel. The proposed CISF would be located on an approximately 130-hectare (320-acre) site, within the approximately 5,666-hectare (14,000-acre) Waste Control Specialists (WCS) site in Andrews County, Texas. The proposed action is the issuance of an NRC license authorizing a CISF to store up to 5,000 metric tons of uranium (MTUs) [5,500 short tons] of SNF for a license period of 40 years.

DATES: The FEIS referenced in this document is available on August 6, 2021.

ADDRESSES: Please refer to Docket ID NRC–2016–0231 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–2016–0231. 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 FEIS is available in ADAMS under Accession No. ML21209A955.
- *Project Webpage:* Information related to the ISP CISF project can be accessed on the NRC's project web page at *https://www.nrc.gov/waste/spent-fuel-storage/cis/waste-control-specialist.html.*
- *Public Libraries:* A copy of the FEIS will be made available at the following public libraries:

Andrews County Library, 109 NM 1st Street, Andrews, TX 79714.	Gaines County Library, 704 Hobbs Hwy, Seminole, TX 79360.
Hobbs Public Library, 509 N Shipp Street, Hobbs, NM 88240.	Winkler County Library, 307 S Poplar Street, Kermit, TX 79745.
Eunice Public Library, 1003 Ave. N, Eunice, NM 88231.	Yoakum County Library, 205 W 4th Street, Denver City, TX 7932.

- *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. (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: James R. Park, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–6954, email: *James.Park@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with section 51.118 of title 10 of the *Code of Federal Regulations* (10 CFR), the NRC is making available the FEIS for the license application submitted by ISP to construct and operate a CISF for SNF and GTCC waste, along with a small quantity of MOX fuel, which are collectively referred to in the EIS as SNF, and composed primarily of spent uranium-based fuel. The NRC published the draft EIS in the **Federal Register** on May 8, 2020 (85 FR 27447), and the Environmental Protection Agency noticed the availability of the draft EIS on May 8, 2020 (85 FR 27412). The public comment period on the draft EIS ended on November 3, 2020, and the comments received are addressed in the FEIS. The FEIS is available as indicated in the **ADDRESSES** section of this document.

II. Discussion

The NRC is issuing the FEIS for an application from ISP requesting a license to authorize construction and operation of a CISF for SNF at the WCS site in Andrews County, Texas. ISP's proposed location for its CISF is on an approximately 130-hectare (320-acre) site, within the approximately 5,666-hectare (14,000-acre) WCS site in Andrews County, Texas. The proposed action is the issuance of an NRC license authorizing a CISF to store up to 5,000 MTUs [5,500 short tons] of SNF for a license period of 40 years.

The FEIS is being issued as part of the NRC's process to decide whether to issue a license to ISP pursuant to 10 CFR part 72. In this FEIS, the NRC staff has assessed the potential environmental impacts to construct and operate the proposed CISF. The NRC staff assessed the impacts of the proposed action and the No-Action alternative on land use; transportation; geology and soils; water resources; ecological resources; air quality; noise; historical and cultural resources; visual and scenic resources; socioeconomics; environmental justice, public and occupational health, and waste management. Additionally, the FEIS analyzes and compares the benefits and costs of the proposed action and the No-Action alternative. In preparing this FEIS, the NRC staff also considered, evaluated, and addressed the public comments received on the draft EIS. Appendix D of the FEIS summarizes the public comments received and the NRC's responses.

After comparing the impacts of the proposed action to those of the No-Action alternative, the NRC staff, in accordance with the requirements in part 51 of 10 CFR, recommends the proposed action, subject to the determinations in the staff's safety review of the application. This recommendation is based on (i) the ISP license application, which includes an environmental report and supplemental documents, and ISP's responses to the NRC staff's requests for additional information; (ii) the NRC staff's consultation with Federal, State, tribal, local agencies, and input from other stakeholders, including members of the public; (iii) the NRC staff's independent review; and (iv) the NRC staff's assessments provided in the FEIS.

Dated: July 29, 2021.

For the Nuclear Regulatory Commission.

John R. Tappert,

Director, Division of Rulemaking, Environmental, and Financial Support, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2021–16553 Filed 8–5–21; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2021–119 and CP2021–121]

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 negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* August 10, 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:

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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).:* MC2021–119 and CP2021–121; *Filing Title:* USPS Request to Add Priority Mail Contract 716 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* August 2, 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:* August 10, 2021.

This Notice will be published in the **Federal Register**.

Erica A. Barker,
Secretary.

[FR Doc. 2021–16810 Filed 8–5–21; 8:45 am]
BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92545; File No. SR–PEARL–2021–35]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing of Proposed Rule Change To Amend Exchange Rule 2616, Priority of Orders

August 2, 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 July 20, 2021, MIAX PEARL, LLC (''MIAX Pearl'' 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 is filing a proposal to amend Exchange Rule 2616, Priority of Orders, to provide that an order will receive a new timestamp when its position is modified via a Cancel/Replace message during a Short Sale Period.[3]

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/pearl* at MIAX Pearl's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Exchange Rule 2616, Priority of Orders, to provide that an order will receive a new timestamp when its position is modified via a Cancel/Replace message during a Short Sale Period. The proposed rule change applies to orders in equity securities traded on the Exchange's equity trading platform (referred to herein as ''MIAX Pearl Equities'').

Exchange Rule 2614(e)(3) provides that only the price, sell long, sell short, or short exempt indicator, Max Floor of an order with a Reserve Quantity,[4] and size terms of the order may be changed by a Cancel/Replace Message. If a User desires to change any other terms of an existing order the existing order must be

[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).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Exchange Rule 2614(g)(3)(A) defines a Short Sale Period as the time when ''a short sale price test restriction under Rule 201 of Regulation SHO'' is in effect. 17 CFR 242.201.

[4] *See* Exchange Rule 2614(c)(8).

cancelled and a new order must be entered. An order receives a new timestamp when that order receives a new price, its size is increased, or is cancelled in full and replaced by a new order. In addition, an order also receives a new timestamp when it is repriced pursuant to Exchange Rule 2614(g).[5] For example, an order may be repriced pursuant to the Exchange's Display Price Sliding Process if it would be displayed at a price that would lock or cross the Protected Best Bid or Offer (''PBBO'') of an away Trading Center.[6] In such case, that order would receive a new timestamp.

Exchange Rule 2616(a)(5) currently provides that in the event an order has been cancelled or replaced in accordance with Exchange Rule 2614(e), such order only retains its timestamp if such modification involves a decrease in the size of the order, a change to the Max Floor of an order with a Reserve Quantity, or a change in position from (A) sell to sell short; (B) sell to sell short exempt; (C) sell short to sell; (D) sell short to sell short exempt; (E) sell short exempt to sell; and (F) sell short exempt to sell short. Any other modification to an order, including an increase in the size of the order and/or price change, will result in such order losing time priority as compared to other orders in the MIAX Pearl Equities Book[7] and the timestamp for such order being revised to reflect the time of the modification.

The Exchange now proposes to provide that an order will also receive a new timestamp in one additional scenario where the order may not receive a new price. As proposed, an order would also receive a new timestamp when its position is changed via a Cancel/Replace message during a Short Sale Period. Specifically, the Exchange proposes to amend Exchange Rule 2616(a)(5) to provide that a change in position via a Cancel/Replace message from (A) sell to sell short; (B) sell to sell short exempt; (C) sell short to sell; (D) sell short to sell short exempt; (E) sell short exempt to sell; and (F) sell short exempt to sell short during a Short Sale Period will result in a change to the order's timestamp. Such modification to an order during a Short Sale Period will result in such order losing time priority as compared to other orders in the MIAX Pearl Equities Book and the timestamp for such order being revised to reflect the time of the modification. The Exchange does not propose to change an order's timestamp where a position change is made via a Cancel/Replace message when a Short Sale Period is not in effect.

The need for proposed rule change became apparent as a result of technology changes related to the Exchange's recent implementation of the Reserve Quantity and Minimum Execution Quantity[8] order instructions.[9] As a result of the above technology changes and to ensure the ongoing resiliency of the System,[10] the reevaluation of an order for execution as a result of a change to the order's position via a Cancel/Replace message during a Short Sale Period will result in that order receiving a new timestamp, including where the order's price remains unchanged.

The Exchange notes that an order will always receive a new timestamp where the order is re-priced, including where that order is re-priced pursuant to the Exchange's Short Sale Price Sliding Process due to a change in position via a Cancel/Replace message.[11] However, pursuant to the proposed rule change, a position change via a Cancel/Replace message during a Short Sale Period would now always result in the order receiving a new timestamp, regardless of whether the re-evaluation of the order results in the order being re-priced.

The proposed rule change reflects a necessary technology change that would ensure continued System resiliency and stability. The Exchange notes that the proposed rule change is designed to address a discrete and potentially limited scenario that a Short Sale Period must be in effect when the position change is made via a Cancel/Replace message. If a Short Sale Period is not in effect, an order would retain its timestamp when its position is changed via a Cancel/Replace message. The proposed rule change is no different than where an order may receive a new timestamp when it is not re-priced, such as when an order's size is increased via a Cancel/Replace message or an order is cancelled in full and replaced with a new order. In both of these cases, the order would be provided a new timestamp and experience a loss in priority. The same would be true under the proposed rule change where an order would receive a new timestamp where its position is changed via a Cancel/Replace message during a Short Sale Period.

* * * * *

Lastly, the Exchange proposes to make two clarifying changes to Exchange Rules 2614(e)(3) and 2616(a)(5). First, the Exchange proposes to add the word ''Cancel'' before the word ''Replace'' in Exchange Rule 2614(e)(3). This change is to use consistent terminology when referring to Cancel/Replace messages in the Exchange's rules. Second, the Exchange proposes to clarify within Exchange Rule 2616(a)(5) that an order is being modified by the Cancel/Replace message. In part, Exchange Rule 2616(a)(5) states that ''[i]n the event an order has been cancelled or replaced in accordance with Exchange Rule 2614(e) above, . . .''. The Exchange proposes to replace the phrase ''cancelled or replaced'' in Exchange Rule 2616(a)(5) with ''modified via a Cancel/Replace message.'' Doing so would clarify within Exchange Rule 2616(a)(5) that the order is being modified, rather than cancelled and replaced with a new order. Neither of the above changes amend the meaning or operation of either rule. They are simply intended to clarify each rule and to ensure the use of consistent terminology across the Exchange's rulebook.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Section 6(b)(5),[13] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The proposed rule change promotes just and equitable principles of trade because it is similar to other cases today where an order may lose priority when a modification is made via a Cancel/Replace message. For example,

[5] *See, e.g.,* Exchange Rule 2614(g) (''Repricing Processes to Comply with Regulatory Requirements'').

[6] *See* Exchange Rule 2614(g)(1) (''Display Price Sliding Process'').

[7] Exchange Rule 1901 defines the term ''MIAX Pearl Equities Book'' as ''the electronic book of orders in equity securities maintained by the System.''

[8] *See* Exchange Rule 2614(c)(7).

[9] *See* MIAX Pearl Equities—Reminder: Announces Further Expansion of its Equity Trading Platform with the Launch of the Minimum Execution Quantity and Reserve Quantity Order Instructions; Both Available July 1st 2021, available at *https://www.miaxoptions.com/alerts/2021/06/15/miax-pearl-equities-reminder-announces-further-expansion-its-equity-trading* (June 15, 2021).

[10] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[11] *See* Exchange Rule 2614(g)(3) for a description of the Exchange's Short Sale Price Sliding Process.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

increasing the size of an order will result in such order losing time priority as compared to other orders in the MIAX Pearl Equities Book and the timestamp for such order being revised to reflect the time of the modification.[14] The System also re-evaluates the order for execution when an Equity Member [15] increases the size of an order via a Cancel/Replace message. The same is true for a position change made pursuant to Exchange Rule 2614(e) during a Short Sale Period. For example, should an order's position be changed from long to short during a Short Sale Period, that order would become subject to the price restrictions of Regulation SHO [16] and the System would evaluate whether the order may be executed or re-priced pursuant to the Exchange's Short Sale Price Sliding Process.[17] Under the proposed rule change, this evaluation would result in the order receiving a new timestamp and loss in priority, even when that order is not re-priced. While the price of the order may not change, the position change during a Short Sale Period impacts whether the order is subject to the price restrictions of Regulation SHO and may or may not become eligible for execution. Therefore, like size change via a Cancel/Replace message may change the execution status of the order, the Exchange believes treating a position change made via a Cancel/Replace message in the same manner and updating the order's timestamp is reasonable and consistent with the Act because it also reflects a change in the execution status of the order.

Further, as stated above, Exchange Rule 2614(e)(3) provides that only the price, sell long, sell short, or short exempt indicator, Max Floor of an order with a Reserve Quantity, and size terms of the order may be changed by a Cancel/Replace Message. If a User desires to change any other terms of an existing order the existing order must be cancelled and a new order must be entered. This includes, for example, changes to the minimum quantity condition of an order with a Minimum Execution Quantity instruction.[18] In such case, the existing order must be cancelled and new order entered with the revised minimum execution quantity. Like a position change during a Short Sale Period, the new order would be provided a new timestamp and re-evaluated for execution based on the revised minimum execution quantity. Therefore, the proposed rule change promotes just and equitable principles of trade because it is similar to existing exchange functionality.

The proposed rule change promotes just and equitable principles of trade because it is consistent with the other exchanges' treatment of position changes and their impact on the order's priority. For example, Investors Exchange LLC (''IEX'') Rule 11.190(d)(4) does not allow for a position change via a Cancel/Replace message and requires that if a ''[u]ser desires to modify an invalid field on an order, the existing order must be canceled and a new order must be entered.'' [19] Therefore, on IEX, a market participant must enter a new order where it seeks to change that order's position at all times, not just during a Short Sale Period. This is broader than the Exchange's proposal which is limited to position changes during a Short Sale Period. On IEX, the new order would receive a new timestamp, resulting in a priority loss. In addition, The Nasdaq Stock Market, LLC (''Nasdaq'') Rule 4756(a)(3) provides that an order will be cancelled if the order's position is ''redesignated as short during a Short Sale Period and the order is not priced at a Permitted Price or higher under Nasdaq Rule 4763(e).'' This would require the replacement of the original order with a new order and a new timestamp, resulting in a priority loss.[20] Therefore, the Exchange's proposal is not novel and is similar to functionality provided for on other exchanges.

Unlike where an order retains its timestamp when a modification involves a decrease in the size of the order or a change to the Max Floor of an order with a Reserve Quantity, a change in the order's position during a Short Sale Period triggers compliance with additional regulatory requirements. In such case, the Exchange must assess whether the order is priced or may be executed in accordance with Regulation SHO. For example, an order whose position is changed from long to short during a Short Sale Period may not be priced at or above the national best bid and may either need to be repriced pursuant to the Exchange's Short Sale Price Sliding Process or cancelled based on the Equity Member's instructions. Conversely, an order whose position is changed from short to long during a Short Sale Period would no longer be subject to the price restrictions of Regulation SHO and may now be eligible for execution or routing to an away market. An order marked short is not subject to the price restrictions of Regulation SHO when a Short Sale Period is not in effect. Therefore, allowing the order to retain its timestamp when a Short Sale Period is not in effect continues to promote just and equitable principles of trade because the execution status of the order remains unchanged.[21]

Notwithstanding the above, the proposed rule change also protects investors and the public interest because it does not change anything with regard to compliance with Regulation SHO, including Regulation SHO's order marking requirements and Equity Member's compliance with its applicable exceptions. Today, an Equity Member has the ability to modify their order's position via a Cancel/Replace message. The proposal does not change that. Today, Equity Members are required to mark their orders properly both upon entry and when modifying that order's position later via a Cancel/Replace message. This proposed rule change does not alter Equity Members obligations to continue to ensure that their orders are marked in accordance with the requirements of Regulation SHO and Exchange Rule 2623 [22] at all times, including when changing the order's position via a Cancel/Replace message when a Short Sale Period is or is not in effect. As they are required to do today, Equity Members must also continue to ensure that their order complies with any applicable exemption from Regulation SHO that they seek to avail themselves of, not only at the time of entry, but also at the time they change the order's position

[14] *See* Exchange Rule 2616(a)(5).

[15] The term ''Equity Member'' is a Member authorized by the Exchange to transact business on MIAX Pearl Equities. *See* Exchange Rule 1901.

[16] 17 CFR 242.201(1)(i) [sic].

[17] Exchange Rule 2614(g)(3).

[18] *See* Exchange Rule 2614(c)(7).

[19] *See* IEX Rule 11.190(d)(4) (stating that ''Symbol, side, execution instruction, order type, and TIF are considered invalid fields. If a User attempts modify an invalid field by submitting a Replace Message, the order amendment will be rejected by the Exchange. If a User desires to modify an invalid field on an order, the existing order must be canceled and a new order must be entered'').

[20] *See* Nasdaq Rule 4756(a)(3).

[21] This is also consistent with other exchanges' rules. *See, e.g.,* Members Exchange, Inc. Rule 11.9(a)(4) *and* Cboe EDGX Exchange, Inc. Rule 11.9(a)(4).

[22] Exchange Rule 26123 [sic] provides that ''[a]ll short sale orders shall be identified as ''short'' or ''short exempt'' when entered into the System. If marked ''short exempt,'' the Exchange shall execute, display and/or route a short sale order marked ''short exempt'' without regard to any short sale price test restriction in effect during a Short Sale Period, as defined in Exchange Rule 2614(g)(3)(A). The Exchange relies on the marking of an order as ''short exempt'' when handling such order, and thus, it is the entering Member's responsibility, not the Exchange's responsibility, to comply with the requirements of Regulation SHO relating to marking of orders as ''short exempt.'' Exchange Rule 2603 also requires that Equity Members input accurate information into the System.

via a Cancel/Replace message.[23] Again, nothing in this proposal alters a Member's obligations under Regulation SHO. The Exchange notes that the proposed rule change removes impediments to and perfects the mechanism of a free and open market and a national market system because it is designed to address a discrete and potentially limited scenario of a Short Sale Period being in effect when the a position change is made via a Cancel/Replace message. If a Short Sale Period is not in effect, an order would retain its timestamp when its position is changed via a Cancel/Replace message. This proposed rule change is narrowly focused to address only where an order would lose priority where its position is changed via a Cancel/Replace message during a Short Sale Period.

The proposed rule change would also remove impediments to and promote just and equitable principles of trade because it reflects a necessary technology change that would ensure continued System resiliency and stability. As a national securities exchange, the Exchange is subject to Regulation Systems Compliance and Integrity (''Reg. SCI'').[24] Reg. SCI Rule 1001(a) requires that the Exchange establish, maintain, and enforce written policies and procedures reasonably designed to ensure (among other things) that its Reg. SCI systems have levels of capacity adequate to maintain the Exchange's operational capability and promote the maintenance of fair and orderly markets.[25] The proposed rule change is necessary to ensure the ongoing resiliency of the Exchange's infrastructure and underling technology to ensure the Exchange continues to satisfy its requirements under Reg. SCI. The Exchange takes pride in the reliability and availability of its System. The proposed rule change is necessary due to technological complexity and to continue to ensure the System operates consistent with the Exchange's rules and in accordance with the Exchange's obligations under Reg. SCI.

Lastly, the proposed clarifying changes to Exchange Rules 2614(e)(3) and 2616(a)(5) removes impediments to and perfect a free and open market system because they simply clarify each rule and ensure the use of consistent terminology across the Exchange's rulebook. Neither of these changes amend the meaning or operation of either rule.

[23] The Exchange will continue to surveil for compliance with Exchange Rules 2623 and 2603 as well as Regulation SHO.

[24] 17 CFR 242.1000–1007.

[25] 17 CFR 242.1001(a).

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 is not being proposed for competitive reasons. As discussed above, the need for the proposed rule change became apparent when making technology changes related to the Exchange's upcoming implementation of the Reserve Quantity and Minimum Execution Quantity order instructions.[26] Further, this proposed rule change to cause an order to lose priority when the order's position is changed during a Short Sale Period via a Cancel/Replace message is no different than where an Equity Member seek to change the position of their order by cancelling that order and re-submitting a new order. In each case, the order will receive a new timestamp at the time the position was changed via a cancel or replace message.

Adjusting the order's timestamp due to a position change via a Cancel/Replace message during a Short Sale Period does not impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the Act. Equity Members may take into consideration that their order may experience a loss in priority when they change their order's position during a Short Sale Period when determining where to send their order for execution. Equity Members are free to consider this change as part of their overall experience on the Exchange, including the quality of executions and other functionality offerings, which are part of their order routing decisions.

Lastly, adjusting the order's timestamp due to a position change via a Cancel/Replace message during a Short Sale Period does not also impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the Act because it is similar to functionality on other exchanges.[27] Also, like above for intra-market competition, Equity Members may take into consideration that their order may experience a loss in priority when they change their order's position during a Short Sale Period when determining where to send their order for execution. Equity Members who make position changes during a Short Sale Period may consider the potential that their order may lose priority and may choose to price their orders more aggressively.

[26] *See supra* note 9.

[27] *See supra* notes 19 and 20.

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

Within 45 days of the date of publication of this notice in the **Federal Register**, or such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–PEARL–2021–35 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–PEARL–2021–35. 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–PEARL–2021–35, and should be submitted on or before August 27, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–16789 Filed 8–5–21; 8:45 am]

BILLING CODE 8011–01–P

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92546; File Nos. SR–CBOE–2021–023; SR–CboeBYX–2021–009; SR–CboeBZX–2021–028; SR–CboeEDGA–2021–009; SR–CboeEDGX–2021–021; SR–C2–2021–007]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Cboe BYX Exchange, Inc.; Cboe BZX Exchange, Inc.; Cboe EDGA Exchange, Inc.; Cboe EDGX Exchange, Inc.; Cboe C2 Exchange, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1, To Amend the Sixth Amended and Restated Bylaws of Cboe Global Markets, Inc. To Implement Proxy Access

August 2, 2021.

I. Introduction

On April 16, 2021, each of Cboe Exchange, Inc. (''Cboe''), Cboe BYX Exchange, Inc. (''BYX''), Cboe BZX Exchange, Inc. (''BZX''), Cboe EDGA Exchange, Inc. (''EDGA''), and Cboe EDGX Exchange, Inc. (''EDGX''), and on April 26, 2021, Cboe C2 Exchange, Inc. (''C2'' and together with Cboe, BYX, BZX, EDGA, and EDGX, the ''Exchanges'') 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 the Sixth Amended and Restated Bylaws (''Bylaws'') of their parent company, Cboe Global Markets, Inc. (''CGM''), to implement proxy access. The proposed rule changes were published for comment in the **Federal Register** on May 5, 2021.[3] No comment letters were received in response to the proposals. On July 28, 2021, each of BYX, BZX, EDGA, EDGX and C2, and on July 29, 2021, Cboe filed Amendment No. 1 to the proposed rule changes (collectively, ''Amendment Nos. 1'').[4] This order provides notice of filing of Amendment Nos. 1 and approves the proposed rule changes, as modified by Amendment Nos. 1, on an accelerated basis.

II. Description of the Proposed Rule Changes, as Modified by Amendment Nos. 1

The Exchanges state that CGM received a stockholder proposal submitted pursuant to Rule 14a–8 under the Act which requested that the Board of Directors of CGM (''Board'') take steps to implement a ''proxy access'' bylaw provision to allow a stockholder, or group of stockholders, who comply with certain requirements, to nominate candidates for service on the Board and have those candidates included in CGM's proxy materials.[5] The Exchanges state that CGM has determined to take the stockholder's requested steps to implement proxy access and, accordingly, the Exchanges have submitted this proposal to adopt new Section 2.16 of the Bylaws.[6] Subject to procedures and conditions set forth therein, and as further described below, proposed Section 2.16 of the Bylaws would generally permit a stockholder, or group of up to 20 stockholders, to nominate director nominees for the Board and have such director nominees included in CGM's annual meeting proxy materials, so long as the stockholder(s) have owned at least three percent of CGM's outstanding shares of capital stock continuously for at least three years.[7] The proposal would limit the number of proposed director nominees to the greater of (i) two or (ii) 20% of the number of CGM directors in office (rounded down to the nearest whole number, but no less than two).[8] The Exchanges note that the parent companies of other national securities exchanges have adopted substantively similar proxy access provisions, and the Exchanges state that they do not believe such provisions are materially different from the proxy access provision proposed by the Exchanges.[9]

Proposed Section 2.16 of the Bylaws

Specifically, proposed Section 2.16(a) of the Bylaws would require that, subject to the provisions of proposed Section 2.16, whenever the Board solicits proxies with respect to the election of directors at an annual meeting of stockholders, CGM must include in its proxy statement for such annual meeting, in addition to any persons nominated for election by or at

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release Nos. 91728 (April 29, 2021), 86 FR 24052 (SR–CBOE–2021–023); 91729 (April 29, 2021), 86 FR 24059 (SR–CboeBYX–2021–009); 91727 (April 29, 2021), 86 FR 24083 (SR–CboeBZX–2021–028); 91725 (April 29, 2021), 86 FR 24076 (SR–CboeEDGA–2021–009); 91724 (April 29, 2021), 86 FR 24044 (SR–CboeEDGX–2021–021); 91732 (April 29, 2021), 86 FR 24125 (SR–C2–2021–007) (collectively, ''Notices'').

[4] In Amendment Nos. 1, the Exchanges clarified the circumstances under which proxy access nominees may be excluded from the proxy materials. Pursuant to proposed Section 2.16(j)(i) of the Bylaws, CGM would not be required to include a Stockholder Nominee in its proxy materials who would not be an independent director under Section 3.3 of the Bylaws, under the rules of the principal national securities exchange on which the outstanding capital stock of CGM is traded, any applicable rules of the Commission and any publicly disclosed standards used by the Board in determining and disclosing independence of CGM's directors, in each case as determined by the Board in its sole discretion. In Amendment Nos. 1, the Exchanges represented that any independence standards adopted by CGM's Board will apply uniformly to all director nominees, including Stockholder Nominees, and that any future independence standards adopted by the Board will comply with all applicable laws, rules, and regulations. Amendment Nos. 1 are available on the Commission's website at *http://www.sec.gov/rules/sro.shtml.*

[5] *See* Notices, *supra* note 3, at 24052, 24059, 24083, 24076, 24045, and 24125, respectively. *See also* 17 CFR 240.14a–8 (establishing procedures pursuant to which stockholders of a public company may have their proposals placed alongside management's proposals in the company's proxy materials for presentation to a vote at a meeting of stockholders).

[6] *See* Notices, *supra* note 3, at 24052, 24059–60, 24083–84, 24076, 24045, and 24125, respectively. The Exchanges also propose to make conforming changes to current Sections 2.10 and 2.11 of the Bylaws. *See id.* at 24052, 24059, 24083, 24076, 24045, and 24125, respectively. *See also infra* notes 45–46.

[7] *See* proposed Bylaws Section 2.16.

[8] *See* proposed Bylaws Section 2.16(c).

[9] *See* Notices, *supra* note 3, at 24052, 24059–60, 24083–84, 24076, 24045, and 24125, respectively (citing to Securities Exchange Release Nos. 79357 (November 18, 2016), 81 FR 85283 (November 25, 2016) (SR–NASDAQ–2016–127; SR–BX–2016–051; SR–ISE–2016–22; SR–ISEGemini–2016–10; SR–ISEMercury–2016–16; SR–PHLX–2016–93; SR–BSECC–2016–001; SR–SCCP–2016–01); and 77782 (May 6, 2016), 81 FR 29600 (May 12, 2016) (SR–NYSE–2016–14; SR–NYSEArca–2016–25; SR–NYSEMKT–2016–20)).

the direction of the Board, the name, together with the ''Required Information,'' of any person nominated for election to the Board as a director by an ''Eligible Stockholder'' (defined below) (''Stockholder Nominee''). The ''Required Information'' to be included in the proxy statement is (i) the information provided to CGM's Secretary concerning the Stockholder Nominee and the Eligible Stockholder that is required to be disclosed in CGM's proxy statement pursuant to Section 14 of the Act and the rules and regulations promulgated thereunder and, (ii) if the Eligible Stockholder so elects, a ''Supporting Statement,'' which is a written statement, not to exceed 500 words, in support of its Stockholder Nominee(s)' candidacy.[10] The proposal would also require that the name of any Stockholder Nominee included in CGM's proxy statement for an annual meeting of stockholders be set forth on the form of proxy and any ballot distributed by CGM in connection with such annual meeting.[11] In addition to any other applicable requirements, for a nomination to be made by an Eligible Stockholder under proposed Section 2.16 of the Bylaws, the Eligible Stockholder must give timely notice to CGM thereof (a ''Notice of Proxy Access Nomination'') and must expressly request in such notice to have its nominee included in CGM's proxy materials.[12]

An ''Eligible Stockholder'' is defined as a stockholder or group of no more than 20 stockholders[13] that (i) has Owned continuously for at least three years (''Minimum Holding Period'') at least three percent of the outstanding shares of capital stock of CGM as of the date the Notice of Proxy Access Nomination is received by CGM (''Required Shares''), (ii) continues to Own the Required Shares through the date of the annual meeting, and (iii) meets all other requirements of the proposed Section 2.16.[14] Proposed Section 2.16(e) of the Bylaws sets forth when a stockholder would be deemed to ''Own'' shares of CGM's capital stock, and provides that whether outstanding shares of CGM's capital stock are ''Owned'' shall be determined by the Board.[15]

Proposed Section 2.16(c) of the Bylaws provides that the maximum number (''Permitted Number'') of Stockholder Nominees nominated by all Eligible Stockholders that will be included in CGM's proxy materials with respect to an annual meeting of stockholders will not exceed the greater of (i) two or (ii) 20% of the number of directors in office as of the last day on which a Notice of Proxy Access Nomination may be delivered pursuant to and in accordance with proposed Section 2.16 (the ''Final Proxy Access Nomination Date'') or, if such amount is not a whole number, the closest whole number below 20%. Proposed Section 2.16(c) sets forth certain circumstances under which the Permitted Number would be reduced.[16] Proposed Section 2.16(c) also sets forth procedures for determining when the Permitted Number is reached and for selecting candidates when the Permitted Number

[10] *See* proposed Bylaws Sections 2.16(a) and (h). *See also infra* note 28 and accompanying text.

[11] Proposed Section 2.16(a) states that, for the avoidance of doubt, nothing in the proposal will limit CGM's ability to solicit against any Stockholder Nominee or include in its proxy materials CGM's own statements or other information relating to any Eligible Stockholder or Stockholder Nominee, including any information provided to CGM pursuant to proposed Section 2.16.

[12] *See* proposed Bylaws Section 2.16(b). Proposed Section 2.16(b) requires that a Notice of Proxy Access Nomination must be delivered not earlier than the open of business on the 150th day and not later than the close of business on the 120th day prior to the first anniversary of the date that CGM first distributed its proxy statement to stockholders for the preceding year's annual meeting of stockholders provided, however, that in the event the annual meeting is more than 30 days before or after the anniversary date of the prior year's annual meeting, or if no annual meeting was held in the preceding year, to be timely, the Notice of Proxy Access Nomination must be received by CGM no earlier than 150 days before such annual meeting and no later than the later of 120 days before such annual meeting or the 10th day following the day on which public announcement (as defined in Section 2.11 of the Bylaws) of the date of such meeting is first made by CGM. Proposed Section 2.16(b) further provides that in no event shall any adjournment or postponement of an annual meeting or the announcement thereof commence a new time period (or extend any time period) for the giving of a Notice of Proxy Access Nomination.

[13] Proposed Section 2.16(d) states that any two or more funds that are part of the same ''Qualifying Fund Group'' will be counted as one stockholder, and defines a ''Qualifying Fund Group'' as two or more funds that are (i) under common management and investment control, (ii) under common management and funded primarily by the same employer, or (iii) a ''group of investment companies'' as such term is defined in Section 12(d)(1)(G)(ii) of the Investment Corporation Act of 1940, as amended.

[14] *See* proposed Bylaws Section 2.16(d). Proposed Section 2.16(d) further provides that whenever the Stockholder consists of a group, (i) each provision of proposed Section 2.16 that requires the Eligible Stockholder to provide any written statements, representations, undertakings, agreements or other instruments or to meet any other conditions will be deemed to require each stockholder (including each individual fund) that is a member of such group to provide such statements, representations, undertakings, agreements or other instruments and to meet such other conditions (except that the members of such group may aggregate the shares that each member has Owned continuously for the Minimum Holding Period in order to meet the three percent Ownership requirement of the ''Required Shares'' definition) and (ii) a breach of any obligation, agreement or representation under proposed Section 2.16 by any member of such group shall be deemed a breach by the Eligible Stockholder. Proposed Section 2.16(d) also prohibits any stockholder from being a member of more than one group of stockholders constituting an Eligible Stockholder with respect to any annual meeting.

[15] Under proposed Section 2.16(e) of the Bylaws, a stockholder will be deemed to ''Own'' only those outstanding shares of CGM's capital stock as to which the stockholder possesses both: (i) The full voting and investment rights pertaining to the shares; and (ii) the full economic interest in (including the opportunity for profit from and risk of loss on) such shares; provided that the number of shares calculated in accordance with clauses (i) and (ii) shall not include any shares that are (1) sold by such stockholder or any of its affiliates in any transaction that has not been settled or closed; (2) borrowed by such stockholder or any of its affiliates for any purposes or purchased by such stockholder or any of its affiliates pursuant to an agreement to resell; or (3) subject to any option, warrant, forward contract, swap, contract of sale, other derivative or similar instrument or agreement entered into by such stockholder or any of its affiliates, whether any such instrument or agreement is to be settled with shares or with cash based on the notional amount or value of outstanding shares of CGM's capital stock, in any such case which instrument or agreement has, or is intended to have, the purpose or effect of: (A) Reducing in any manner, to any extent or at any time in the future, such stockholder's or its affiliates' full right to vote or direct the voting of any such shares; and/or (B) hedging, offsetting or altering to any degree any gain or loss realized or realizable from maintaining the full economic ownership of such shares by such stockholder or affiliate. Proposed Section 2.16(e) further provides that a stockholder shall ''Own'' shares held in the name of a nominee or other intermediary so long as the stockholder retains the right to instruct how the shares are voted with respect to the election of directors and possesses the full economic interest in the shares. Under proposed Section 2.16(e), a stockholder's Ownership of shares shall be deemed to continue during any period in which (i) the stockholder has loaned such shares, provided that the stockholder has the power to recall such loaned shares on five business days' notice and includes in the Notice of Proxy Access Nomination an agreement that it will (1) promptly recall such loaned shares upon being notified that any of its Stockholder Nominees will be included in CGM's proxy materials and (2) will continue to hold such shares through the date of the annual meeting or (ii) the stockholder has delegated any voting power by means of a proxy, power of attorney or other instrument or arrangement which is revocable at any time by the stockholder.

[16] Proposed Section 2.16(c) provides that in the event one or more vacancies on the Board occurs with respect to any directors for any reason after the Final Proxy Access Nomination Date but before the date of the annual meeting and the Board resolves to reduce the size of the Board in connection therewith, the Permitted Number will be calculated based on the number of directors in office as so reduced. In addition, the Permitted Number will be reduced by (i) the number of individuals who will be included in CGM's proxy materials as director nominees recommended by the Board pursuant to an agreement, arrangement or other understanding with a stockholder or group of stockholders (other than any such agreement, arrangement or understanding entered into in connection with an acquisition of stock from CGM by such stockholder or group of stockholders) and/or (ii) the number of directors in office as of the Final Proxy Access Nomination Date who were included in CGM's proxy materials as Stockholder Nominees for any of the two preceding annual meetings of stockholders and whose reelection at the upcoming annual meeting is being recommended by the Board.

is exceeded.[17] Proposed Section 2.16(c) also specifies that CGM will not be required to include any Stockholder Nominees in its proxy materials pursuant to Section 2.16 for any meeting of stockholders for which CGM receives a notice (whether or not subsequently withdrawn) that the Eligible Stockholder or any other stockholder intends to nominate one or more persons for election to the Board pursuant to Section 2.11 of the Bylaws.

Proposed Section 2.16(f) sets forth the information that an Eligible Stockholder must include in its Notice of Proxy Access Nomination, and includes, among other things: [18] (i) A statement by the Eligible Stockholder (1) setting forth and certifying as to the number of shares it Owns and has Owned continuously for the Minimum Holding Period and (2) agreeing to continue to Own the Required Shares through the date of the annual meeting; (ii) one or more written statements from the record holder of the Required Shares (and from each intermediary through which the Required Shares are or have been held during the Minimum Holding Period) verifying that, as of a date within seven calendar days prior to the date the Notice of Proxy Access Nomination is delivered to the CGM Secretary, the Eligible Stockholder Owns, and has Owned continuously for the Minimum Holding Period, the Required Shares, and the Eligible Stockholder's agreement to provide, within five business days after the record date for the annual meeting, one or more written statements from the record holder and such intermediaries verifying the Eligible Stockholder's continuous ownership of the Required Shares through the record date; (iii) a copy of the Schedule 14N that has been filed with the Commission as required by Rule 14a–18 under the Act; [19] (iv) the information, representations, agreements, and other documents that are required to be set forth in or included with a stockholder's notice of nomination given pursuant to Section 2.11 of the Bylaws; and (v) the written consent of each Stockholder Nominee to being named in the proxy statement as a nominee and to serving as a director if elected.[20]

The Notice of Proxy Access Nomination must also include a representation that the Eligible Stockholder (1) acquired the Required Shares in the ordinary course of business and not with the intent to change or influence control of CGM, and does not presently have such intent; (2) has not nominated and will not nominate for election to the Board as a director at the annual meeting any person, other than its Stockholder Nominee(s); (3) has not engaged and will not engage in, and has not and will not be a ''participant'' in another person's, ''solicitation'' within the meaning of Rule 14a–1(l) under the Act in support of the election of any individual as a director at the annual meeting, other than its Stockholder Nominee(s) or a nominee of the Board; (4) has not distributed and will not distribute to any stockholder of CGM any form of proxy for the annual meeting other than the form distributed by CGM; (5) has complied and will comply with all laws, rules and regulations applicable to solicitations and the use, if any, of soliciting material in connection with the annual meeting; and (6) has provided and will provide facts, statements and other information in all communications with CGM and its stockholders that are or will be true and correct in all material respects and do not and will not omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.[21]

Proposed Section 2.16(f) further requires the Notice of Proxy Access Nomination to include an undertaking that the Eligible Stockholder file with the Commission any solicitation or other communication with the stockholders of CGM relating to the meeting at which its Stockholder Nominee(s) will be nominated, regardless of whether any such filing is required under Regulation 14A of the Act or whether any exemption from filing is available for such solicitation or other communication under Regulation 14A of the Act.[22]

Finally, proposed Section 2.16(f) requires the Notice of Proxy Access Nomination include a written representation and agreement by the Stockholder Nominee that such person: (1) Will act as a representative of all of the stockholders of CGM while serving as a director; (2) will provide facts, statements, and other information in all communications with CGM and its stockholders that are or will be true and correct in all material respects (and shall not omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading); (3) is not and will not become a party to (i) any compensatory, payment or other financial agreement, arrangement or understanding with any person or entity other than CGM in connection with service or action as a director of CGM that has not been disclosed to CGM, (ii) any Voting Commitment [23] that has not been disclosed to CGM, or (iii) any Voting Commitment that could reasonably be expected to limit or interfere with the Stockholder Nominee's ability to comply, if elected as a director of CGM, with its fiduciary duties under applicable law; and (4) will abide by and comply with the

[17] Proposed Section 2.16(c) provides that for purposes of determining when the Permitted Number has been reached, any individual nominated by an Eligible Stockholder for inclusion in CGM's proxy materials pursuant to Section 2.16 whose nomination is subsequently withdrawn or whom the Board decides to nominate for election to the Board as a director will be counted as one of the Stockholder Nominees. Proposed Section 2.16(c) also provides that any Eligible Stockholder submitting more than one Stockholder Nominee pursuant to proposed Section 2.16 shall rank such Stockholder Nominees and, in the event the number of Stockholder Nominees submitted by Eligible Stockholders exceeds the Permitted Number, the highest ranking Stockholder Nominee who meets the requirements of proposed Section 2.16 from each Eligible Stockholder will be selected for inclusion in CGM's proxy materials until the Permitted Number is reached, going in order of the amount (largest to smallest) of shares of outstanding capital stock of CGM each Eligible Stockholder disclosed as Owned in its Notice of Proxy Access Nomination. If the Permitted Number is not reached after the highest ranking Stockholder Nominee from each Eligible Stockholder has been selected, then the next highest ranking Stockholder Nominee from each Eligible Stockholder will be selected for inclusion in CGM's proxy materials, and this process will continue as many times as necessary, following the same order each time, until the Permitted Number is reached.

[18] In addition to the items further discussed below, proposed Section 2.16(f) also requires the Notice of Proxy Nomination to include (i) an undertaking that the Eligible Stockholder will assume liability and indemnify CGM in connection with the nomination submitted by the Eligible Stockholder; (ii) in the case of a nomination by an Eligible Stockholder consisting of a group of stockholders, the designation of one group member that is authorized to receive communications, notices, and inquiries from CGM and to act on behalf of members of the group; and (iii) in the case of a nomination by an Eligible Stockholder consisting of a group of stockholders in which two or more funds are intended to be treated as one stockholder, documentation that demonstrates that the funds are part of the same Qualifying Fund Group. *See* proposed Bylaws Section 2.16(f)(vii)(1)–(2), (viii), and (ix).

[19] *See* proposed Bylaws Section 2.16(f)(iii). *See also* 17 CFR 240.14n–101 and 17 CFR 240.14a–18, which generally require a Nominating Stockholder to provide notice to CGM of its intent to submit a proxy access nomination on a Schedule 14N and file that notice, including the required disclosure, with the Commission on the date first transmitted to CGM.

[20] *See* proposed Bylaws Section 2.16(f)(i)–(v).

[21] *See* proposed Bylaws Section 2.16(f)(vi)(1)–(6).

[22] *See* proposed Bylaws Section 2.16(f)(vii). *See also* 17 CFR 240.14a–1 through 14b–2, which governs solicitations of proxies.

[23] A ''Voting Commitment'' is any agreement, arrangement or understanding with any person or entity as to how the Stockholder Nominee would vote or act on any issue or question as a director. *See* Notices, *supra* note 3, at 24055 n.12, 24063 n.12, 24087 n.12, 24079 n.12, 24048 n.12, and 24128 n.12, respectively.

Bylaws, CGM's Certificate of Incorporation and applicable policies of CGM including all applicable publicly disclosed corporate governance, conflict of interest, confidentiality and stock ownership, and trading policies and guidelines of CGM, as well as the applicable provisions of the rules and regulations of the Commission and any stock exchange applicable to CGM.[24]

Proposed Section 2.16(g) sets forth additional information the Stockholder Nominee must provide in addition to the information required or requested pursuant to proposed Section 2.16(f) or any other provision of the Bylaws and specifies that the Stockholder Nominee(s) must submit all completed and signed questionnaires required of directors and officers of CGM.[25] Additionally, Section 2.16(g) provides that CGM may require any proposed Stockholder Nominee to furnish any information: (1) That may reasonably be requested by CGM to determine whether the Stockholder Nominee would be independent under Section 3.3 of the Bylaws and otherwise qualifies as independent under the rules of the principal national securities exchange on which the outstanding capital stock of CGM is traded; (2) that could be material to a reasonable stockholder's understanding of the independence, or lack thereof, of such Stockholder Nominee; (3) that would be required to satisfy the requirements for qualification of directors under applicable foreign regulations; or (4) that may reasonably be requested by CGM to determine the eligibility of such Stockholder Nominee to be included in CGM's proxy materials pursuant to proposed Section 2.16 or to serve as a director of CGM.[26] Proposed Section 2.16(g) further provides that CGM may require the Eligible Stockholder to furnish any other information that may reasonably be requested by CGM to verify the Eligible Stockholder's continuous Ownership of the Required Shares for the Minimum Holding Period and through the date of the annual meeting.[27]

As discussed above, an Eligible Stockholder may, at its option, provide to the Secretary, at the time the Notice of Proxy Access Nomination is provided, one Supporting Statement.[28] Proposed Section 2.16(h) provides that CGM may omit from its proxy materials any information or Supporting Statement (or portion thereof) that it, in good faith, believes is untrue in any material respect (or omits to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading) or would violate any applicable law, rule or regulation.[29]

Proposed Section 2.16(i) provides that, in the event any information or communications provided by an Eligible Stockholder or a Stockholder Nominee to CGM or its stockholders is not, when provided, or thereafter ceases to be, true and correct in all material respects or omits to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading, such Eligible Stockholder or Stockholder Nominee must promptly notify the Secretary of any such defect and of the information that is required to correct any such defect.[30] In addition, an Eligible Stockholder must provide immediate notice to CGM if the Eligible Stockholder ceases to Own any of the Required Shares prior to the date of the annual meeting.[31] Furthermore, any person providing any information to CGM pursuant to proposed Section 2.16(i) must further update and supplement such information, if necessary, so that all such information shall be true and correct as of the (i) record date for determining the stockholders entitled to receive notice of the meeting and (ii) date that is ten business days prior to the meeting (or any postponement, adjournment or recess thereof).[32] However, no notification, update or supplement provided pursuant to proposed Section 2.16(i) or otherwise shall be deemed to cure any defect in any previously provided information or communications or limit the remedies available to CGM relating to such defect (including the right to omit a Stockholder Nominee from its proxy materials).[33]

Proposed Section 2.16(j) sets forth circumstances in which CGM would not be required to include a Stockholder Nominee in its proxy materials for any meeting of stockholders. In such circumstances, any such nomination would be disregarded and no vote on such Stockholder Nominee would occur, notwithstanding that proxies in respect of such vote may have been received by CGM.[34] In particular, CGM would not be required to include a Stockholder Nominee in its proxy materials (i) who would not be an independent director under Section 3.3 of the Bylaws, under the rules of the principal national securities exchange on which the outstanding capital stock of CGM is traded, any applicable rules of the Commission and any publicly disclosed standards used by the Board in determining and disclosing independence of CGM's directors, in each case as determined by the Board in its sole discretion;[35] (ii) who would not meet the audit committee independence requirements under the rules of the principal national securities exchange on which the outstanding capital stock of CGM is traded; (iii) who, if elected, intends to resign as a director of CGM prior to the end of the full term for which he or she is standing for election; (iv) who is or has been subject to any statutory disqualification under Section 3(a)(39) of the Act; (v) who is or has been subject to disqualification under 17 CFR 1.63; (vi) whose election as a member of the Board would otherwise cause CGM to be in violation of the Bylaws, CGM's Certificate of Incorporation, the rules of the principal national securities exchange on which the outstanding capital stock of CGM is traded, or any applicable law, rule or regulation; (vii) who is or has been, within the past three years, an officer or director of a competitor, as defined for purposes of Section 8 of the Clayton Antitrust Act of 1914; (viii) who is a named subject of a pending criminal proceeding (excluding traffic violations and other minor offenses) or has been convicted in such a criminal proceeding within the past 10 years; (ix) who is subject to any order of the type specified in Rule 506(d) of Regulation D promulgated under the Securities Act of 1933, as amended; (x) who has provided

[24] *See* proposed Bylaws Section 2.16(f)(x).

[25] *See* proposed Bylaws Section 2.16(g)(i).

[26] *See* proposed Bylaws Section 2.16(g)(ii).

[27] *See* proposed Bylaws Section 2.16(g)(iii).

[28] *See* proposed Bylaws Section 2.16(h). *See also supra* note 10 and accompanying text.

[29] *See* 17 CFR 240.14a–9 (generally prohibiting proxy solicitations that contain any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading).

[30] *See* proposed Bylaws Section 2.16(i).

[31] *See id.*

[32] *See id.,* which requires that such update be received by CGM (A) not later than five business days after the record date for determining the stockholders entitled to receive notice of such meeting (in the case of an update required to be made under clause (i)) and (B) not later than seven business days prior to the date for the meeting, if practicable, or, if not practicable, on the first practicable date prior to the meeting or any adjournment, recess or postponement thereof (in the case of an update required to be made pursuant to clause (ii)).

[33] *See id.*

[34] *See* proposed Bylaws Section 2.16(j).

[35] Independence standards adopted by the Board will apply uniformly to all director nominees, including Stockholder Nominees. Any future independence standards adopted by the Board will comply with all applicable laws, rules, and regulations. *See* Amendment Nos. 1, *supra* note 4.

any information to CGM or its stockholders that was untrue in any material respect or that omitted to state a material fact necessary to make the statements made, in light of the circumstances in which they were made, not misleading; or (xi) if the Eligible Stockholder and/or applicable Stockholder Nominee breaches or fails to comply with its obligations pursuant to the Bylaws, including, but not limited to, proposed Section 2.16 and any agreement, representation or undertaking required by proposed Section 2.16.[36]

Proposed Section 2.16(k) provides that, notwithstanding anything to the contrary contained in the Bylaws, if (i) a Stockholder Nominee and/or the applicable Eligible Stockholder breaches any of its agreements or representations or fails to comply with any of its obligations under proposed Section 2.16, or (ii) a Stockholder Nominee otherwise becomes ineligible for inclusion in CGM's proxy materials pursuant to proposed Section 2.16, or dies, becomes disabled or otherwise becomes ineligible or unavailable for election at the annual meeting, in each case as determined by the Board or the chairman of the meeting, CGM may omit or, to the extent feasible, remove the information concerning such Stockholder Nominee and the related Supporting Statement from its proxy materials and/or otherwise communicate to its stockholders that such Stockholder Nominee will not be eligible for election at the annual meeting. In addition, in such circumstances CGM will not be required to include in its proxy materials any successor or replacement nominee proposed by the applicable Eligible Stockholder or any other Eligible Stockholder and the chairman of the meeting would declare such nomination to be invalid and such nomination would be disregarded, notwithstanding that proxies in respect of such vote may have been received by CGM.[37]

Proposed Section 2.16(l) provides that any Stockholder Nominee who is included in CGM's proxy materials for a particular annual meeting of stockholders would be ineligible to be a Stockholder Nominee for the next two annual meetings if: (i) The Stockholder Nominee withdraws from or becomes ineligible or unavailable for election at the annual meeting; or (ii) the Stockholder Nominee does not receive at least 25% of the votes cast in favor of such Stockholder Nominee's election.[38] This provision would not, however, prevent any stockholder from nominating any person to the Board pursuant to Section 2.11 of the Bylaws.[39]

Notwithstanding the provisions of proposed Section 2.16, if the Eligible Stockholder providing notice (or a qualified representative of the Eligible Stockholder)[40] does not appear in person (including virtually, in the case of a meeting held solely by means of remote communication) at the stockholder meeting to present the nomination of such Stockholder Nominee, such proposed nomination shall not be presented by CGM and shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by CGM.[41]

Proposed Section 2.16 of the Bylaws provides that the Board (or any other person or body authorized by the Board) shall have the exclusive power and authority to interpret the provisions of proposed Section 2.16 and make all determinations deemed necessary or advisable in connection with proposed Section 2.16 as to any person, facts or circumstances. All such actions, interpretations, and determinations that are done or made by the Board (or any other person or body authorized by the Board) shall be final, conclusive, and binding on CGM, the stockholders and all other parties.[42]

Finally, proposed Section 2.16(o) states that the proxy access provisions outlined in proposed Section 2.16 shall be the exclusive means for stockholders to include nominees for director in CGM's proxy materials.[43] The Exchanges state that stockholders may continue to propose nominees through other means, but that the Board will have final authority to determine whether to include those nominees in CGM's proxy materials.[44]

Proposed Revisions to Other Sections of the Bylaws

The Exchanges have proposed to make additional changes to Sections 2.10 and 2.11 to account for the addition of the proposed proxy access provision. First, the Exchanges propose to add references to Section 2.11 and proposed Section 2.16 in Section 2.10 of the Bylaws to clarify the exact provisions of the Bylaws that set forth requirements relating to stockholder nominees.[45] Second, the Exchanges propose to add references to proposed Section 2.16 and additional language in Section 2.11 of the Bylaws to clarify that only persons who are nominated in accordance with either Section 2.11 or proposed Section 2.16 shall be eligible for election as directors and that Section 2.11 and proposed Section 2.16 of the Bylaws are the exclusive means for a stockholder to make a director nomination.[46]

III. Discussion and Commission Findings

The Commission finds, after careful review, that the proposed rule changes, as modified by Amendment Nos. 1, are consistent with the requirements of Section 6 of the Act[47] and the rules and regulations thereunder applicable to a national securities exchange.[48] In particular, the Commission finds that the proposed rule changes, as modified by Amendment Nos. 1, are consistent with the requirements of Section 6(b)(5) of the Act, which requires, among other things, that an exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.[49]

A stockholder who wishes to nominate his or her own candidate for director may initiate a proxy contest in order to solicit proxies from fellow shareholders, but doing so requires the preparation and dissemination of

[36] *See id.*

[37] *See* proposed Bylaws Section 2.16(k).

[38] *See* Notices, *supra* note 3, at 24057, 24064, 24088, 24081, 24050, and 24130, respectively; proposed Bylaws Section 2.16(l).

[39] *See* proposed Bylaws Section 2.16(l).

[40] To be considered a qualified representative of the Eligible Stockholder providing notice, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting and such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, must be provided to CGM at least 24 hours prior to the meeting. *See* proposed Bylaws Section 2.16(m).

[41] *See id.*

[42] *See* proposed Bylaws Section 2.16(n).

[43] *See* proposed Bylaws Section 2.16(o).

[44] *See* Notices, *supra* note 3, at 24057, 24065, 24089, 24082, 24050, and 24130, respectively.

[45] *See id.* at 24058, 24065, 24089, 24082, 24050, and 24131, respectively; proposed Bylaws Section 2.10.

[46] *See* Notices, *supra* note 3, at 24058, 24065, 24089, 24082, 24050, and 24131, respectively; proposed Bylaws Section 2.11.

[47] 15 U.S.C. 78f(b).

[48] In approving these proposed rule changes, as modified by Amendment Nos. 1, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[49] 15 U.S.C. 78f(b)(5).

separate proxy materials and entails substantial cost. Proposed Section 2.16 of the Bylaws provides CGM stockholders an alternative path for having their nominees considered through the proxy process. This proposal is intended to respond to a stockholder proposal, submitted under Rule 14a–8 of the Act, requesting that the Board take steps to implement a proxy access bylaw provision.[50]

The Exchanges state that, by permitting an Eligible Stockholder of CGM that meets the stated requirements to nominate directors and have its nominees included in CGM's annual meeting proxy statement,[51] the proposal would strengthen the corporate governance of CGM, which the Exchanges believe is beneficial to both investors and the public interest.[52] The Commission believes that the proposal to provide a process for stockholder proxy access in the Bylaws should help to provide the stockholders of CGM that meet the stated requirements of proposed Section 2.16 with an alternative opportunity to exercise their right to nominate directors for the Board, consistent with the Act.

The proposed rule changes, as modified by Amendment Nos. 1, would require CGM to include in its proxy materials information regarding the Stockholder Nominee and the Eligible Stockholder, including the Required Information, any Supporting Statement, and any other information CGM determines to include relating to the Stockholder Nominee or the Eligible Stockholder.[53] The Commission believes that the provision of such information could help stockholders to assess whether a nominee submitted pursuant to proposed Section 2.16 possesses the necessary qualifications and experience to serve as a director.

The proposed rule changes to the Bylaws limit the availability of proxy access in certain circumstances. For example, in order to be eligible to submit a nomination to be included in the proxy statement pursuant to proposed Section 2.16, a stockholder (or a group of no more than 20 stockholders) is required to own at least three percent of CGM's outstanding shares of capital stock continuously for at least three years.[54] Furthermore, a stockholder may only nominate a director to be included in the proxy materials pursuant to proposed Section 2.16 if the stockholder represents that he or she acquired the Required Shares in the ordinary course of business and not with the intent to change or influence control of CGM, and does not presently have such intent.[55] The proposal also limits the number of director nominees submitted pursuant to proposed Section 2.16 that may be included in the proxy statement to the greater of two or 20% of the total number of directors of the Board.[56] The proposal would allow CGM to disregard or omit director nominees submitted pursuant to proposed Section 2.16 from the proxy materials in certain circumstances, including when the Stockholder Nominee has provided any information to CGM or its stockholders that was untrue in any material respect or that omitted to state a material fact necessary to make the statements made, in light of the circumstances in which they were made, not misleading.[57] Such limitations on proxy access seem designed to balance the ability of CGM stockholders to participate more fully in the nomination and election process against the potential cost and practical difficulties of requiring inclusion of stockholder nominations in proxy materials.

As discussed above, the proposed proxy access provisions include safeguards that will help to ensure that any director nominees submitted pursuant to proposed Section 2.16 would qualify as independent directors and that the nominating shareholder's nomination of the nominee, and the nominee's membership on the Board, if elected, would not violate any applicable laws, rules or regulations of any government entity or relevant self-regulatory organization. Specifically, the proposal permits CGM to disregard and omit from the proxy materials any nominee whose election as a member of the Board would cause CGM to be in violation of the Bylaws, CGM's Certificate of Incorporation, the rules of the principal national securities exchange on which CGM's capital stock is traded, or any applicable law, rule or regulation.[58] CGM may also disregard or omit from the proxy materials any nominee who would not be an independent director under the Bylaws, the rules of the principal national securities exchange on which CGM's capital stock is traded,[59] any applicable rules of the Commission, or any publicly disclosed standards used by the Board in determining and disclosing independence of CGM's directors.[60] The Exchanges have represented that any independence standards adopted by the Board will apply uniformly to all director nominees, including Stockholder Nominees, and that any future independence standards adopted by the Board will comply with all applicable laws, rules, and regulations.[61]

In addition, the Stockholder Nominee must provide a written representation and agreement that, among other things, the nominee (i) is not and will not become a party to any Voting Commitment that has not been disclosed to CGM or any Voting Commitment that could reasonably be expected to limit or interfere with the Stockholder Nominee's ability to comply, if elected as a director of CGM, with its fiduciary duties under applicable law, and (ii) will abide by and comply with the Bylaws, CGM's Certificate of Incorporation and applicable policies of CGM, including all applicable publicly disclosed

[50] *See supra* note 5 and accompanying text. The Exchanges state that after receiving this stockholder proposal related to proxy access, CGM determined to take the stockholder's requested steps to implement proxy access. *See supra* note 6 and accompanying text.

[51] As discussed above, however, the Permitted Number of Stockholder Nominees under proposed Section 2.16 may not exceed the greater of two or 20% of the total number of directors in office, and under certain circumstances, could be less than two Stockholder Nominees. *See* proposed Bylaws Section 2.16(c). *See also supra* notes 16–17 and accompanying text.

[52] *See* Notices, *supra* note 3, at 24058, 24065, 24089, 24082, 24051, and 24131, respectively.

[53] *See* proposed Bylaws Section 2.16(a). *See also supra* notes 10–11 and accompanying text.

[54] *See* proposed Bylaws Section 2.16(f)(vi)(1). *See also supra* notes 13–15 and accompanying text.

[55] *See* proposed Bylaws Section 2.16(d). *See also supra* note 21 and accompanying text.

[56] *See* proposed Bylaws Section 2.16(c). *See also supra* notes 8, 16, and 17 and accompanying text.

[57] *See* proposed Section 2.16(j)(x). *See also supra* notes 34–36 and accompanying text.

[58] *See* proposed Bylaws Section 2.16(j)(vi). *See also supra* notes 34–36 and accompanying text.

[59] The Commission notes that CGM's capital stock is listed on BZX and BZX is also currently the principal market on which CGM's stock is traded. The Exchange has represented to Commission staff that for purposes of proposed Bylaws Section 2.16, the terms ''listed and ''traded'' have no meaningful difference in this context. The Commission notes that the national securities exchange that lists a security is the relevant exchange for compliance with listing standards including independence requirements. Although CGM's listing market is currently also the principal market on which its stock is traded, for the avoidance of confusion, the Commission believes CGM should amend this provision of its Bylaws to provide that CGM must comply with the listing standards of its listing market, including the independence requirements of its listing market, rather than those of the principal market on which its stock is traded, which market may change over time. *See, e.g.,* Bylaws Section 3.3 (''At all times no less than two-thirds of the members of the Board of Directors shall satisfy the independence requirements adopted by the Board of Directors for directors of [CGM], as may be modified and amended by the Board of Directors from time to time, and which shall satisfy the independence requirements *contained in the listing standards of each national securities exchange on which the common stock of [CGM] is listed*.'') (emphasis added).

[60] *See* proposed Bylaws Section 2.16(j)(i). *See also supra* notes 34–36 and accompanying text.

[61] *See* Amendment Nos. 1, *supra* note 4.

corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and guidelines of CGM, as well as the applicable provisions of the rules and regulations of the Commission and any stock exchange applicable to CGM.[62]

The Commission believes that the safeguards and limitations described above, including the representations set forth in Amendment Nos. 1, should help to ensure that CGM can comply with its Bylaws and any applicable laws, rules, regulations, including, among others, exchange listing standards on independent directors, consistent with Section 6(b)(5) of the Act. The Commission further believes that the representations set forth in Amendment Nos. 1 will help to ensure that any independence standards adopted by the Board will apply uniformly among both Stockholder Nominees and Board nominees, consistent with Section 6(b)(5) of the Act. Based on the foregoing, the Commission finds that the proposed rule changes, as modified by Amendment Nos. 1, are consistent with the Act.

Finally, the Commission finds that the proposed conforming changes to Sections 2.10 and 2.11 of the Bylaws are consistent with the Act because these changes prevent stockholder confusion by clarifying the operation of the proposed proxy access provision and other provisions by which stockholders may nominate directors to the Board.

IV. Solicitation of Comments on Amendment Nos. 1

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule changes, as modified by Amendment Nos. 1, are 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 Nos. SR–CBOE–2021–023; SR–CboeBYX–2021–009; SR–CboeBZX–2021–028; SR–CboeEDGA–2021–009; SR–CboeEDGX–2021–021; SR–C2–2021–007 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 Nos. SR–CBOE–2021–023; SR–CboeBYX–2021–009; SR–CboeBZX–2021–028; SR–CboeEDGA–2021–009; SR–CboeEDGX–2021–021; SR–C2–2021–007. These file numbers 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 changes that are filed with the Commission, and all written communications relating to the proposed rule changes 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 filings also will be available for inspection and copying at the principal office of the Exchanges. 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 Nos. SR–CBOE–2021–023; SR–CboeBYX–2021–009; SR–CboeBZX–2021–028; SR–CboeEDGA–2021–009; SR–CboeEDGX–2021–021; SR–C2–2021–007, and should be submitted on or before August 27, 2021.

V. Accelerated Approval of Proposed Rule Changes, as Modified by Amendment Nos. 1

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act, to approve the proposed rule changes, as modified by Amendment Nos. 1, prior to the 30th day after the date of publication of Amendment Nos. 1 in the **Federal Register**. As discussed above, in Amendment Nos. 1 the Exchanges clarify the circumstances under which Stockholder Nominees may be excluded from the proxy materials by representing that any publicly disclosed standards used by the Board in determining and disclosing independence of CGM's directors will apply uniformly to all director nominees, including Stockholder Nominees, and will comply with all applicable laws, rules, and regulations.[63] The Commission believes that these revisions provide needed clarity to the proposed rule changes and help to ensure the proposal is consistent with investor protection under Section 6(b)(5) of the Act. Accordingly, the Commission finds good cause for approving the proposed rule changes, as modified by Amendment Nos. 1, on an accelerated basis, pursuant to Section 19(b)(2) of the Act.[64]

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[65] that the proposed rule changes (SR–CBOE–2021–023; SR–CboeBYX–2021–009; SR–CboeBZX–2021–028; SR–CboeEDGA–2021–009; SR–CboeEDGX–2021–021; SR–C2–2021–007), as modified by Amendment Nos. 1, be, and hereby are, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[66]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–16796 Filed 8–5–21; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92543; File No. SR–CboeBZX–2021–051]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change To List and Trade Shares of the ARK 21Shares Bitcoin ETF Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares

August 2, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 20, 2021, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to

[62] *See* proposed Bylaws Section 2.16(f)(x). *See also supra* note 24 and accompanying text.

[63] *See* Amendment Nos. 1, *supra* note 4.

[64] 15 U.S.C. 78s(b)(2).

[65] 15 U.S.C. 78s(b)(2).

[66] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 a rule change to list and trade shares of the ARK 21Shares Bitcoin ETF (the ''Trust''),[3] under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares. The shares of the Trust are referred to herein as the ''Shares.''

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade the Shares under BZX Rule 14.11(e)(4),[4] which governs the listing and trading of Commodity-Based Trust Shares on the Exchange.[5] 21Shares US LLC is the sponsor of the Trust (the ''Sponsor''). The Shares will be registered with the Commission by means of the Trust's registration statement on Form S–1 (the ''Registration Statement'').[6]

Background

Bitcoin is a digital asset based on the decentralized, open source protocol of the peer-to-peer computer network launched in 2009 that governs the creation, movement, and ownership of bitcoin and hosts the public ledger, or ''blockchain,'' on which all bitcoin transactions are recorded (the ''Bitcoin Network'' or ''Bitcoin''). The decentralized nature of the Bitcoin Network allows parties to transact directly with one another based on cryptographic proof instead of relying on a trusted third party. The protocol also lays out the rate of issuance of new bitcoin within the Bitcoin Network, a rate that is reduced by half approximately every four years with an eventual hard cap of 21 million. It's generally understood that the combination of these two features—a systemic hard cap of 21 million bitcoin and the ability to transact trustlessly with anyone connected to the Bitcoin Network—gives bitcoin its value.[7] The first rule filing proposing to list an exchange-traded product to provide exposure to bitcoin in the U.S. was submitted by the Exchange on June 30, 2016.[8] At that time, blockchain technology, and digital assets that utilized it, were relatively new to the broader public. The market cap of all bitcoin in existence at that time was approximately $10 billion. No registered offering of digital asset securities or shares in an investment vehicle with exposure to bitcoin or any other cryptocurrency had yet been conducted, and the regulated infrastructure for conducting a digital asset securities offering had not begun to develop.[9] Similarly, regulated U.S. bitcoin futures contracts did not exist. The Commodity Futures Trading Commission (the ''CFTC'') had determined that bitcoin is a commodity,[10] but had not engaged in significant enforcement actions in the space. The New York Department of Financial Services (''NYDFS'') adopted its final BitLicense regulatory framework in 2015, but had only approved four entities to engage in activities relating to virtual currencies (whether through granting a BitLicense or a limited-purpose trust charter) as of June 30, 2016.[11] While the first over-the-counter bitcoin fund launched in 2013, public trading was limited and the fund had only $60 million in assets.[12] There were very few, if any, traditional financial institutions engaged in the space, whether through investment or providing services to digital asset companies. In January 2018, the Staff of the Commission noted in a letter to the Investment Company Institute and SIFMA that it was not aware, at that time, of a single custodian providing fund custodial services for digital assets.[13] Fast forward to the first quarter of 2021 and the digital assets financial ecosystem, including bitcoin, has progressed significantly. The development of a regulated market for digital asset securities has significantly evolved, with market participants having conducted registered public offerings of both digital asset securities[14] and shares in investment

[3] The Trust was formed as a Delaware statutory trust on June 22, 2021 and is operated as a grantor trust for U.S. federal tax purposes. The Trust has no fixed termination date.

[4] The Commission approved BZX Rule 14.11(e)(4) in Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR–BATS–2011–018).

[5] All statements and representations made in this filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares on the Exchange.

[6] *See* Registration Statement on Form S–1, dated June 28, 2021 submitted to the Commission by the Sponsor on behalf of the Trust. The descriptions of the Trust, the Shares, and the Index (as defined below) contained herein are based, in part, on information in the Registration Statement. The Registration Statement is not yet effective and the Shares will not trade on the Exchange until such time that the Registration Statement is effective.

[7] For additional information about bitcoin and the Bitcoin Network, *see https://bitcoin.org/en/getting-started; https://www.fidelitydigitalassets.com/articles/addressing-bitcoin-criticisms;* and *https://www.vaneck.com/education/investment-ideas/investing-in-bitcoin-and-digital-assets/.*

[8] *See* Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018). This proposal was subsequently disapproved by the Commission. *See* Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018) (the ''Winklevoss Order'').

[9] Digital assets that are securities under U.S. law are referred to throughout this proposal as ''digital asset securities.'' All other digital assets, including bitcoin, are referred to interchangeably as ''cryptocurrencies'' or ''virtual currencies.'' The term ''digital assets'' refers to all digital assets, including both digital asset securities and cryptocurrencies, together.

[10] *See* ''In the Matter of Coinflip, Inc.'' (''Coinflip'') (CFTC Docket 15–29 (September 17, 2015)) (order instituting proceedings pursuant to Sections 6(c) and 6(d) of the CEA, making findings and imposing remedial sanctions), in which the CFTC stated:

''Section 1a(9) of the CEA defines 'commodity' to include, among other things, 'all services, rights, and interests in which contracts for future delivery are presently or in the future dealt in.' 7 U.S.C. 1a(9). The definition of a 'commodity' is broad. *See, e.g.,* Board of Trade of City of Chicago v. SEC, 677 F. 2d 1137, 1142 (7th Cir. 1982). Bitcoin and other virtual currencies are encompassed in the definition and properly defined as commodities.''

[11] A list of virtual currency businesses that are entities regulated by the NYDFS is available on the NYDFS website. *See https://www.dfs.ny.gov/apps_and_licensing/virtual_currency_businesses/regulated_entities.*

[12] Data as of March 31, 2016 according to publicly available filings. *See* Bitcoin Investment Trust Form S–1, dated May 27, 2016, available: *https://www.sec.gov/Archives/edgar/data/1588489/000095012316017801/filename1.htm.*

[13] *See* letter from Dalia Blass, Director, Division of Investment Management, U.S. Securities and Exchange Commission to Paul Schott Stevens, President & CEO, Investment Company Institute and Timothy W. Cameron, Asset Management Group—Head, Securities Industry and Financial Markets Association (January 18, 2018), *available at https://www.sec.gov/divisions/investment/noaction/2018/cryptocurrency-011818.htm.*

[14] *See* Prospectus supplement filed pursuant to Rule 424(b)(1) for INX Tokens (Registration No. 333–233363), *available at: https://www.sec.gov/Archives/edgar/data/1725882/*

vehicles holding bitcoin futures.[15] Additionally, licensed and regulated service providers have emerged to provide fund custodial services for digital assets, among other services. For example, in December 2020, the Commission adopted a conditional no-action position permitting certain special purpose broker-dealers to custody digital asset securities under Rule 15c3–3 under the Exchange Act;[16] in September 2020, the Staff of the Commission released a no-action letter permitting certain broker-dealers to operate a non-custodial Alternative Trading System (''ATS'') for digital asset securities, subject to specified conditions;[17] and in October 2019, the Staff of the Commission granted temporary relief from the clearing agency registration requirement to an entity seeking to establish a securities clearance and settlement system based on distributed ledger technology,[18] and multiple transfer agents who provide services for digital asset securities registered with the Commission.[19]

Outside the Commission's purview, the regulatory landscape has changed significantly since 2016, and cryptocurrency markets have grown and evolved as well. The market for bitcoin is approximately 100 times larger, having recently reached a market cap of over $1 trillion, although as of June 18, 2021, it is closer to $650 billion. CFTC regulated bitcoin futures represented approximately $28 billion in notional trading volume on Chicago Mercantile Exchange (''CME'') (''Bitcoin Futures'') in December 2020 compared to $737 million, $1.4 billion, and $3.9 billion in total trading in December 2017, December 2018, and December 2019, respectively. Bitcoin Futures traded over $1.2 billion per day in December 2020 and represented $1.6 billion in open interest compared to $115 million in December 2019, which the Exchange believes represents a regulated market of significant size, as further discussed below.[20] The CFTC has exercised its regulatory jurisdiction in bringing a number of enforcement actions related to bitcoin and against trading platforms that offer cryptocurrency trading.[21] The U.S. Office of the Comptroller of the Currency (the ''OCC'') has made clear that federally-chartered banks are able to provide custody services for cryptocurrencies and other digital assets.[22] The OCC recently granted conditional approval of two charter conversions by state-chartered trust companies to national banks, both of which provide cryptocurrency custody services.[23] NYDFS has granted no fewer than twenty-five BitLicenses, including to established public payment companies like PayPal Holdings, Inc. and Square, Inc., and limited purpose trust charters to entities providing cryptocurrency custody services, including the Trust's Custodian. The U.S. Treasury Financial Crimes Enforcement Network (''FinCEN'') has released extensive guidance regarding the applicability of the Bank Secrecy Act (''BSA'') and implementing regulations to virtual currency businesses,[24] and has proposed rules imposing requirements on entities subject to the BSA that are specific to the technological context of virtual currencies.[25] In addition, the Treasury's Office of Foreign Assets Control (''OFAC'') has brought enforcement actions over apparent violations of the sanctions laws in connection with the provision of wallet management services for digital assets.[26]

In addition to the regulatory developments laid out above, more traditional financial market participants appear to be embracing cryptocurrency: large insurance companies,[27] asset managers,[28] university endowments,[29] pension funds,[30] and even historically bitcoin skeptical fund managers[31] are allocating to bitcoin. The largest over-the-counter bitcoin fund previously

000121390020023202/ea125858-424b1_inxlimited.htm.

[15] *See* Prospectus filed by Stone Ridge Trust VI on behalf of NYDIG Bitcoin Strategy Fund Registration, *available at: https://www.sec.gov/Archives/edgar/data/1764894/000119312519309942/d693146d497.htm.*

[16] *See* Securities Exchange Act Release No. 90788, 86 FR 11627 (February 26, 2021) (File Number S7–25–20) (Custody of Digital Asset Securities by Special Purpose Broker-Dealers).

[17] *See* letter from Elizabeth Baird, Deputy Director, Division of Trading and Markets, U.S. Securities and Exchange Commission to Kris Dailey, Vice President, Risk Oversight & Operational Regulation, Financial Industry Regulatory Authority (September 25, 2020), *available at: https://www.sec.gov/divisions/marketreg/mr-noaction/2020/finra-ats-role-in-settlement-of-digital-asset-security-trades-09252020.pdf.*

[18] *See* letter from Jeffrey S. Mooney, Associate Director, Division of Trading and Markets, U.S. Securities and Exchange Commission to Charles G. Cascarilla & Daniel M. Burstein, Paxos Trust Company, LLC (October 28, 2019), *available at: https://www.sec.gov/divisions/marketreg/mr-noaction/2019/paxos-trust-company-102819-17a.pdf.*

[19] *See, e.g.,* Form TA–1/A filed by Tokensoft Transfer Agent LLC (CIK: 0001794142) on January 8, 2021, *available at: https://www.sec.gov/Archives/edgar/data/1794142/000179414219000001/xslFTA1X01/primary_doc.xml.*

[20] All statistics and charts included in this proposal are sourced from *https://www.cmegroup.com/trading/bitcoin-futures.html.*

[21] The CFTC's annual report for Fiscal Year 2020 (which ended on September 30, 2020) noted that the CFTC ''continued to aggressively prosecute misconduct involving digital assets that fit within the CEA's definition of commodity'' and ''brought a record setting seven cases involving digital assets.'' *See* CFTC FY2020 Division of Enforcement Annual Report, *available at: https://www.cftc.gov/media/5321/DOE_FY2020_AnnualReport_120120/download.* Additionally, the CFTC filed on October 1, 2020, a civil enforcement action against the owner/operators of the BitMEX trading platform, which was one of the largest bitcoin derivative exchanges. *See* CFTC Release No. 8270–20 (October 1, 2020) *available at: https://www.cftc.gov/PressRoom/PressReleases/8270-20.*

[22] *See* OCC News Release 2021–2 (January 4, 2021) *available at: https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-2.html.*

[23] *See* OCC News Release 2021–6 (January 13, 2021) *available at: https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-6.html* and OCC News Release 2021–19 (February 5, 2021) *available at: https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-19.html.*

[24] *See* FinCEN Guidance FIN–2019–G001 (May 9, 2019) (Application of FinCEN's Regulations to Certain Business Models Involving Convertible Virtual Currencies) *available at: https://www.fincen.gov/sites/default/files/2019-05/FinCEN%20Guidance%20CVC%20FINAL%20508.pdf.*

[25] *See* U.S. Department of the Treasury Press Release: ''The Financial Crimes Enforcement Network Proposes Rule Aimed at Closing Anti-Money Laundering Regulatory Gaps for Certain Convertible Virtual Currency and Digital Asset Transactions'' (December 18, 2020), *available at: https://home.treasury.gov/news/press-releases/sm1216.*

[26] *See* U.S. Department of the Treasury Enforcement Release: ''OFAC Enters Into $98,830 Settlement with BitGo, Inc. for Apparent Violations of Multiple Sanctions Programs Related to Digital Currency Transactions'' (December 30, 2020) *available at: https://home.treasury.gov/system/files/126/20201230_bitgo.pdf.*

[27] On December 10, 2020, Massachusetts Mutual Life Insurance Company (MassMutual) announced that it had purchased $100 million in bitcoin for its general investment account. *See* MassMutual Press Release ''Institutional Bitcoin provider NYDIG announces minority stake purchase by MassMutual'' (December 10, 2020) *available at: https://www.massmutual.com/about-us/news-and-press-releases/press-releases/2020/12/institutional-bitcoin-provider-nydig-announces-minority-stake-purchase-by-massmutual.*

[28] *See e.g.,* ''BlackRock's Rick Rieder says the world's largest asset manager has 'started to dabble' in bitcoin'' (February 17, 2021) *available at: https://www.cnbc.com/2021/02/17/blackrock-has-started-to-dabble-in-bitcoin-says-rick-rieder.html* and ''Guggenheim's Scott Minerd Says Bitcoin Should Be Worth $400,000'' (December 16, 2020) *available at: https://www.bloomberg.com/news/articles/2020-12-16/guggenheim-s-scott-minerd-says-bitcoin-should-be-worth-400-000.*

[29] *See e.g.,* ''Harvard and Yale Endowments Among Those Reportedly Buying Crypto'' (January 25, 2021) *available at: https://www.bloomberg.com/news/articles/2021-01-26/harvard-and-yale-endowments-among-those-reportedly-buying-crypto.*

[30] *See e.g.,* ''Virginia Police Department Reveals Why its Pension Fund is Betting on Bitcoin'' (February 14, 2019) *available at: https://finance.yahoo.com/news/virginia-police-department-reveals-why-194558505.html.*

[31] *See e.g.,* ''Bridgewater: Our Thoughts on Bitcoin'' (January 28, 2021) *available at: https://www.bridgewater.com/research-and-insights/our-thoughts-on-bitcoin* and ''Paul Tudor Jones says he likes bitcoin even more now, rally still in the 'first inning'" (October 22, 2020) *available at: https://www.cnbc.com/2020/10/22/-paul-tudor-jones-says-he-likes-bitcoin-even-more-now-rally-still-in-the-first-inning.html.*

filed a Form 10 registration statement, which the Staff of the Commission reviewed and which took effect automatically, and is now a reporting company.[32] Established companies like Tesla, Inc.,[33] MicroStrategy Incorporated,[34] and Square, Inc.,[35] among others, have recently announced substantial investments in bitcoin in amounts as large as $1.5 billion (Tesla) and $425 million (MicroStrategy). Suffice to say, bitcoin is on its way to gaining mainstream usage.

Despite these developments, access for U.S. retail investors to gain exposure to bitcoin via a transparent and regulated exchange-traded vehicle remains limited. As investors and advisors increasingly utilize ETPs to manage diversified portfolios (including equities, fixed income securities, commodities, and currencies) quickly, easily, relatively inexpensively, and without having to hold directly any of the underlying assets, options for bitcoin exposure for U.S. investors remain limited to: (i) Investing in over-the-counter bitcoin funds (''OTC Bitcoin Funds'') that are subject to high premium/discount volatility (and high management fees) to the advantage of more sophisticated investors that are able to create and potentially redeem shares at net asset value (''NAV'') directly with the issuing trust; (ii) facing the technical risk, complexity and generally high fees associated with buying spot bitcoin; or (iii) purchasing shares of operating companies that they believe will provide proxy exposure to bitcoin with limited disclosure about the associated risks. Meanwhile, investors in many other countries, including Canada,[36] are able to use more traditional exchange listed and traded products to gain exposure to bitcoin, disadvantaging U.S. investors and leaving them with riskier and more expensive means of getting bitcoin exposure.[37]

OTC Bitcoin Funds and Investor Protection

Over the past year, U.S. investor exposure to bitcoin through OTC Bitcoin Funds has grown into the tens of billions of dollars. With that growth, so too has grown the potential risk to U.S. investors. As described below, premium and discount volatility, high fees, insufficient disclosures, and technical hurdles are putting U.S. investor money at risk on a daily basis that could potentially be eliminated through access to a bitcoin ETP. The Exchange understands the Commission's previous focus on potential manipulation of a bitcoin ETP in prior disapproval orders, but now believes that such concerns have been sufficiently mitigated and that the growing and quantifiable investor protection concerns should be the central consideration as the Commission reviews this proposal. As such, the Exchange believes that approving this proposal (and comparable proposals submitted hereafter) provides the Commission with the opportunity to allow U.S. investors with access to bitcoin in a regulated and transparent exchange-traded vehicle that would act to limit risk to U.S. investors by: (i) Reducing premium and discount volatility; (ii) reducing management fees through meaningful competition; (iii) reducing risks associated with investing in operating companies that are imperfect proxies for bitcoin exposure; and (iv) providing an alternative to custodying spot bitcoin.

(i) OTC Bitcoin Funds and Premium/Discount Volatility

OTC Bitcoin Funds are generally designed to provide exposure to bitcoin in a manner similar to the Shares. However, unlike the Shares, OTC Bitcoin Funds are unable to freely offer creation and redemption in a way that incentivizes market participants to keep their shares trading in line with their NAV[38] and, as such, frequently trade at a price that is out of line with the value of their assets held. Historically, OTC Bitcoin Funds have traded at a significant premium to NAV.[39]

Trading at a premium or a discount is not unique to OTC Bitcoin Funds and is not in itself problematic, but the size of such premiums/discounts and volatility thereof highlight the key differences in operations and market structure of OTC Bitcoin Funds as compared to ETPs. This, combined with the significant increase in AUM for OTC Bitcoin Funds over the past year, has given rise to significant and quantifiable investor protection issues, as further described below. In fact, the largest OTC Bitcoin Fund has grown to $38.3 billion in AUM[40] and has historically traded at a premium of between roughly five and 40%, though it has seen premiums at times above 100%.[41] Recently, however, it has traded at a discount. As of June 18, 2021, the discount was approximately 11%, representing around $4.1 billion in market value less than the bitcoin actually held by the fund. If premium/discount numbers

[32] *See* Letter from Division of Corporation Finance, Office of Real Estate & Construction to Barry E. Silbert, Chief Executive Officer, Grayscale Bitcoin Trust (January 31, 2020) *https://www.sec.gov/Archives/edgar/data/1588489/000000000020000953/filename1.pdf.*

[33] *See* Form 10–K submitted by Tesla, Inc. for the fiscal year ended December 31, 2020 at 23: *https://www.sec.gov/ix?doc=/Archives/edgar/data/1318605/000156459021004599/tsla-10k_20201231.htm.*

[34] *See* Form 10–Q submitted by MicroStrategy Incorporated for the quarterly period ended September 30, 2020 at 8: *https://www.sec.gov/ix?doc=/Archives/edgar/data/1050446/000156459020047995/mstr-10q_20200930.htm.*

[35] *See* Form 10–Q submitted by Square, Inc. for the quarterly period ended September 30, 2020 at 51: *https://www.sec.gov/ix?doc=/Archives/edgar/data/1512673/000151267320000012/sq-20200930.htm.*

[36] The Exchange notes that the Purpose Bitcoin ETF, a retail physical bitcoin ETP recently launched in Canada, reportedly reached $421.8 million in assets under management (''AUM'') in two days, demonstrating the demand for a North American market listed bitcoin exchange-traded product (''ETP''). The Purpose Bitcoin ETF also offers a class of units that is U.S. dollar denominated, which could appeal to U.S. investors. Without an approved bitcoin ETP in the U.S. as a viable alternative, U.S. investors could seek to purchase these shares in order to get access to bitcoin exposure. Given the separate regulatory regime and the potential difficulties associated with any international litigation, such an arrangement would create more risk exposure for U.S. investors than they would otherwise have with a U.S. exchange listed ETP.

[37] The Exchange notes that securities regulators in a number of other countries have either approved or otherwise allowed the listing and trading of bitcoin ETPs. Specifically, these funds include the Purpose Bitcoin ETF, Bitcoin ETF, VanEck Vectors Bitcoin ETN, WisdomTree Bitcoin ETP, Bitcoin Tracker One, BTCetc bitcoin ETP, Amun Bitcoin ETP, Amun Bitcoin Suisse ETP, 21Shares Short Bitcoin ETP, and CoinShares Physical Bitcoin ETP.

[38] Because OTC Bitcoin Funds are not listed on an exchange, they are also not subject to the same transparency and regulatory oversight by a listing exchange as the Shares would be. In the case of the Trust, the existence of a surveillance-sharing agreement between the Exchange and the Bitcoin Futures market results in increased investor protections compared to OTC Bitcoin Funds.

[39] The inability to trade in line with NAV may at some point result in OTC Bitcoin Funds trading at a discount to their NAV, which has occurred more recently with respect to one prominent OTC Bitcoin Fund. While that has not historically been the case, and it is not clear whether such discounts will continue, such a prolonged, significant discount scenario would give rise to nearly identical potential issues related to trading at a premium as described below.

[40] As of March 31, 2021. *See* Form 10–Q submitted by on behalf of the Grayscale Bitcoin Trust for the quarterly period ended March 31, 2021 at 4: *https://grayscale.com/wp-content/uploads/sites/3/2021/05/gbtc_q1-2021_10q_as-filed.pdf.* Compare to an AUM of approximately $2.6 billion on February 26, 2020, the date on which the Commission issued the most recent disapproval order for a bitcoin ETP. *See* Securities Exchange Act Release No. 88284 (February 26, 2020), 85 FR 12595 (March 3, 2020) (SR–NYSEArca–2019–39) (the ''Wilshire Phoenix Disapproval''). While the price of one bitcoin has increased approximately 400% in the intervening period, the total AUM has increased by approximately 1240%, indicating that the increase in AUM was created beyond just price appreciation in bitcoin.

[41] *See* ''Traders Piling Into Overvalued Crypto Funds Risk a Painful Exit'' (February 4, 2021) *available at: https://www.bloomberg.com/news/articles/2021-02-04/bitcoin-one-big-risk-when-investing-in-crypto-funds.*

move back to the middle of its historical range to a 20% premium (which historically could occur at any time and overnight), it would represent a swing of approximately $11 billion in value unrelated to the value of bitcoin held by the fund. These numbers are only associated with a single OTC Bitcoin Fund—as more and more OTC Bitcoin Funds come to market and more investor assets flood into them to get access to bitcoin exposure, the potential dollars at risk will only increase.

This raises significant investor protection issues in several ways. First, the most obvious issue is that investors are buying shares of a fund for a price that is not reflective of the per share value of the fund's underlying assets. Even operating within the normal premium range, it's possible for an investor to buy shares of an OTC Bitcoin Fund only to have those shares quickly lose 10% or more in dollar value excluding any movement of the price of bitcoin. That is to say—the price of bitcoin could have stayed exactly the same from market close on one day to market open the next, yet the value of the shares held by the investor decreased only because of the fluctuation of the premium/discount. As more investment vehicles, including mutual funds and ETFs, seek to gain exposure to bitcoin, the easiest option for a buy and hold strategy is often an OTC Bitcoin Fund, meaning that even investors that do not directly buy OTC Bitcoin Funds can be disadvantaged by extreme premiums (or discounts) and premium volatility.

The second issue is related to the first and explains how the premium in OTC Bitcoin Funds essentially creates a direct payment from retail investors to more sophisticated investors. Generally speaking, only accredited investors are able to create or redeem shares with the issuing trust, which means that they are able to buy or sell shares directly with the trust at NAV (in exchange for either cash or bitcoin) without having to pay the premium or sell into the discount. While there are often minimum holding periods for shares, an investor that is allowed to interact directly with the trust is able to hedge their bitcoin exposure as needed to satisfy the holding requirements and collect on the premium or discount opportunity.

As noted above, the existence of a premium or discount and the premium/discount collection opportunity is not unique to OTC Bitcoin Funds and does not in itself warrant the approval of an ETP.[42] What makes this situation unique is that such significant and persistent premiums and discounts can exist in a product with $30+ billion in assets under management,[43] that billions of retail investor dollars are constantly under threat of premium/discount volatility,[44] and that premium/discount volatility is generally captured by more sophisticated investors on a riskless basis. The Exchange understands the Commission's focus on potential manipulation of a bitcoin ETP in prior disapproval orders, but now believes that current circumstances warrant that this direct, quantifiable investor protection issue should be the central consideration as the Commission determines whether to approve this proposal, particularly when the Trust as a bitcoin ETP is designed to reduce the likelihood of significant and prolonged premiums and discounts with its open-ended nature as well as the ability of market participants (*i.e.,* market makers and authorized participants) to create and redeem on a daily basis.

(ii) Spot and Proxy Exposure

Exposure to bitcoin through an ETP also presents certain advantages for retail investors compared to buying spot bitcoin directly. The most notable advantage is the use of the Custodian to custody the Trust's bitcoin assets. The Sponsor has carefully selected the Custodian, a third party custodian that carries insurance covering both hot and cold storage and is chartered as a trust company and will custody the Trust's bitcoin assets in a manner so that it meets the definition of qualified custodian under the Investment Advisers Act of 1940, as amended. This includes, among others, the use of ''cold'' (offline) storage to hold private keys and the employment by the Custodian of a certain degree of cybersecurity measures and operational best practices. By contrast, an individual retail investor holding bitcoin through a cryptocurrency exchange lacks these protections. Typically, retail exchanges hold most, if not all, retail investors' bitcoin in ''hot'' (internet-connected) storage and do not make any commitments to indemnify retail investors or to observe any particular cybersecurity standard. Meanwhile, a retail investor holding spot bitcoin directly in a self-hosted wallet may suffer from inexperience in private key management (*e.g.,* insufficient password protection, lost key, etc.), which could cause them to lose some or all of their bitcoin holdings. In the Custodian, the Trust has engaged a regulated and licensed entity highly experienced in bitcoin custody, with dedicated, trained employees and procedures to manage the private keys to the Trust's bitcoin, and which is accountable for failures. Thus, with respect to custody of the Trust's bitcoin assets, the Trust presents advantages from an investment protection standpoint for retail investors compared to owning spot bitcoin directly.

Finally, as described in the Background section above, recently a number of operating companies engaged in unrelated businesses—such as Tesla (a car manufacturer) and MicroStrategy (an enterprise software company)—have announced investments as large as $1.5 billion in bitcoin.[45] Without access to bitcoin exchange-traded products, retail investors seeking investment exposure to bitcoin may end up purchasing shares in these companies in order to gain the exposure to bitcoin that they seek.[46] In fact, mainstream financial news networks have written a number of articles providing investors with guidance for obtaining bitcoin exposure through publicly traded companies (such as MicroStrategy, Tesla, and bitcoin mining companies, among others) instead of dealing with the complications associated with buying spot bitcoin in the absence of a bitcoin ETP.[47] Such operating companies,

[42] The Exchange notes, for example, that similar premiums/discounts and premium/discount volatility exist for other non-bitcoin cryptocurrency related over-the-counter funds, but that the size and investor interest in those funds does not give rise to the same investor protection concerns that exist for OTC Bitcoin Funds.

[43] At $35 billion in AUM, the largest OTC Bitcoin Fund would be the 32nd largest out of roughly 2,400 U.S. listed ETPs.

[44] The Exchange notes that in two recent incidents, the premium dropped from 28.28% to 12.29% from the close on 3/19/20 to the close on 3/20/20 and from 38.40% to 21.05% from the close on 5/13/19 to the close on 5/14/19. Similarly, over the period of 12/21/20 to 1/21/20, the premium went from 40.18% to 2.79%. While the price of bitcoin appreciated significantly during this period and NAV per share increased by 41.25%, the price per share increased by only 3.58%.

[45] In addition to numerous debt offerings, MicroStrategy recently filed with the SEC to offer for sale up to $1 billion in additional common stock, the proceeds of which may at least be partially used to acquire more bitcoin. See Form S–3 submitted by MicroStrategy Incorporated on June 14, 2021: *https://www.sec.gov/Archives/edgar/data/1050446/000119312521190150/d159028ds3asr.htm#tocb159028_8.*

[46] In August 2017, the Commission's Office of Investor Education and Advocacy warned investors about situations where companies were publicly announcing events relating to digital coins or tokens in an effort to affect the price of the company's publicly traded common stock. *See https://www.sec.gov/oiea/investor-alerts-and-bulletins/ia_icorelatedclaims.*

[47] *See e.g.,* ''7 public companies with exposure to bitcoin'' (February 8, 2021) available at: *https://finance.yahoo.com/news/7-public-companies-with-exposure-to-bitcoin-154201525.html;* and ''Want to get in the crypto trade without holding bitcoin

Continued

however, are imperfect bitcoin proxies and provide investors with partial bitcoin exposure paired with a host of additional risks associated with whichever operating company they decide to purchase. Additionally, the disclosures provided by the aforementioned operating companies with respect to risks relating to their bitcoin holdings are generally substantially smaller than the registration statement of a bitcoin ETP, including the Registration Statement, typically amounting to a few sentences of narrative description and a handful of risk factors.[48] In other words, investors seeking bitcoin exposure through publicly traded companies are gaining only partial exposure to bitcoin and are not fully benefitting from the risk disclosures and associated investor protections that come from the securities registration process.

Bitcoin Futures

CME began offering trading in Bitcoin Futures in 2017. Each contract represents five bitcoin and is based on the CME CF Bitcoin Reference Rate.[49] The contracts trade and settle like other cash-settled commodity futures contracts. Nearly every measurable metric related to Bitcoin Futures has trended consistently up since launch and/or accelerated upward in the past year. For example, there was approximately $28 billion in trading in Bitcoin Futures in December 2020 compared to $737 million, $1.4 billion, and $3.9 billion in total trading in December 2017, December 2018, and December 2019, respectively. Bitcoin Futures traded over $1.2 billion per day on the CME in December 2020 and represented $1.6 billion in open interest compared to $115 million in December 2019. This general upward trend in trading volume and open interest is captured in the following chart.

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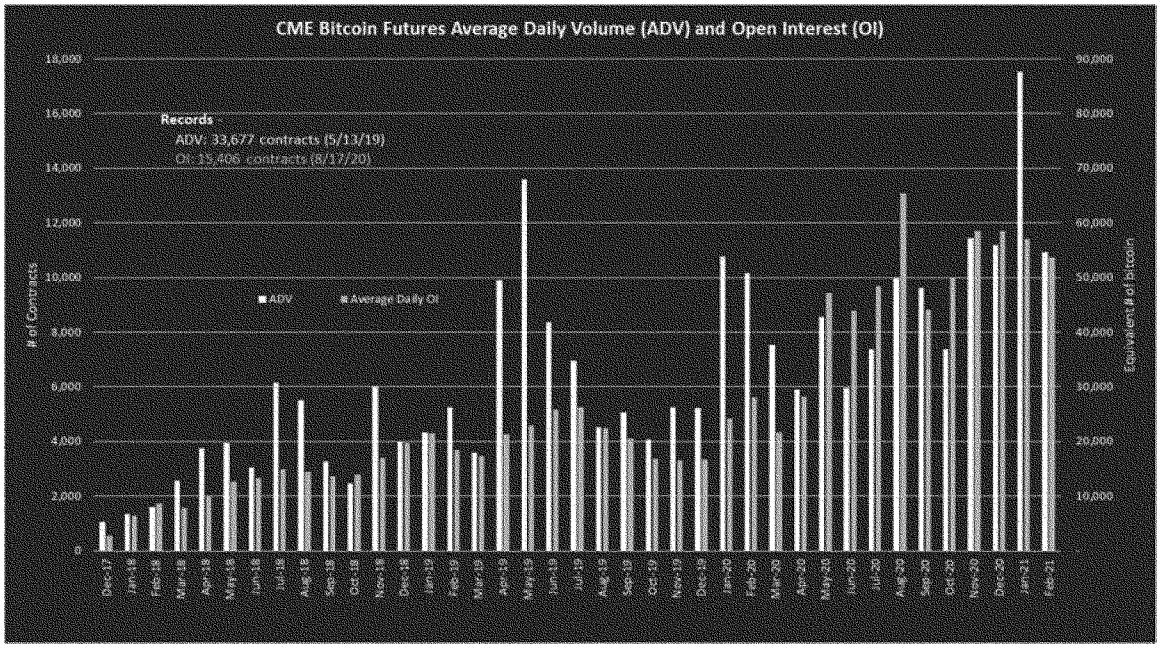
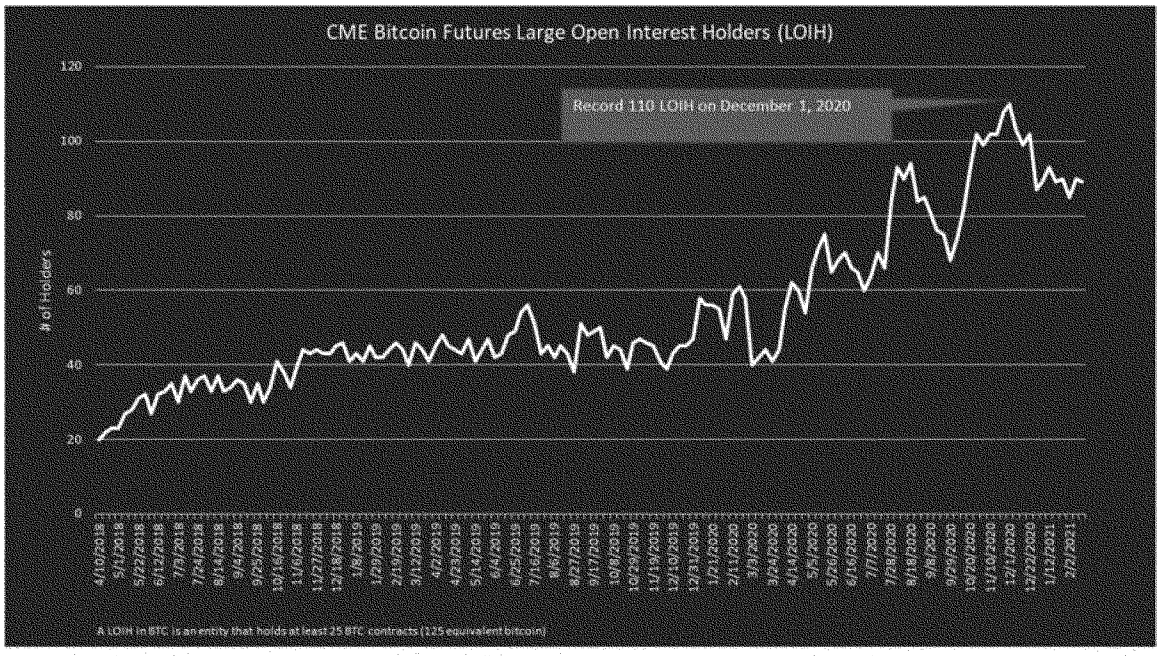


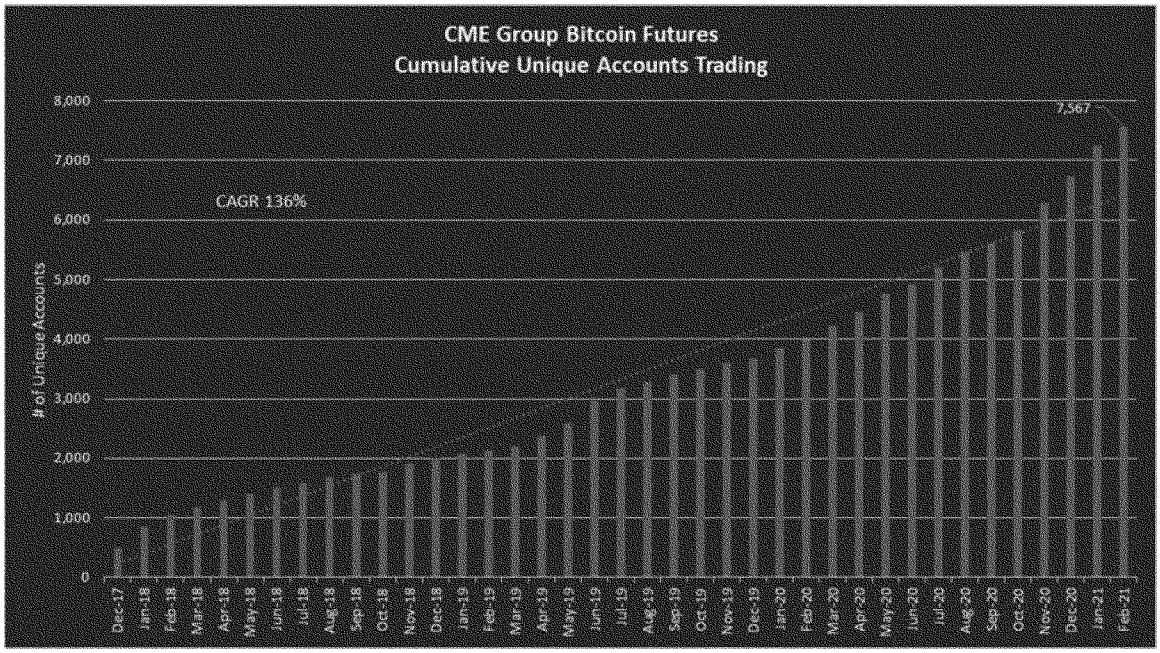
yourself? Here are some investing ideas'' (February 19, 2021) available at: *https://www.cnbc.com/2021/02/19/ways-to-invest-in-bitcoin-without-holding-the-cryptocurrency-yourself-.html.*

[48] *See e.g.,* Tesla 10–K for the year ended December 31, 2020, which mentions bitcoin just nine times: *https://www.sec.gov/ix?doc=/Archives/edgar/data/1318605/000156459021004599/tsla-10k_20201231.htm.*

[49] According to CME, the CME CF Bitcoin Reference Rate aggregates the trade flow of major bitcoin spot exchanges during a specific calculation window into a once-a-day reference rate of the U.S. dollar price of bitcoin. Calculation rules are geared toward maximum transparency and real-time replicability in underlying spot markets, including Bitstamp, Coinbase, Gemini, itBit, and Kraken. For additional information, refer to *https://www.cmegroup.com/trading/cryptocurrency-indices/cf-bitcoin-reference-rate.html?redirect=/trading/cf-bitcoin-reference-rate.html.*

Similarly, the number of large open interest holders [50] has continued to increase even as the price of bitcoin has risen, as have the number of unique accounts trading Bitcoin Futures.





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[50] A large open interest holder in Bitcoin Futures is an entity that holds at least 25 contracts, which is the equivalent of 125 bitcoin. At a price of approximately $30,000 per bitcoin on 12/31/20, more than 80 firms had outstanding positions of greater than $3.8 million in Bitcoin Futures.

The Sponsor further believes that academic research corroborates the overall trend outlined above and supports the thesis that the Bitcoin Futures pricing leads the spot market and, thus, a person attempting to manipulate the Shares would also have to trade on that market to manipulate the ETP. Specifically, the Sponsor believes that such research indicates that bitcoin futures lead the bitcoin spot market in price formation.[51]

Section 6(b)(5) and the Applicable Standards

The Commission has approved numerous series of Trust Issued Receipts,[52] including Commodity-Based Trust Shares,[53] to be listed on U.S. national securities exchanges. In order for any proposed rule change from an exchange to be approved, the Commission must determine that, among other things, the proposal is consistent with the requirements of Section 6(b)(5) of the Act, specifically including: (i) The requirement that a national securities exchange's rules are designed to prevent fraudulent and manipulative acts and practices; [54] and (ii) the requirement that an exchange proposal be designed, in general, to protect investors and the public interest. The Exchange believes that this proposal is consistent with the requirements of Section 6(b)(5) of the Act and that it has sufficiently demonstrated that, on the whole, the manipulation concerns previously articulated by the Commission are sufficiently mitigated to the point that they are outweighed by quantifiable investor protection issues that would be resolved by approving this proposal. Specifically, the Exchange lays out below why it believes that the significant increase in trading volume in Bitcoin Futures, the growth of liquidity at the inside in the spot market for bitcoin, and certain features of the Shares and the Index (as defined below) mitigate potential manipulation concerns to the point that the investor protection issues that have arisen from the rapid growth of over-the-counter bitcoin funds since the Commission last reviewed an exchange proposal to list and trade a bitcoin ETP, including premium/discount volatility and management fees, should be the central consideration as the Commission determines whether to approve this proposal.

(i) Designed To Prevent Fraudulent and Manipulative Acts and Practices

In order to meet this standard in a proposal to list and trade a series of Commodity-Based Trust Shares, the Commission requires that an exchange demonstrate that there is a comprehensive surveillance-sharing agreement in place [55] with a regulated market of significant size. Both the Exchange and CME are members of the Intermarket Surveillance Group (the ''ISG'').[56] The only remaining issue to be addressed is whether the Bitcoin Futures market constitutes a market of significant size, which the Exchange believes that it does. The terms ''significant market'' and ''market of significant size'' include a market (or group of markets) as to which: (a) There is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to manipulate the ETP, so that a surveillance-sharing agreement would assist the listing exchange in detecting and deterring misconduct; and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.[57]

The Commission has also recognized that the ''regulated market of significant size'' standard is not the only means for satisfying Section 6(b)(5) of the act, specifically providing that a listing exchange could demonstrate that ''other means to prevent fraudulent and manipulative acts and practices'' are sufficient to justify dispensing with the requisite surveillance-sharing agreement.[58]

(a) Manipulation of the ETP

The significant growth in Bitcoin Futures across each of trading volumes, open interest, large open interest holders, and total market participants since the Wilshire Phoenix Disapproval was issued are reflective of that market's growing influence on the spot price, which according to the academic research cited above, was already leading the spot price in 2018 and 2019. Where Bitcoin Futures lead the price in the spot market such that a potential manipulator of the bitcoin spot market (beyond just the constituents of the Index [59]) would have to participate in

[51] *See* Hu, Y., Hou, Y. and Oxley, L. (2019). ''What role do futures markets play in Bitcoin pricing? Causality, cointegration and price discovery from a time-varying perspective'' (available at: *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7481826/*). This academic research paper concludes that ''There exist no episodes where the Bitcoin spot markets dominates the price discovery processes with regard to Bitcoin futures. This points to a conclusion that the price formation originates solely in the Bitcoin futures market. We can, therefore, conclude that the Bitcoin futures markets dominate the dynamic price discovery process based upon time-varying information share measures. Overall, price discovery seems to occur in the Bitcoin futures markets rather than the underlying spot market based upon a time-varying perspective.''

[52] *See* Exchange Rule 14.11(f).

[53] Commodity-Based Trust Shares, as described in Exchange Rule 14.11(e)(4), are a type of Trust Issued Receipt.

[54] As the Exchange has stated in a number of other public documents, it continues to believe that bitcoin is resistant to price manipulation and that ''other means to prevent fraudulent and manipulative acts and practices'' exist to justify dispensing with the requisite surveillance sharing agreement. The geographically diverse and continuous nature of bitcoin trading render it difficult and prohibitively costly to manipulate the price of bitcoin. The fragmentation across bitcoin platforms, the relatively slow speed of transactions, and the capital necessary to maintain a significant presence on each trading platform make manipulation of bitcoin prices through continuous trading activity challenging. To the extent that there are bitcoin exchanges engaged in or allowing wash trading or other activity intended to manipulate the price of bitcoin on other markets, such pricing does not normally impact prices on other exchange because participants will generally ignore markets with quotes that they deem non-executable. Moreover, the linkage between the bitcoin markets and the presence of arbitrageurs in those markets means that the manipulation of the price of bitcoin price on any single venue would require manipulation of the global bitcoin price in order to be effective. Arbitrageurs must have funds distributed across multiple trading platforms in order to take advantage of temporary price dislocations, thereby making it unlikely that there will be strong concentration of funds on any particular bitcoin exchange or OTC platform. As a result, the potential for manipulation on a trading platform would require overcoming the liquidity supply of such arbitrageurs who are effectively eliminating any cross-market pricing differences.

[55] As previously articulated by the Commission, ''The standard requires such surveillance-sharing agreements since ''they provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a manipulation if it were to occur.'' The Commission has emphasized that it is essential for an exchange listing a derivative securities product to enter into a surveillance-sharing agreement with markets trading underlying securities for the listing exchange to have the ability to obtain information necessary to detect, investigate, and deter fraud and market manipulation, as well as violations of exchange rules and applicable federal securities laws and rules. The hallmarks of a surveillance-sharing agreement are that the agreement provides for the sharing of information about market trading activity, clearing activity, and customer identity; that the parties to the agreement have reasonable ability to obtain access to and produce requested information; and that no existing rules, laws, or practices would impede one party to the agreement from obtaining this information from, or producing it to, the other party.'' The Commission has historically held that joint membership in ISG constitutes such a surveillance sharing agreement. *See* Wilshire Phoenix Disapproval.

[56] For a list of the current members and affiliate members of ISG, *see www.isgportal.com.*

[57] *See* Wilshire Phoenix Disapproval.

[58] *See* Winklevoss Order at 37580. The Commission has also specifically noted that it ''is not applying a 'cannot be manipulated' standard; instead, the Commission is examining whether the proposal meets the requirements of the Exchange Act and, pursuant to its Rules of Practice, places the burden on the listing exchange to demonstrate the validity of its contentions and to establish that the requirements of the Exchange Act have been met.'' *Id.* at 37582.

[59] As further described below, the ''Index'' for the Fund is the S&P Bitcoin Index. The current exchange composition of the Index is Binance,

the Bitcoin Futures market, it follows that a potential manipulator of the Shares would similarly have to transact in the Bitcoin Futures market because the Index is based on spot prices. Further, the Trust only allows for in-kind creation and redemption, which, as further described below, reduces the potential for manipulation of the Shares through manipulation of the Index or any of its individual constituents, again emphasizing that a potential manipulator of the Shares would have to manipulate the entirety of the bitcoin spot market, which is led by the Bitcoin Futures market. As such, the Exchange believes that part (a) of the significant market test outlined above is satisfied and that common membership in ISG between the Exchange and CME would assist the listing exchange in detecting and deterring misconduct in the Shares.

(b) Predominant Influence on Prices in Spot and Bitcoin Futures

The Exchange also believes that trading in the Shares would not be the predominant force on prices in the Bitcoin Futures market (or spot market) for a number of reasons, including the significant volume in the Bitcoin Futures market, the size of bitcoin's market cap (approximately $650 billion), and the significant liquidity available in the spot market. In addition to the Bitcoin Futures market data points cited above, the spot market for bitcoin is also very liquid. According to data from CoinRoutes from February 2021, the cost to buy or sell $5 million worth of bitcoin averages roughly 10 basis points with a market impact of 30 basis points.[60] For a $10 million market order, the cost to buy or sell is roughly 20 basis points with a market impact of 50 basis points. Stated another way, a market participant could enter a market buy or sell order for $10 million of bitcoin and only move the market 0.5%. More strategic purchases or sales (such as using limit orders and executing through OTC bitcoin trade desks) would likely have less obvious impact on the market—which is consistent with MicroStrategy, Tesla, and Square being able to collectively purchase billions of dollars in bitcoin. As such, the combination of Bitcoin Futures leading price discovery, the overall size of the bitcoin market, and the ability for market participants, including authorized participants creating and redeeming in-kind with the Trust, to buy or sell large amounts of bitcoin without significant market impact will help prevent the Shares from becoming the predominant force on pricing in either the bitcoin spot or Bitcoin Futures markets, satisfying part (b) of the test outlined above.

(c) Other Means To Prevent Fraudulent and Manipulative Acts and Practices

As noted above, the Commission also permits a listing exchange to demonstrate that ''other means to prevent fraudulent and manipulative acts and practices'' are sufficient to justify dispensing with the requisite surveillance-sharing agreement. The Exchange believes that such conditions are present. Specifically, the significant liquidity in the spot market and the impact of market orders on the overall price of bitcoin mean that attempting to move the price of bitcoin is costly and has grown more expensive over the past year. In January 2020, for example, the cost to buy or sell $5 million worth of bitcoin averaged roughly 30 basis points (compared to 10 basis points in 2/2021) with a market impact of 50 basis points (compared to 30 basis points in 2/2021).[61] For a $10 million market order, the cost to buy or sell was roughly 50 basis points (compared to 20 basis points in 2/2021) with a market impact of 80 basis points (compared to 50 basis points in 2/2021). As the liquidity in the bitcoin spot market increases, it follows that the impact of $5 million and $10 million orders will continue to decrease the overall impact in spot price.

Additionally, offering only in-kind creation and redemption will provide unique protections against potential attempts to manipulate the Shares. While the Sponsor believes that the Index which it uses to value the Trust's bitcoin is itself resistant to manipulation based on the methodology further described below, the fact that creations and redemptions are only available in-kind makes the manipulability of the Index significantly less important. Specifically, because the Trust will not accept cash to buy bitcoin in order to create new shares or, barring a forced redemption of the Trust or under other extraordinary circumstances, be forced to sell bitcoin to pay cash for redeemed shares, the price that the Sponsor uses to value the Trust's bitcoin is not particularly important.[62] When authorized participants are creating with the Trust, they need to deliver a certain number of bitcoin per share (regardless of the valuation used) and when they're redeeming, they can similarly expect to receive a certain number of bitcoin per share. As such, even if the price used to value the Trust's bitcoin is manipulated (which the Sponsor believes that its methodology is resistant to), the ratio of bitcoin per Share does not change and the Trust will either accept (for creations) or distribute (for redemptions) the same number of bitcoin regardless of the value. This not only mitigates the risk associated with potential manipulation, but also discourages and disincentivizes manipulation of the Index because there is little financial incentive to do so.

ARK 21Shares Bitcoin ETF

Delaware Trust Company is the trustee (''Trustee''). The Bank of New York Mellon will be the administrator (''Administrator'') and transfer agent (''Transfer Agent''). Foreside Global Services, LLC will be the marketing agent (''Marketing Agent'') in connection with the creation and redemption of ''Baskets'' of Shares. ARK Investment Management LLC (''ARK'') will provide assistance in the marketing of the Shares. Coinbase Custody Trust Company, LLC, a third-party regulated custodian (the ''Custodian''), will be responsible for custody of the Trust's bitcoin.

According to the Registration Statement, each Share will represent a fractional undivided beneficial interest in the bitcoin held by the Trust. The Trust's assets will consist of bitcoin held by the Custodian on behalf of the Trust. The Trust generally does not intend to hold cash or cash equivalents. However, there may be situations where the Trust will unexpectedly hold cash on a temporary basis.

According to the Registration Statement, the Trust is neither an investment company registered under the Investment Company Act of 1940, as amended,[63] nor a commodity pool for purposes of the Commodity Exchange Act (''CEA''), and neither the Trust nor the Sponsor is subject to regulation as a commodity pool operator or a commodity trading adviser in connection with the Shares.

When the Trust sells or redeems its Shares, it will do so in ''in-kind''

Bitfinex, Bitflyer, Bittrex, Bitstamp, Coinbase Pro, Gemini, HitBTC, Huobi, Kraken, KuCoin, and Poloniex.

[60] These statistics are based on samples of bitcoin liquidity in USD (excluding stablecoins or Euro liquidity) based on executable quotes on Coinbase Pro, Gemini, Bitstamp, Kraken, LMAX Exchange, BinanceUS, and OKCoin during February 2021.

[61] These statistics are based on samples of bitcoin liquidity in USD (excluding stablecoins or Euro liquidity) based on executable quotes on Coinbase Pro, Gemini, Bitstamp, Kraken, LMAX Exchange, BinanceUS, and OKCoin during February 2021.

[62] While the Index will not be particularly important for the creation and redemption process, it will be used for calculating fees.

[63] 15 U.S.C. 80a–1.

transactions in blocks of 5,000 Shares (a ''Creation Basket'') at the Trust's NAV. Authorized participants will deliver, or facilitate the delivery of, bitcoin to the Trust's account with the Custodian in exchange for Shares when they purchase Shares, and the Trust, through the Custodian, will deliver bitcoin to such authorized participants when they redeem Shares with the Trust. Authorized participants may then offer Shares to the public at prices that depend on various factors, including the supply and demand for Shares, the value of the Trust's assets, and market conditions at the time of a transaction. Shareholders who buy or sell Shares during the day from their broker may do so at a premium or discount relative to the NAV of the Shares of the Trust.

Investment Objective

According to the Registration Statement and as further described below, the investment objective of the Trust is to seek to track the performance of bitcoin, as measured by the performance of the S&P Bitcoin Index (the ''Index''), adjusted for the Trust's expenses and other liabilities. In seeking to achieve its investment objective, the Trust will hold bitcoin and will value the Shares daily based on the Index. The Trust will process all creations and redemptions in-kind in transactions with authorized participants. The Trust is not actively managed.

The Index

As described in the Registration Statement, the Fund will use the Index to calculate the Trust's NAV. The Index is a U.S. dollar-denominated composite reference rate for the price of bitcoin. There is no component other than bitcoin in the Index. The underlying exchanges are sourced by Lukka Inc. (the ''Data Provider'') based on a combination of qualitative and quantitative metrics to analyze a comprehensive data set and evaluate factors including legal/regulation, KYC/transaction risk, data provision, security, team/exchange, asset quality/diversity, market quality and negative events. The Index price is currently sourced from the following set of exchanges: Binance, Bitfinex, Bitflyer, Bittrex, Bitstamp, Coinbase Pro, Gemini, HitBTC, Huobi, Kraken, KuCoin, and Poloniex.

The Index methodology is intended to determine the fair market value (''FMV'') for bitcoin by determining the principal market for bitcoin as of 4pm ET daily. The Index methodology uses a ranking approach that considers several exchange characteristics including oversight and intra-day trading volume. Specifically, to rank the credibility and quality of each exchange, the Data Provider dynamically assigns a Base Exchange Score (''BES'') score to the key characteristics for each exchange.

The BES reflects the fundamentals of an exchange and determines which exchange should be designated as the principal market at a given point of time. This score is determined by computing a weighted average of the values assigned to four different exchange characteristics. All new and existing exchanges have to be approved by Lukka's Price Integrity Oversight Board at quarterly meetings. The exchange characteristics are as follows: (i) Oversight; (ii) microstructure efficiency; (iii) data transparency and (iv) data integrity.

Oversight

This score reflects the rules in place to protect and to give access to the investor. The score assigned for exchange oversight will depend on parameters such as jurisdiction, regulation, ''Know Your Customer and Anti-Money Laundering Compliance'' (KYC/AML), among other proprietary factors.

Microstructure Efficiency

The effective bid ask spread is used as a proxy for efficiency. For example, for each exchange and currency pair, the Data Provider takes an estimate of the ''effective spread'' relative to the price.

Data Transparency

Transparency is the term used for a quality score that is determined by the level of detail of the data offered by an exchange. The most transparent exchanges offer order-level data, followed by order book, trade-level, and then candles.

Data Integrity

Data integrity reconstructs orders to ensure the transaction amounts that make up an order equal the overall order amount matching on both a minute and daily basis. This data would help expose nefarious actions such as wash trading or other potential manipulation of data.

The methodology then applies a five-step weighting process for identifying a principal exchange and the last price on that exchange. Following this weighting process, an executed exchange price is assigned for bitcoin as of 4 p.m. ET. The Index price is determined according to the following procedure:

- *Step 1:* Assign each exchange a Base Exchange Score (''BES'') reflecting static exchange characteristics such as oversight, microstructure and technology, as discussed below.
- *Step 2:* Adjust the BES based on the relative monthly volume each exchange services. This new score is the Volume Adjusted Score (''VAS'').
- *Step 3:* Decay the VAS based on the time passed since the last trade on the exchange. Here, the Data Provider is assessing the level of activity in the market by considering the frequency (volume) of trades. The decay factor reflects the time since the last trade on the exchange. This is the final Decayed Volume Adjusted Score (''DVAS''), which tracks the freshness of the data by tracking most recent trades.
- *Step 4:* Rank the exchanges by the DVAS score and designate the highest-ranking exchange as the principal market for that point in time. The principal market is the exchange with the highest DVAS.
- *Step 5:* After selecting a primary exchange, an executed exchange price is used for bitcoin representing FMV at 4 p.m. ET. The Data Provider takes the last traded prices at that moment in time on that trading venue for the relevant pair (Bitcoin/USD) when determining the Index price.

As discussed in the Registration Statement, the fact that there are multiple bitcoin spot markets that may contribute prices to the Index price makes manipulation more difficult in a well-arbitraged and fractured market, as a malicious actor would need to manipulate multiple spot markets simultaneously to impact the Index price, or dramatically skew the historical distribution of volume between the various exchanges.

The Data Provider has dedicated resources and committees established to ensure all prices are representative of the market. Any price challenges will result in an independent analysis of the price. This includes assessing whether the price from the selected exchange is biased according to analyses designed to recognize patterns consistent with manipulative activity, such as a quick reversion to previous traded levels following a sharp price change or any significant deviations from the volume weighted average price on a particular exchange or pricing on any other exchange included in the Lukka Prime eligibility universe.

Upon detection or external referral of suspect manipulative activities, the case will be assigned a team of quantitative experts for mandatory investigation. These checks occur on an on-going, intraday basis and any investigations are typically resolved same day. The evidence uncovered shall be turned over to the Data Provider's Price Integrity

Oversight Board for final decision and action. The Price Integrity Oversight Board may choose to pick an alternative primary market and may exclude such market from future inclusion in the Index methodology or choose to stand by the original published price upon fully evaluating all available evidence. It may also initiate an investigation of prior prices from such market and shall evaluate evidence presented on a case-by-case basis.

Availability of Information

In addition to the price transparency of the Index, the Trust will provide information regarding the Trust's bitcoin holdings as well as additional data regarding the Trust. The Trust will provide an Intraday Indicative Value (''IIV'') per Share updated every 15 seconds, as calculated by the Exchange or a third-party financial data provider during the Exchange's Regular Trading Hours (9:30 a.m. to 4:00 p.m. E.T.). The IIV will be calculated by using the prior day's closing NAV per Share as a base and updating that value during Regular Trading Hours to reflect changes in the value of the Trust's bitcoin holdings during the trading day.

The IIV disseminated during Regular Trading Hours should not be viewed as an actual real-time update of the NAV, which will be calculated only once at the end of each trading day. The IIV will be widely disseminated on a per Share basis every 15 seconds during the Exchange's Regular Trading Hours by one or more major market data vendors. In addition, the IIV will be available through on-line information services.

The website for the Trust, which will be publicly accessible at no charge, will contain the following information: (a) The current NAV per Share daily and the prior business day's NAV and the reported closing price; (b) the BZX Official Closing Price [64] in relation to the NAV as of the time the NAV is calculated and a calculation of the premium or discount of such price against such NAV; (c) data in chart form displaying the frequency distribution of discounts and premiums of the Official Closing Price against the NAV, within appropriate ranges for each of the four previous calendar quarters (or for the life of the Trust, if shorter); (d) the prospectus; and (e) other applicable quantitative information. The Trust will also disseminate the Trust's holdings on a daily basis on the Trust's website. The price of bitcoin will be made available by one or more major market data vendors, updated at least every 15 seconds during Regular Trading Hours. Information about the Index, including key elements of how the Index is calculated, will be publicly available at *https://www.spglobal.com/spdji/en/indices/digital-assets/sp-bitcoin-index/.*

The NAV for the Trust will be calculated by the Administrator once a day and will be disseminated daily to all market participants at the same time. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association (''CTA'').

Quotation and last sale information for bitcoin is widely disseminated through a variety of major market data vendors, including Bloomberg and Reuters, as well as the Index. Information relating to trading, including price and volume information, in bitcoin is available from major market data vendors and from the exchanges on which bitcoin are traded. Depth of book information is also available from bitcoin exchanges. The normal trading hours for bitcoin exchanges are 24 hours per day, 365 days per year.

Net Asset Value

NAV means the total assets of the Trust including, but not limited to, all bitcoin and cash less total liabilities of the Trust, each determined on the basis of generally accepted accounting principles. The Administrator determines the NAV of the Trust on each day that the Exchange is open for regular trading, as promptly as practical after 4:00 p.m. EST. The NAV of the Trust is the aggregate value of the Trust's assets less its estimated accrued but unpaid liabilities (which include accrued expenses). In determining the Trust's NAV, the Administrator values the bitcoin held by the Trust based on the price set by the Index as of 4:00 p.m. EST. The Administrator also determines the NAV per Share.

Creation and Redemption of Shares

According to the Registration Statement, on any business day, an authorized participant may place an order to create one or more baskets. Purchase orders must be placed by 4:00 p.m. Eastern Time, or the close of regular trading on the Exchange, whichever is earlier. The day on which an order is received is considered the purchase order date. The total deposit of bitcoin required is an amount of bitcoin that is in the same proportion to the total assets of the Trust, net of accrued expenses and other liabilities, on the date the order to purchase is properly received, as the number of Shares to be created under the purchase order is in proportion to the total number of Shares outstanding on the date the order is received. Each night, the Sponsor will publish the amount of bitcoin that will be required in exchange for each creation order. The Administrator determines the required deposit for a given day by dividing the number of bitcoin held by the Trust as of the opening of business on that business day, adjusted for the amount of bitcoin constituting estimated accrued but unpaid fees and expenses of the Trust as of the opening of business on that business day, by the quotient of the number of Shares outstanding at the opening of business divided by 5,000. The procedures by which an authorized participant can redeem one or more Creation Baskets mirror the procedures for the creation of Creation Baskets.

Rule 14.11(e)(4)—Commodity-Based Trust Shares

The Shares will be subject to BZX Rule 14.11(e)(4), which sets forth the initial and continued listing criteria applicable to Commodity-Based Trust Shares. The Exchange will obtain a representation that the Trust's NAV will be calculated daily and that these values and information about the assets of the Trust will be made available to all market participants at the same time. The Exchange notes that, as defined in Rule 14.11(e)(4)(C)(i), the Shares will be: (a) Issued by a trust that holds a specified commodity [65] deposited with the trust; (b) issued by such trust in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity; and (c) when aggregated in the same specified minimum number, may be redeemed at a holder's request by such trust which will deliver to the redeeming holder the quantity of the underlying commodity.

Upon termination of the Trust, the Shares will be removed from listing. The Trustee, Delaware Trust Company, is a trust company having substantial capital and surplus and the experience and facilities for handling corporate trust business, as required under Rule 14.11(e)(4)(E)(iv)(a) and that no change will be made to the trustee without prior notice to and approval of the Exchange. The Exchange also notes that, pursuant to Rule 14.11(e)(4)(F), neither the Exchange nor any agent of the Exchange

[64] As defined in Rule 11.23(a)(3), the term ''BZX Official Closing Price'' shall mean the price disseminated to the consolidated tape as the market center closing trade.

[65] For purposes of Rule 14.11(e)(4), the term commodity takes on the definition of the term as provided in the Commodity Exchange Act. As noted above, the CFTC has opined that Bitcoin is a commodity as defined in Section 1a(9) of the Commodity Exchange Act. *See* Coinflip.

shall have any liability for damages, claims, losses or expenses caused by any errors, omissions or delays in calculating or disseminating any underlying commodity value, the current value of the underlying commodity required to be deposited to the Trust in connection with issuance of Commodity-Based Trust Shares; resulting from any negligent act or omission by the Exchange, or any agent of the Exchange, or any act, condition or cause beyond the reasonable control of the Exchange, its agent, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission or delay in the reports of transactions in an underlying commodity. Finally, as required in Rule 14.11(e)(4)(G), the Exchange notes that any registered market maker (''Market Maker'') in the Shares must file with the Exchange in a manner prescribed by the Exchange and keep current a list identifying all accounts for trading in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, which the registered Market Maker may have or over which it may exercise investment discretion. No registered Market Maker shall trade in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, in an account in which a registered Market Maker, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to the Exchange as required by this Rule. In addition to the existing obligations under Exchange rules regarding the production of books and records (see, *e.g.,* Rule 4.2), the registered Market Maker in Commodity-Based Trust Shares shall make available to the Exchange such books, records or other information pertaining to transactions by such entity or registered or non-registered employee affiliated with such entity for its or their own accounts for trading the underlying physical commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, as may be requested by the Exchange.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. The Exchange will halt trading in the Shares under the conditions specified in BZX Rule 11.18. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the bitcoin underlying the Shares; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Rule 14.11(e)(4)(E)(ii), which sets forth circumstances under which trading in the Shares may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. BZX will allow trading in the Shares during all trading sessions on the Exchange. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in BZX Rule 11.11(a), the minimum price variation for quoting and entry of orders in securities traded on the Exchange is $0.01 where the price is greater than $1.00 per share or $0.0001 where the price is less than $1.00 per share.

Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Commodity-Based Trust Shares. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Trust or the Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Trust or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12. The Exchange may obtain information regarding trading in the Shares and Bitcoin Futures via ISG, from other exchanges who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement.[66]

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (i) The procedures for the creation and redemption of Baskets (and that the Shares are not individually redeemable); (ii) BZX Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (iii) how information regarding the IIV and the Trust's NAV are disseminated; (iv) the risks involved in trading the Shares outside of Regular Trading Hours[67] when an updated IIV will not be calculated or publicly disseminated; (v) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (vi) trading information.

In addition, the Information Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Shares. Members purchasing the Shares for resale to investors will deliver a prospectus to such investors. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act[68] in general and Section 6(b)(5) of the Act[69] in particular in that 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 Commission has approved numerous series of Trust Issued Receipts,[70] including Commodity-Based

[66] For a list of the current members and affiliate members of ISG, *see www.isgportal.com.*

[67] Regular Trading Hours is the time between 9:30 a.m. and 4:00 p.m. Eastern Time.

[68] 15 U.S.C. 78f.

[69] 15 U.S.C. 78f(b)(5).

[70] *See* Exchange Rule 14.11(f).

Trust Shares,[71] to be listed on U.S. national securities exchanges. In order for any proposed rule change from an exchange to be approved, the Commission must determine that, among other things, the proposal is consistent with the requirements of Section 6(b)(5) of the Act, specifically including: (i) The requirement that a national securities exchange's rules are designed to prevent fraudulent and manipulative acts and practices;[72] and (ii) the requirement that an exchange proposal be designed, in general, to protect investors and the public interest.

The Exchange believes that the proposal is, in particular, designed to protect investors and the public interest. With the growth of OTC Bitcoin Funds over the past year, so too has grown the potential risk to U.S. investors. Significant and prolonged premiums and discounts, significant premium/discount volatility, high fees, insufficient disclosures, and technical hurdles are putting U.S. investor money at risk on a daily basis that could potentially be eliminated through access to a bitcoin ETP. As such, the Exchange believes that this proposal acts to limit the risk to U.S. investors that are increasingly seeking exposure to bitcoin through the elimination of significant and prolonged premiums and discounts, significant premium/discount volatility, the reduction of management fees through meaningful competition, the avoidance of risks associated with investing in operating companies that are imperfect proxies for bitcoin exposure, and protection from risk associated with custodying spot bitcoin by providing direct, 1-for-1 exposure to bitcoin in a regulated, transparent, exchange-traded vehicle designed to reduce the likelihood of significant and prolonged premiums and discounts with its open-ended nature as well as the ability of market participants (*i.e.,* market makers and authorized participants) to create and redeem on a daily basis.

The Exchange also believes that this proposal is consistent with the requirements of Section 6(b)(5) of the Act and that it has sufficiently demonstrated that, on the whole, the manipulation concerns previously articulated by the Commission are sufficiently mitigated to the point that they are outweighed by quantifiable investor protection issues that would be resolved by approving this proposal. Specifically, the Exchange believes that the significant increase in trading volume in Bitcoin Futures, the growth of liquidity at the inside in the spot market for bitcoin, and certain features of the Shares and the Index mitigate potential manipulation concerns to the point that the investor protection issues that have arisen from the rapid growth of over-the-counter bitcoin funds since the Commission last reviewed an exchange proposal to list and trade a bitcoin ETP, including premium/discount volatility and management fees, should be the central consideration as the Commission determines whether to approve this proposal.

(i) Designed To Prevent Fraudulent and Manipulative Acts and Practices

In order to meet this standard in a proposal to list and trade a series of Commodity-Based Trust Shares, the Commission requires that an exchange demonstrate that there is a comprehensive surveillance-sharing agreement in place[73] with a regulated market of significant size. Both the Exchange and CME are members of ISG.[74] The only remaining issue to be addressed is whether the Bitcoin Futures market constitutes a market of significant size, which the Exchange believes that it does. The terms ''significant market'' and ''market of significant size'' include a market (or group of markets) as to which: (a) There is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to manipulate the ETP, so that a surveillance-sharing agreement would assist the listing exchange in detecting and deterring misconduct; and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.[75]

The Commission has also recognized that the ''regulated market of significant size'' standard is not the only means for satisfying Section 6(b)(5) of the act, specifically providing that a listing exchange could demonstrate that ''other means to prevent fraudulent and manipulative acts and practices'' are sufficient to justify dispensing with the requisite surveillance-sharing agreement.[76]

(a) Manipulation of the ETP

The significant growth in Bitcoin Futures across each of trading volumes, open interest, large open interest holders, and total market participants since the Wilshire Phoenix Disapproval was issued are reflective of that market's growing influence on the spot price, which according to the academic research cited above, was already leading the spot price in 2018 and 2019. Where Bitcoin Futures lead the price in the spot market such that a potential manipulator of the bitcoin spot market (beyond just the constituents of the Index) would have to participate in the Bitcoin Futures market, it follows that a potential manipulator of the Shares would similarly have to transact in the Bitcoin Futures market because the Index is based on spot prices. Further, the Trust only allows for in-kind creation and redemption, which, as further described below, reduces the potential for manipulation of the Shares through manipulation of the Index or any of its individual constituents, again emphasizing that a potential manipulator of the Shares would have to manipulate the entirety of the bitcoin spot market, which is led by the Bitcoin Futures market. As such, the Exchange believes that part (a) of the significant market test outlined above is satisfied and that common membership in ISG between the Exchange and CME would assist the listing exchange in detecting and deterring misconduct in the Shares.

(b) Predominant Influence on Prices in Spot and Bitcoin Futures

The Exchange also believes that trading in the Shares would not be the predominant force on prices in the Bitcoin Futures market (or spot market)

[71] Commodity-Based Trust Shares, as described in Exchange Rule 14.11(e)(4), are a type of Trust Issued Receipt.

[72] *See* note 54.

[73] As previously articulated by the Commission, ''The standard requires such surveillance-sharing agreements since ''they provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a manipulation if it were to occur.'' The Commission has emphasized that it is essential for an exchange listing a derivative securities product to enter into a surveillance-sharing agreement with markets trading underlying securities for the listing exchange to have the ability to obtain information necessary to detect, investigate, and deter fraud and market manipulation, as well as violations of exchange rules and applicable federal securities laws and rules. The hallmarks of a surveillance-sharing agreement are that the agreement provides for the sharing of information about market trading activity, clearing activity, and customer identity; that the parties to the agreement have reasonable ability to obtain access to and produce requested information; and that no existing rules, laws, or practices would impede one party to the agreement from obtaining this information from, or producing it to, the other party.'' The Commission has historically held that joint membership in ISG constitutes such a surveillance sharing agreement. *See* Wilshire Phoenix Disapproval.

[74] For a list of the current members and affiliate members of ISG, *see www.isgportal.com.*

[75] *See* Wilshire Phoenix Disapproval.

[76] *See* Winklevoss Order at 37580. The Commission has also specifically noted that it ''is not applying a ''cannot be manipulated'' standard; instead, the Commission is examining whether the proposal meets the requirements of the Exchange Act and, pursuant to its Rules of Practice, places the burden on the listing exchange to demonstrate the validity of its contentions and to establish that the requirements of the Exchange Act have been met. *Id.* at 37582.

for a number of reasons, including the significant volume in the Bitcoin Futures market, the size of bitcoin's market cap (approximately $650 billion), and the significant liquidity available in the spot market. In addition to the Bitcoin Futures market data points cited above, the spot market for bitcoin is also very liquid. According to data from CoinRoutes from February 2021, the cost to buy or sell $5 million worth of bitcoin averages roughly 10 basis points with a market impact of 30 basis points.[77] For a $10 million market order, the cost to buy or sell is roughly 20 basis points with a market impact of 50 basis points. Stated another way, a market participant could enter a market buy or sell order for $10 million of bitcoin and only move the market 0.5%. More strategic purchases or sales (such as using limit orders and executing through OTC bitcoin trade desks) would likely have less obvious impact on the market—which is consistent with MicroStrategy, Tesla, and Square being able to collectively purchase billions of dollars in bitcoin. As such, the combination of Bitcoin Futures leading price discovery, the overall size of the bitcoin market, and the ability for market participants, including authorized participants creating and redeeming in-kind with the Trust, to buy or sell large amounts of bitcoin without significant market impact will help prevent the Shares from becoming the predominant force on pricing in either the bitcoin spot or Bitcoin Futures markets, satisfying part (b) of the test outlined above.

(c) Other Means To Prevent Fraudulent and Manipulative Acts and Practices

As noted above, the Commission also permits a listing exchange to demonstrate that ''other means to prevent fraudulent and manipulative acts and practices'' are sufficient to justify dispensing with the requisite surveillance-sharing agreement. The Exchange believes that such conditions are present. Specifically, the significant liquidity in the spot market and the impact of market orders on the overall price of bitcoin mean that attempting to move the price of bitcoin is costly and has grown more expensive over the past year. In January 2020, for example, the cost to buy or sell $5 million worth of bitcoin averaged roughly 30 basis points (compared to 10 basis points in 2/2021) with a market impact of 50 basis points (compared to 30 basis points in 2/2021).[78] For a $10 million market order, the cost to buy or sell was roughly 50 basis points (compared to 20 basis points in 2/2021) with a market impact of 80 basis points (compared to 50 basis points in 2/2021). As the liquidity in the bitcoin spot market increases, it follows that the impact of $5 million and $10 million orders will continue to decrease the overall impact in spot price.

Additionally, offering only in-kind creation and redemption will provide unique protections against potential attempts to manipulate the Shares and the Sponsor notes that it has operated numerous products on this basis since 2018. While the Sponsor believes that the Index which it uses to value the Trust's bitcoin is itself resistant to manipulation based on the methodology described above, the fact that creations and redemptions are only available in-kind makes the manipulability of the Index significantly less important. Specifically, because the Trust will not accept cash to buy bitcoin in order to create new shares or, barring a forced redemption of the Trust or under other extraordinary circumstances, be forced to sell bitcoin to pay cash for redeemed shares, the price that the Sponsor uses to value the Trust's bitcoin is not particularly important.[79] When authorized participants are creating with the Trust, they need to deliver a certain number of bitcoin per share (regardless of the valuation used) and when they're redeeming, they can similarly expect to receive a certain number of bitcoin per share. As such, even if the price used to value the Trust's bitcoin is manipulated (which the Sponsor believes that its methodology is resistant to), the ratio of bitcoin per Share does not change and the Trust will either accept (for creations) or distribute (for redemptions) the same number of bitcoin regardless of the value. This not only mitigates the risk associated with potential manipulation, but also discourages and disincentivizes manipulation of the Index because there is little financial incentive to do so.

Commodity-Based Trust Shares

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed on the Exchange pursuant to the initial and continued listing criteria in Exchange Rule 14.11(e)(4). The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Commodity-Based Trust Shares. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Trust or the Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Trust or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12. The Exchange may obtain information regarding trading in the Shares and listed bitcoin derivatives via the ISG, from other exchanges who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

Availability of Information

The Exchange also believes that the proposal promotes market transparency in that a large amount of information is currently available about bitcoin and will be available regarding the Trust and the Shares. In addition to the price transparency of the Index, the Trust will provide information regarding the Trust's bitcoin holdings as well as additional data regarding the Trust. The Trust will provide an IIV per Share updated every 15 seconds, as calculated by the Exchange or a third-party financial data provider during the Exchange's Regular Trading Hours (9:30 a.m. to 4:00 p.m. E.T.). The IIV will be calculated by using the prior day's closing NAV per Share as a base and updating that value during Regular Trading Hours to reflect changes in the value of the Trust's bitcoin holdings during the trading day.

The IIV disseminated during Regular Trading Hours should not be viewed as an actual real-time update of the NAV, which will be calculated only once at the end of each trading day. The IIV will be widely disseminated on a per Share basis every 15 seconds during the Exchange's Regular Trading Hours by one or more major market data vendors. In addition, the IIV will be available through on-line information services.

[77] These statistics are based on samples of bitcoin liquidity in USD (excluding stablecoins or Euro liquidity) based on executable quotes on Coinbase Pro, Gemini, Bitstamp, Kraken, LMAX Exchange, BinanceUS, and OKCoin during February 2021.

[78] These statistics are based on samples of bitcoin liquidity in USD (excluding stablecoins or Euro liquidity) based on executable quotes on Coinbase Pro, Gemini, Bitstamp, Kraken, LMAX Exchange, BinanceUS, and OKCoin during February 2021.

[79] While the Index will not be particularly important for the creation and redemption process, it will be used for calculating fees.

The website for the Trust, which will be publicly accessible at no charge, will contain the following information: (a) The current NAV per Share daily and the prior business day's NAV and the reported closing price; (b) the BZX Official Closing Price in relation to the NAV as of the time the NAV is calculated and a calculation of the premium or discount of such price against such NAV; (c) data in chart form displaying the frequency distribution of discounts and premiums of the Official Closing Price against the NAV, within appropriate ranges for each of the four previous calendar quarters (or for the life of the Trust, if shorter); (d) the prospectus; and (e) other applicable quantitative information. The Trust will also disseminate the Trust's holdings on a daily basis on the Trust's website. The price of bitcoin will be made available by one or more major market data vendors, updated at least every 15 seconds during Regular Trading Hours. Information about the Index, including key elements of how the Index is calculated, will be publicly available at *https://www.spglobal.com/spdji/en/indices/digital-assets/sp-bitcoin-index/.*

The NAV for the Trust will be calculated by the Administrator once a day and will be disseminated daily to all market participants at the same time. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA.

Quotation and last sale information for bitcoin is widely disseminated through a variety of major market data vendors, including Bloomberg and Reuters, as well as the Index. Information relating to trading, including price and volume information, in bitcoin is available from major market data vendors and from the exchanges on which bitcoin are traded. Depth of book information is also available from bitcoin exchanges. The normal trading hours for bitcoin exchanges are 24 hours per day, 365 days per year

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change, rather will facilitate the listing and trading of an additional exchange-traded product that will enhance competition among both market participants and listing venues, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on 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 within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2021–051 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–CboeBZX–2021–051. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2021–051 and should be submitted on or before August 27, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[80]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–16788 Filed 8–5–21; 8:45 am]

BILLING CODE 8011–01–P

[80] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17072 and #17073; Oklahoma Disaster Number OK–00151]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Oklahoma

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Oklahoma (FEMA–4587–DR), dated 07/30/2021.

Incident: Severe Winter Storms.

Incident Period: 02/08/2021 through 02/20/2021.

DATES: Issued on 07/30/2021.

Physical Loan Application Deadline Date: 09/28/2021.

Economic Injury (EIDL) Loan Application Deadline Date: 05/02/2022.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration,

409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 07/30/2021, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Alfalfa, Bryan, Grant, Kiowa, Latimer, Love, Marshall, Pittsburg, Stephens.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere ...	2.000
Non-Profit Organizations without Credit Available Elsewhere	2.000
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	2.000

The number assigned to this disaster for physical damage is 17072 B and for economic injury is 17073 0.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2021–16819 Filed 8–5–21; 8:45 am]

BILLING CODE 8026–03–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[FAA–2021–0012]

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Reduced Vertical Separation Minimum

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

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on January 15, 2021. Aircraft Operators seeking specific operational approval to conduct Reduced Vertical Separation Minimum (RVSM) operations must submit application to the FAA for RVSM specific approval. Specific approval is required when aircraft operators intend to operate outside the United States (U.S.) or their aircraft are not equipped with Automatic Dependent Surveillance—Broadcast (ADS–B) Out.

DATES: Written comments should be submitted by September 7, 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: Madison Walton, (FAA), Flight Technologies and Procedures Division by email at: *Madison.Walton@faa.gov*; phone: 202–267–8850.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information.

OMB Control Number: 2120–0679.

Title: Reduced Vertical Separation Minimum.

Form Numbers: N/A.

Type of Review: Renewal.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on January 15, 2021 (86 FR 4172). The authority to collect data from aircraft operators seeking operational approval to conduct Reduced Vertical Separation Minimum (RVSM) operations is contained in Part 91, Section 91.180, as established by a final rule published in the **Federal Register** on October 27, 2003 (68 FR 61304) and in Part 91, Section 91.706, as established by a final rule published April 9, 1997 (62 FR 17487, Apr 9, 1997). Aircraft operators seeking specific operational approval to conduct RVSM operations outside the U.S. must submit their application to the responsible Flight Standards office. The responsible Flight Standards office registers RVSM approved airframes in the FAA RVSM Approvals Database to track the approval status for operator airframes. Application information includes evidence of aircraft equipment and RVSM qualification information along with operational training and program elements.

Respondents: Operators are required to submit application for RVSM specific approval if they desire to operate in RVSM airspace outside the U.S. or if they do not meet the provisions of Title 14 of the Code of Federal Regulations (14 CFR), Part 91, Appendix G, Section 9—Aircraft Equipped with Automatic Dependent Surveillance—Broadcast Out. The FAA estimates processing 856 initial applications annually and 1,998 annual updates to existing approvals.

Frequency: An Operator must make application for initial specific approval to operate in RVSM airspace, or whenever requesting an update to an existing approval.

Estimated Average Burden per Response: 4.00 hours for updates to existing applications and 6.8 hours for application of initial approvals.

Estimated Total Annual Burden: 13,813 hours [(1,998 × 4.00) + (856 × 6.8)]

Issued in District of Columbia, on August 03, 2021.

Herbert Madison Walton, Jr.,

Aviation Safety Inspector, FAA Flight Technologies & Procedures Division.

[FR Doc. 2021–16801 Filed 8–5–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

FY 2021 Competitive Funding Opportunity: Passenger Ferry Grant Program

AGENCY: Federal Transit Administration (FTA), U.S. Department of Transportation (DOT).

ACTION: Notice of funding opportunity (NOFO).

SUMMARY: The Federal Transit Administration (FTA) announces the opportunity to apply for $38 million in competitive grants under the Fiscal Year (FY) 2021 Passenger Ferry Grant Program (Ferry Program). Of that amount, $4 million is available only for low or zero-emission ferries or ferries using electric battery or fuel cell components and the infrastructure to support such ferries. As required by Federal public transportation law, funds will be awarded competitively to

designated recipients or eligible direct recipients of Urbanized Area Formula funds to support capital projects to improve existing passenger ferry service, establish new ferry service, and repair and modernize ferry boats, terminals, and related facilities and equipment. FTA may award additional funding made available to the program prior to the announcement of project selections.

DATES: Complete proposals must be submitted electronically through the *GRANTS.GOV* ''APPLY'' function by 11:59 p.m. Eastern time on October 5, 2021. Prospective applicants should initiate the process by promptly registering on the *GRANTS.GOV* website to ensure completion of the application process before the submission deadline. Instructions for applying can be found on FTA's website at *https://www.transit.dot.gov/funding/grants/applying/applying-fta-funding* and in the ''FIND'' module of *GRANTS.GOV.* The funding opportunity ID is FTA–2021–006–TPM–Ferry. Mail and fax submissions will not be accepted.

FOR FURTHER INFORMATION CONTACT: Vanessa Williams, FTA Office of Program Management, (202) 366–4818, or *vanessa.williams@dot.gov.*

SUPPLEMENTARY INFORMATION:

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A. Program Description

Federal public transportation law (49 U.S.C. 5307(h)) authorizes FTA to award grants for passenger ferries through a competitive process, as described in this notice. The Ferry Program provides funding to designated recipients and direct recipients under FTA's Urbanized Area Formula Program, as well as public entities engaged in providing public transportation passenger ferry service in urban areas that are eligible to be direct recipients. Projects funded under the program will improve the condition and quality of existing passenger ferry services, support the establishment of new passenger ferry services, and repair and modernize ferry boats, terminals, and related facilities and equipment. FTA recognizes that passenger ferries provide critical and cost-effective transportation links in urban areas throughout the United States but face a critical backlog of state of good repair and safety investments. The Ferry Program (Federal Assistance Listing: 20.507) supports FTA's strategic goals and objectives through the timely and efficient investment in public transportation. This program also supports the President's goals to mobilize American ingenuity to build a modern infrastructure and an equitable, clean energy future. In addition, this NOFO will advance the goals of the President's January 20, 2021, Executive Order 13990, ''Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis.''

B. Federal Award Information

Federal public transportation law (49 U.S.C. 5336(h)(1)) apportions $30 million in FY 2021 funds for competitive grants under the Ferry Program. The Consolidated Appropriations Act, 2021 (Pub. L. 116–260), appropriated an additional $8 million for the Ferry Program, for a total of $38 million. Of that amount, $4 million is available only for low or zero-emission ferries or ferries using electric battery or fuel cell components and the infrastructure to support such ferries. FTA may award additional funding made available to the program prior to the announcement of project selections.

In FY 2020, FTA received 19 eligible proposals from 15 States and territories requesting $102 million in Federal funds. Twelve projects were funded at a total of $47.5 million, using a combination of funding from FY 2020 and funding remaining from prior year appropriations.

FTA will grant pre-award authority to incur costs for selected projects beginning on the date the FY 2021 project selections are announced on FTA's website. Funds are available for obligation for five years after the fiscal year in which the competitive awards are announced. Funds are available only for projects that have not already incurred costs prior to the announcement of project selections.

C. Eligibility Information

1. Eligible Applicants

Eligible applicants are: (1) Designated recipients as defined in FTA Circular ''Urbanized Area Formula Program: Program Guidance and Application Instructions'' (FTA.C.9030.1E) and (2) direct recipients of FTA's Urbanized Area Formula Grants, as well as public entities engaged in providing public transportation passenger ferry service in urban areas that are eligible to be direct recipients.

If an applicant does not currently have an active Urbanized Area Formula Program grant with FTA, the applicant is encouraged to contact the FTA Ferry Program manager for assistance with determining if it is eligible to receive funds under the Ferry Program. An eligible applicant that does not currently have an active grant with FTA will, upon selection, be required to work with an FTA regional office to establish its organization as an active grant recipient. This process may require additional documentation to support the organization's technical, financial, and legal capacity to receive and administer Federal funds under this program.

2. Cost Sharing or Matching

a. The maximum Federal share for projects selected under the Ferry Program is 80 percent of the net project cost, with the following exceptions.

b. The maximum Federal share is 85 percent of the net project cost of acquiring vehicles (including clean-fuel or alternative fuel vehicles) for purposes of complying with or maintaining compliance with the Clean Air Act (CAA) and/or the Americans with Disabilities Act (ADA) of 1990.

c. The maximum Federal share is 90 percent of the net project cost of acquiring, installing or constructing vehicle-related equipment or facilities (including clean fuel or alternative-fuel vehicle-related equipment or facilities) for purposes of complying with or maintaining compliance with the ADA or CAA. The award recipient must itemize the cost of specific, discrete, vehicle-related equipment associated with compliance with the ADA or CAA to be eligible for the maximum 90 percent Federal share for these costs.

Eligible sources of non-Federal matching funds include:

i. Cash from non-governmental sources other than revenues from providing public transportation services;

ii. Non-farebox revenues from the operation of public transportation service, such as the sale of advertising and concession revenues;

iii. Monies received under a service agreement with a State or local social service agency or private social service organization;

iv. Undistributed cash surpluses, replacement or depreciation cash funds, reserves available in cash, or new capital;

v. Amounts appropriated or otherwise made available to a department or agency of the Government (other than the U.S. Department of Transportation),

that are eligible to be expended for public transportation;

vi. In-kind contributions integral to the project;

vii. Revenue bond proceeds for a capital project, with prior FTA approval; and

viii. Transportation Development Credits (TDC) (formerly referred to as Toll Revenue Credits).

If an applicant proposes a Federal share greater than 80 percent, the applicant must clearly explain why the project is eligible for the proposed Federal share.

3. Eligible Projects

Eligible projects are capital projects for the purchase, construction, replacement, or rehabilitation of ferries, terminals, related infrastructure, and related equipment (including fare equipment and communication devices). Projects are required to support a passenger ferry service that serves an urbanized area, and may include services that operate between an urbanized area and non-urbanized areas. Ferry systems that accommodate cars must also accommodate walk-on passengers to be eligible for funding.

Recipients are permitted to use up to 0.5 percent of their grant award to pay for not more than 80 percent of the cost for workforce development activities eligible under Federal public transportation law (49 U.S.C 5314(b)) and an additional 0.5 percent for costs associated with training at the National Transit Institute. Applicants must identify the proposed use of funds for these activities in the project proposal and identify them separately in the project budget.

D. Application and Submission Information

1. Address To Request Application

A complete proposal submission consists of two forms: The SF–424 Application for Federal Assistance can be downloaded from *GRANTS.GOV* and the supplemental form for the FY 2021 Passenger Ferry Grant Program can be downloaded from *GRANTS.GOV* or the FTA website at: *https://www.transit.dot.gov/funding/grants/passenger-ferry-grant-program-section-5307.*

2. Content and Form of Application Submission

a. Proposal Submission

Applications must be submitted electronically through *GRANTS.GOV.* General information for submitting applications along with specific instructions for the forms and attachments required for submission can be found at *GRANTS.GOV.* Mail and fax submissions will not be accepted. A complete proposal submission consists of two forms: (1) The SF–424 Application for Federal Assistance; and (2) the FY 2021 Passenger Ferry Grant Program supplemental form. The supplemental form and any supporting documents must be attached to the ''Attachments'' section of the SF–424. The application must include responses to all sections of the SF–424 Application for Federal Assistance and the supplemental form, unless designated as optional. The information on the supplemental form will be used to determine applicant and project eligibility for the program, and to evaluate the proposal against the selection criteria described in part E of this notice. Failure to submit the information as requested can delay review or disqualify the application.

FTA will accept only one supplemental form per SF–424 submission. FTA encourages States and other applicants to consider submitting a single supplemental form that includes multiple activities to be evaluated as a consolidated proposal. If a State or other applicant chooses to submit separate proposals for individual consideration by FTA, each proposal must be submitted using a separate SF–424 and supplemental form.

Applicants may attach additional supporting information to the SF–424 submission, including but not limited to letters of support, project budgets, fleet status reports, or excerpts from relevant planning documents. Supporting documentation should be described and referenced by file name in the appropriate response section of the supplemental form, or it may not be reviewed.

Information such as applicant name, Federal amount requested, local match amount, and description of areas served may be requested in varying degrees of detail on both the SF–424 and Supplemental Form. Applicants must fill in all fields unless otherwise stated on the forms. Applicants should not place N/A or ''refer to attachment'' in lieu of typing in responses in the field sections. If information is copied into the supplemental form from another source, applicants should verify that pasted text is fully captured on the supplemental form and has not been truncated by the character limits built into the form. Applicants should use both the ''Check Package for Errors'' and the ''Validate Form'' validation buttons on both forms to check all required fields on the forms, and ensure that the Federal and local amounts specified are consistent.

b. Application Content

The SF–424 Application for Federal Assistance and the supplemental form will prompt applicants for the required information:

a. Applicant name

b. Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number

c. Key contact information (including contact name, address, email address, and phone)

d. Congressional district(s) where project will take place

e. Project information (including title, executive summary, and type)

f. A detailed description of the need for the project

g. A detailed description of how the project will support the Ferry Program objectives

h. Evidence that the project is consistent with local and regional planning objectives

i. Evidence that the applicant can provide the local cost share

j. A description of the technical, legal, and financial capacity of the applicant

k. A detailed project budget

l. An explanation of the scalability of the project

m. Details on the local matching funds

n. A detailed project timeline

3. Unique Entity Identifier and System for Award Management (SAM)

Each applicant is required to: (1) Be registered in SAM before submitting an application; (2) provide a valid unique entity identifier in its application; and (3) continue to maintain an active SAM registration with current information at all times during which the applicant has an active Federal award or an application or plan under consideration by FTA. FTA may not make an award until the applicant has complied with all applicable unique entity identifier and SAM requirements. If an applicant has not fully complied with the requirements by the time FTA is ready to make an award, FTA may determine that the applicant is not qualified to receive an award and use that determination as a basis for making a Federal award to another applicant. These requirements do not apply if the applicant: Has an exception approved by FTA or the U.S. Office of Management and Budget under 2 CFR 25.110(c) or (d). Non-Federal entities that have received a Federal award are required to report certain civil, criminal, or administrative proceedings to SAM (currently the Federal Awardee

Performance and Integrity Information System (FAPIIS)) to ensure registration information is current and comply with Federal requirements. Applicants should reference 2 CFR 200.113, for more information.

All applicants must provide a unique entity identifier provided by SAM. Registration in SAM may take as little as 3–5 business days, but since there could be unexpected steps or delays (for example, if there is a need to obtain an Employee Identification Number), FTA recommends allowing ample time, up to several weeks, for completion of all steps. For additional information on obtaining a unique entity identifier, please visit *www.sam.gov.*

4. Submission Dates and Times

Project proposals must be submitted electronically through *GRANTS.GOV* by 11:59 p.m. Eastern Time on October 5, 2021. *GRANTS.GOV* attaches a time stamp to each application at the time of submission. Mail and fax submissions will not be accepted.

FTA urges applicants to submit applications at least 72 hours prior to the due date to allow time to correct any problems that may have caused either *GRANTS.GOV* or FTA systems to reject the submission. Proposals submitted after the deadline will be considered only under extraordinary circumstances not under the applicant's control. Mail and fax submissions will not be accepted. Deadlines will not be extended due to scheduled website maintenance. *GRANTS.GOV* scheduled maintenance and outage times are announced on the *GRANTS.GOV* website.

Within 48 hours after submitting an electronic application, the applicant should receive an email message from *GRANTS.GOV* with confirmation of successful transmission to *GRANTS.GOV.* If a notice of failed validation or incomplete materials is received, the applicant must address the reason for the failed validation, as described in the email notice, and resubmit before the submission deadline. If making a resubmission for any reason, include all original attachments regardless of which attachments were updated and check the box on the supplemental form indicating this is a resubmission.

Applicants are encouraged to begin the process of registration on the *GRANTS.GOV* site well in advance of the submission deadline. Registration is a multi-step process, which may take several weeks to complete before an application can be submitted. Registered applicants may still be required to take steps to keep their registration up to date before submissions can be made successfully: (1) Registration in SAM is renewed annually; and (2) persons making submissions on behalf of the Authorized Organization Representative (AOR) must be authorized in *GRANTS.GOV* by the AOR to make submissions.

5. Funding Restrictions

Funds made available under the Ferry Program may not be used to fund operating expenses, planning, or preventive maintenance. Any project that does not include the purchase, construction, replacement, or rehabilitation of ferries, terminals, related infrastructure, or related equipment is not eligible. Funds made available under this NOFO cannot be used to reimburse applicants for otherwise eligible expenses incurred prior to the posting of project selections on FTA's website and the corresponding issuance of preaward authority. Allowable direct and indirect expenses must be consistent with the Governmentwide Uniform Administrative Requirements and Cost Principles (2 CFR part 200) and FTA Circular 5010.1E.

6. Other Submission Requirements

Applicants are encouraged to identify scaled funding options in case insufficient funding is available to fund a project at the full requested amount. If an applicant advises that a project is scalable, the applicant must provide an appropriate minimum funding amount that will fund an eligible project that achieves the objectives of the program and meets all relevant program requirements. The applicant must provide a clear explanation of how the project budget would be affected by a reduced award. FTA may award a lesser amount whether or not a scalable option is provided.

E. Application Review Information

1. Criteria

Projects will be evaluated primarily on the responses provided in the supplemental form. Additional information may be provided to support the responses; however, any additional documentation must be directly referenced on the supplemental form, including the file name where the additional information can be found. FTA will evaluate project proposals for competitive passenger ferry grants based on the criteria described in this notice. Criteria are weighted equally.

a. Demonstration of Need

Applications will be evaluated based on the quality and extent to which they demonstrate how the proposed project will address an unmet need for capital investment in passenger ferry vehicles, equipment, or facilities. FTA also will evaluate the project's impact on service delivery and whether the project represents a one-time or periodic need that cannot reasonably be funded from FTA formula program allocations or State and/or local resources. In evaluating applications, FTA will consider, among other factors, certain project-specific criteria as outlined below:

i. For vessel replacement or rehabilitation projects (including low or zero emission ferries):

- The age of the asset to be replaced or rehabilitated by the proposed project, relative to its useful life.
- Condition and performance of the asset to be replaced by the proposed project, as ascertained through inspections or otherwise, if available.

ii. For facility infrastructure improvements or related-equipment acquisitions:

- The age of the facility or equipment to be rehabilitated or replaced, relative to its useful life.
- The degree to which the proposed project will enable the agency to improve the maintenance and condition of the agency's fleet and/or other related ferry assets.

iii. For vessel or facility-related expansion or new service requests:

- The degree to which the proposed project addresses a current capacity constraint that is limiting the ability of the agency to provide reliable service, meet ridership demands, or maintain vessels and related equipment.
- The degree the proposed new service is supported by ridership demand.

b. Demonstration of Benefits

Applications will be evaluated based on how the ferry project will improve the (1) safety of existing ferry systems, (2) the state of good repair of the existing system, and/or (3) provide additional transportation options to existing or potential riders within the service area. FTA also will consider potential benefits such as increased reliability of service, improved operations or maintenance capabilities, or expanded mobility options, intermodal connections, and improved community benefits related to the economy or the environment.

For low or no emission projects, applicants should demonstrate how the proposed ferries or infrastructure will reduce the emission of particulates that create local air pollution, which leads to local environmental health concerns,

smog, and unhealthy ozone concentrations. Applicants should also demonstrate how the proposed ferries or infrastructure will reduce emissions of greenhouse gases from transit vehicle operations.

Applicants should address how the ferry service to be supported by the proposed project is integrated with other regional modes of transportation, including but not limited to: Rail, bus, intercity bus, and private transportation providers. Supporting documentation should include data that demonstrates the number of trips (passengers and vehicles), the number of walk-on passengers, and the frequency of transfers to other modes if applicable.

c. Planning and Local/Regional Prioritization

Applicants must demonstrate how the proposed project is consistent with local and regional planning documents and identified priorities. This will involve assessing whether the project is consistent with the transit priorities identified in the long-range transportation plan and the State and Metropolitan Transportation Improvement Program (STIP/TIP). Applicants should note if the project could not be included in the financially constrained STIP or TIP due to lack of funding, and if selected that the project can be added to the federally approved STIP before grant award.

FTA encourages applicants to demonstrate local support by including letters of support from State Departments of Transportation, local transit agencies, local government officials and public agencies, local non-profit or private sector organizations, and other relevant stakeholders. In an area with both ferry and other public transit operators, FTA will evaluate whether project proposals demonstrate coordination with and support of other related projects within the applicant's Metropolitan Planning Organization (MPO) or the geographic region within which the proposed project will operate.

d. Local Financial Commitment

Applicants must identify the source of the local cost share and describe whether such funds are currently available for the project or will need to be secured if the project is selected for funding. FTA will consider the availability of the local cost share as evidence of local financial commitment to the project. Additional consideration will be given to those projects for which local funds have already been made available or reserved. Applicants should submit evidence of the availability of funds for the project, by including, for example, a board resolution, letter of support from the State, or other documentation of the source of local funds such as a budget document highlighting the line item or section committing funds to the proposed project.

An applicant may provide documentation of previous local investments in the project, which cannot be used to satisfy local matching requirements, as evidence of local financial commitment.

Applicants that request a Federal share greater than 80 percent must clearly explain why the project is eligible for the proposed Federal share.

e. Project Implementation Strategy

Projects will be evaluated based on the extent to which the project is ready to implement within a reasonable period of time and whether the applicant's proposed implementation plans are reasonable and complete.

In assessing whether the project is ready to implement within a reasonable period of time, FTA will consider whether the project qualifies for a Categorical Exclusion, or whether the required environmental work has been initiated or completed for projects that require an Environmental Assessment or Environmental Impact Statement under the National Environmental Policy Act of 1969. As such, applicants should submit information describing the project's anticipated path and timeline through the environmental review process. The proposal must also state whether grant funds can be obligated within 12 months from time of award, if selected, and the timeframe under which the Metropolitan TIP and/or STIP can be amended to include the proposed project. Additional consideration will be given to projects for which grant funds can be obligated within 12 months from time of award.

In assessing whether the proposed implementation plans are reasonable and complete, FTA will review the proposed project implementation plan, including all necessary project milestones and the overall project timeline. For projects that will require formal coordination, approvals, or permits from other agencies or project partners, the applicant must demonstrate coordination with these organizations and their support for the project, such as through letters of support.

f. Technical, Legal, and Financial Capacity

Applicants must demonstrate that they have the technical, legal, and financial capacity to undertake the project. FTA will review relevant oversight assessments and records to determine whether there are any outstanding legal, technical, or financial issues with the applicant that would affect the outcome of the proposed project.

Applicants with outstanding legal, technical, or financial compliance issues from an FTA compliance review or FTA grant-related Single Audit finding must explain how corrective actions taken will mitigate negative impacts on the project.

2. Review and Selection Process

FTA technical evaluation committees will evaluate proposals using the project evaluation criteria. Members of the technical evaluation committees and other FTA staff may request additional information from applicants, if necessary. After consideration of the findings of the technical evaluation committees, FTA will determine the final selection of projects for program funding. In determining the allocation of program funds, FTA may consider geographic diversity, diversity in the size of the transit systems receiving funding, and the applicant's receipt of other competitive awards. FTA will also consider whether the project will include low or zero-emission ferries or ferries using electric battery or fuel cell components and the infrastructure to support such ferries. FTA may consider capping the amount a single applicant may receive. After applying the above criteria, in support of the President's January 20, 2021, Executive Order 13990, ''Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis,'' the FTA Administrator will give priority consideration to applications that are expected to create significant community benefits relating to the environment, including those projects that incorporate low or no emission technology. FTA seeks to select projects that have considered climate change and environmental justice in the planning stage and were designed with specific elements to address climate change impacts. Projects should directly support Climate Action Plans or apply environmental justice screening tools in the planning stage. As stated in this NOFO, of the $38 million, $4 million is available only for low or zero-emission ferries or ferries using electric battery or fuel cell components and the infrastructure to support such ferries. Projects should include components that reduce emissions, promote energy efficiency, incorporate electrification or zero emission vehicle infrastructure,

increase resiliency, and recycle or redevelop existing infrastructure.

Furthermore, in support of Executive Order 13985, ''Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,'' FTA may consider projects that advance racial equity and overcomes barriers to opportunity for underserved communities. FTA seeks to select projects that have considered racial equity in the planning stage and were designed with specific elements to address racial equity and barriers to opportunity. The applicant should indicate which (if any) planning and policies related to racial equity and barriers to opportunity they are implementing or have implemented, along with the specific project investment details necessary for FTA to evaluate if the investments are being made either to proactively advance racial equity and remove barriers to opportunity, or to redress prior inequities and barriers to opportunity. All project investment costs for the project that are related to racial equity and barriers to opportunity should be summarized.

Prior to making an award, FTA is required to review and consider any information about the applicant that is in the FAPIIS accessible through SAM. An applicant may review and comment on information about itself that a Federal awarding agency previously entered. FTA may consider any comments by the applicant, in addition to the other information in FAPIIS, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants as described in the Office of Management and Budget's Uniform Requirements for Federal Awards (2 CFR 200.206).

F. Federal Award Administration Information

1. Federal Award Notices

Final project selections will be posted on the FTA website. Only proposals from eligible recipients for eligible activities will be considered for funding. There is no minimum or maximum grant award amount; however, FTA intends to fund as many meritorious projects as possible. Due to funding limitations, projects that are selected for funding may receive less than the amount originally requested. In those cases, applicants must be able to demonstrate that the proposed projects are still viable and can be completed with the amount awarded.

Recipients should contact their FTA Regional Offices for additional information regarding allocations for projects under the Ferry Program.

2. Administrative and National Policy Requirements

i. Pre-Award Authority

At the time the project selections are announced, FTA will extend pre-award authority for the selected projects. There is no blanket pre-award authority for these projects before announcement and pre-award authority cannot be used prior to FTA issuance of pre-award authority. FTA does not provide pre-award authority for competitive funds until projects are selected and even then, there are Federal requirements that must be met before costs are incurred. For more information about FTA's policy on pre-award authority, please see the most recent Apportionment Notice at *https://www.transit.dot.gov.*

ii. Grant Requirements

If selected, awardees will apply for a grant through FTA's Transit Award Management System (TrAMS). All Ferry Program recipients are subject to the grant requirements of the Urbanized Area Formula Grant program (49 U.S.C. 5307), FTA's Master Agreement for financial assistance awards, the annual Certifications and Assurances required of applicants, and FTA Circular ''Urbanized Area Formula Program: Program Guidance and Application Instructions'' (FTA.C.9030.1E). All recipients must also follow the Award Management Requirements (FTA.C.5010.1) and the labor protections required by Federal public transportation law (49 U.S.C. 5333(b)). All these documents are available on FTA's website. Technical assistance regarding these requirements is available from each FTA regional office.

iii. Buy America

FTA requires that all capital procurements meet FTA's Buy America requirements (49 U.S.C. 5323(j)) which require all iron, steel, or manufactured products be produced in the United States. Any proposal that will require a waiver must identify the items for which a waiver will be sought in the application. Applicants should not proceed with the expectation that waivers will be granted.

iv. Disadvantaged Business Enterprise

Projects that include ferry acquisitions are subject to the Disadvantaged Business Enterprise (DBE) program regulations (49 CFR part 26) and ferry manufacturers must comply with that part to be eligible to bid on an FTA-assisted ferry procurement. Grant recipients must verify each Transit Vehicle Manufacturer's (TVM) compliance before accepting its bid. A list of certified TVMs is posted on FTA's web page at *https://www.transit.dot.gov/TVM.* Recipients should contact FTA before accepting bids from entities not listed on this web-posting. In lieu of using a certified TVM, recipients may also establish project specific DBE goals for ferry purchases. The FTA will provide additional guidance as grants are awarded. For more information on DBE requirements, please contact Monica McCallum, Director of Regional Operations, Office of Civil Rights, 206–220–7519, email: *Monica.McCallum@dot.gov.*

v. Planning

FTA encourages applicants to notify the appropriate State Departments of Transportation and MPOs in areas likely to be served by the project funds made available under these initiatives and programs. Selected projects must be incorporated into the long-range plans and transportation improvement programs of States and metropolitan areas before they are eligible for FTA funding. As described under the evaluation criteria, FTA may consider whether a project is consistent with or already included in these plans when evaluating a project.

vi. Standard Assurances

The applicant assures that it will comply with all applicable Federal statutes, regulations, executive orders, directives, FTA circulars, and other Federal administrative requirements in carrying out any project supported by the FTA grant. The applicant acknowledges that it is under a continuing obligation to comply with the terms and conditions of the grant agreement issued for its project with FTA. The applicant understands that Federal laws, regulations, policies, and administrative practices might be modified from time to time and may affect the implementation of the project. The applicant agrees that the most recent Federal requirements will apply to the project, unless FTA issues a written determination otherwise. The applicant must submit the Certifications and Assurances before receiving a grant if it does not have current certifications on file.

3. Reporting

Post-award reporting requirements include the electronic submission of Federal Financial Reports and Milestone

Progress Reports. Applicant should include goals, targets, and indicators referenced in their application to the project in the Executive Summary of the TrAMS application. Recipients of funds made available through this NOFO are also required to regularly submit data to the National Transit Database. National Transit Database reports include total sources of revenue and complete expenditure reports for all public transportation operations, not just those funded by this project. Applicants partnering with a private operator should ensure that the private operator will meet all of the comprehensive reporting requirements of the National Transit Database.

As part of completing the annual certifications and assurances required of FTA grant recipients, a successful applicant must report on the suspension or debarment status of itself and its principals. If the award recipient's active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds $10,000,000 for any period of time during the period of performance of an award made pursuant to this Notice, the recipient must comply with the Recipient Integrity and Performance Matters reporting requirements described in Appendix XII to 2 CFR part 200.

G. Federal Awarding Agency Contacts

For further information concerning this notice, please contact the Ferry Program manager, Vanessa Williams, by phone at 202–366–4818, or by email at *vanessa.williams@dot.gov.* A TDD is available for individuals who are deaf or hard of hearing at 800–877–8339. In addition, FTA will post answers to questions and requests for clarifications on FTA's website at: *https://www.transit.dot.gov/funding/grants/passenger-ferry-grant-program-section-5307.* To ensure receipt of accurate information about eligibility or the program, the applicant is encouraged to contact FTA directly, rather than through intermediaries or third parties.

H. Other Information

This program is not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.'' FTA will consider applications for funding only from eligible recipients for eligible projects listed in Section C. Complete applications must be submitted through *GRANTS.GOV* by 11:59 p.m. EST on October 5, 2021. For issues with *GRANTS.GOV,* please contact *GRANTS.GOV* by phone at 1–800–518–4726 or by email at *support@grants.gov.* Contact information for FTA's regional offices can be found on FTA's website at *http://www.transit.dot.gov/.*

Nuria I. Fernandez,

Administrator.

[FR Doc. 2021–16790 Filed 8–5–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel's Toll-Free Phone Lines Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Toll-Free Phone Lines Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, September 14, 2021.

FOR FURTHER INFORMATION CONTACT: Rosalind Matherne at 1–888–912–1227 or 202–317–4115.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Toll-Free Phone Lines Project Committee will be held Tuesday, September 14, 2021 at 11:00 a.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Rosalind Matherne. For more information please contact Rosalind Matherne at 1–888–912–1227 or 202–317–4115, or write TAP Office, 1111 Constitution Ave. NW, Room 1509, Washington, DC 20224 or contact us at the website: *http://www.improveirs.org.* The agenda will include various IRS issues.

Dated: August 2, 2021.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2021–16777 Filed 8–5–21; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel's Tax Forms and Publications Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Tax Forms and Publications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, September 9, 2021.

FOR FURTHER INFORMATION CONTACT: Fred Smith at 1–888–912–1227 or (202) 317–3087.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel's Tax Forms and Publications Project Committee will be held Thursday, September 9, 2021 at 2:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Fred Smith. For more information please contact Fred Smith at 1–888–912–1227 or (202) 317–3087, or write TAP Office, 1111 Constitution Ave. NW, Room 1509, Washington, DC 20224 or contact us at the website: *http://www.improveirs.org.*

Dated: August 2, 2021.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2021–16778 Filed 8–5–21; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel's Notices and Correspondence Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Notices and Correspondence Project Committee will be conducted. The Taxpayer Advocacy

Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. This meeting will still be held via teleconference.

DATES: The meeting will be held Wednesday, September 8, 2021.

FOR FURTHER INFORMATION CONTACT: Robert Rosalia at 1–888–912–1227 or (718) 834–2203.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel's Notices and Correspondence Project Committee will be held Wednesday, September 8, 2021, at 1:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Robert Rosalia. For more information please contact Robert Rosalia at 1–888–912–1227 or (718) 834–2203, or write TAP Office, 2 Metrotech Center, 100 Myrtle Avenue, Brooklyn, NY 11201 or contact us at the website: *http://www.improveirs.org*. The agenda will include various IRS issues.

Dated: August 2, 2021.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2021–16780 Filed 8–5–21; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Joint Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Joint Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, September 23, 2021.

FOR FURTHER INFORMATION CONTACT: Gilbert Martinez at 1–888–912–1227 or (737) 800–4060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Joint Committee will be held Thursday, September 23, 2021, at 1:30 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. For more information please contact Gilbert Martinez at 1–888–912–1227 or (737–800–4060), or write TAP Office 3651 S IH–35, STOP 1005 AUSC, Austin, TX 78741, or post comments to the website: *http://www.improveirs.org.*

The agenda will include various committee issues for submission to the IRS and other TAP related topics. Public input is welcomed.

Dated: August 2, 2021.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2021–16782 Filed 8–5–21; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Taxpayer Communications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. This meeting will still be held via teleconference.

DATES: The meeting will be held Tuesday, September 14, 2021.

FOR FURTHER INFORMATION CONTACT: Conchata Holloway at 1–888–912–1227 or 214–413–6550.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee will be held Tuesday, September 14, 2021, at 12:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Conchata Holloway. For more information please contact Conchata Holloway at 1–888–912–1227 or 214–413–6550, or write TAP Office, 1114 Commerce Street, Mail Code 1005DAL, Dallas, Texas, 75242 or contact us at the website: *http://www.improveirs.org.* The agenda will include various IRS issues.

Dated: August 2, 2021.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2021–16781 Filed 8–5–21; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Taxpayer Assistance Center Improvements Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, September 9, 2021.

FOR FURTHER INFORMATION CONTACT: Matthew O'Sullivan at 1–888–912–1227 or (510) 907–5274.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel's Taxpayer Assistance Center Improvements Project Committee will be held Thursday, September 9, 2021, at 12:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Matthew O'Sullivan. For more information please contact Matthew O'Sullivan at 1–888–912–1227 or (510) 907–5274, or write TAP Office, 1301 Clay Street, Oakland, CA 94612–5217 or contact us at the website: *http://www.improveirs.org.* The agenda will include various IRS issues.

Dated: August 2, 2021.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2021–16776 Filed 8–5–21; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel's Special Projects Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Special Projects Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, September 9, 2021.

FOR FURTHER INFORMATION CONTACT: Antoinette Ross at 1–888–912–1227 or 202–317–4110.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel's Special Projects Committee will be held Thursday, September 9, 2021, at 11:00 a.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Antoinette Ross. For more information please contact Antoinette Ross at 1–888–912–1227 or 202–317–4110, or write TAP Office, 1111 Constitution Ave. NW, Room 1509, Washington, DC 20224 or contact us at the website: *http://www.improveirs.org*. The agenda will include various IRS issues.

Dated: August 2, 2021.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2021–16779 Filed 8–5–21; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Multiple Financial Crimes Enforcement Network Information Collection Requests

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before September 7, 2021 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Molly Stasko by emailing *PRA@treasury.gov,* calling (202) 622–8922, or viewing the entire information collection request at *www.reginfo.gov*.

SUPPLEMENTARY INFORMATION:

Financial Crimes Enforcement Network (FinCEN)

1. Title: Transactions of Exempt Person and FinCEN Report 110—DOEP Report.

OMB Control Number: 1506–0012.

Type of Review: Extension without change of a currently approved collection.

Description: The legislative framework generally referred to as the Bank Secrecy Act (BSA) consists of the Currency and Financial Transactions Reporting Act of 1970, as amended by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act) (Pub. L. 107–56) and other legislation. The BSA is codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, 31 U.S.C. 5311–5314 and 5316–5332, and notes thereto, with implementing regulations at 31 CFR Chapter X.

The BSA authorizes the Secretary of the Treasury, inter alia, to require financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities, to protect against international terrorism, and to implement anti-money laundering (AML) programs and compliance procedures. Regulations implementing Title II of the BSA appear at 31 CFR Chapter X.

The requirement for financial institutions to report certain transactions in currency has been an important component of the BSA from its inception. Regulations implementing this requirement have long established a one-person, one-day, one-institution aggregate currency transaction threshold of $10,000, above which every financial institution must file a Currency Transaction Report (CTR). The Money Laundering Suppression Act of 1994 amended the BSA to create certain mandatory exemptions applicable to banks from the requirement for financial institutions to file CTRs, and to give the Secretary authority to create additional such exemptions. Regulations implementing this exemption authority, including by requiring the collection of information on the DOEP Report, are found at 31 CFR 1020.315.

Under 31 CFR 1020.315(a), a bank is not required to file a CTR with respect to any transaction in currency between exempt persons and the bank, or between an exempt person and other banks that are affiliated with the bank.

31 CFR 1020.315(b) sets out that an exempt person is: (1) A bank, to the extent of such bank's domestic operations; (2) a department or agency of the United States, of any State, or of any political subdivision of any State; (3) any entity established under the laws of the United States, any State, or any political subdivision of any State, or under an interstate compact, that exercises governmental authority on behalf of the United States, any such State, or any such political subdivision; (4) any entity, other than a bank, whose common stock or analogous equity interests are listed on the New York Stock Exchange, the American Exchange, or the NASDAQ Stock Market (a ''listed entity''), provided that, if the listed entity is a financial institution other than a bank, it is an exempt person only to the extent of its domestic operations; (5) any subsidiary, other than a bank, of a listed entity mentioned in the previous item (4) that is organized under the laws of the United States or of any State, provided that the listed entity owns at least 51 percent of the equity interest of the subsidiary, and subject to the qualification that if the subsidiary is a financial institution other than a bank, it is an exempt person only to the extent of its domestic operations; (6) any other commercial enterprise, with certain exceptions, that maintains a transaction account at the bank for at least two months, frequently engages in transactions with the bank in currency in excess of $10,000, and is incorporated or organized under the laws of, or is registered as and eligible to do business within, the United States or a State (a ''non-listed business''), but only to the extent of the non-listed business customers' domestic

operations and only with respect to transactions conducted through the non-listed business customer's exemptible accounts; or (7) any other person, with certain exceptions, that maintains a transaction account at the bank for at least two months, operates a firm that frequently withdraws more than $10,000 in order to pay its U.S. employees in currency, and is incorporated or organized under the laws of, or is registered as and eligible to do business within, the United States or a State (a ''payroll customer''), but solely with respect to withdrawals for payroll purposes from existing exemptible accounts.

31 CFR 1020.315(c)(1) requires a bank to designate an exempt person by filing the DOEP Report within 30 calendar days after the day of the first reportable transaction in currency with that person that the bank seeks to exempt from reporting. A bank holding company or one of its bank subsidiaries may make such a designation on behalf of any or all of the bank holding company's bank subsidiaries by listing those bank subsidiaries in the DOEP Report that it files. However, a bank is not required to file a DOEP Report for transfer of currency to or from (1) any of the 12 Federal Reserve Banks, (2) a bank, to the extent of such bank's domestic operations, (3) a department or agency of the United States, of any State, or of any political subdivision of any State, or (4) any entity established under the laws of the United States, any State, or any political subdivision of any State, or under an interstate compact between two or more States, that exercises governmental authority on behalf of the United States or any such State or political subdivision.

31 CFR 1020.315(d) requires a bank to review at least once annually the continued eligibility of an exempt person that is a (1) listed entity, (2) subsidiary of a listed entity, (3) non-listed business customer, or (4) payroll customer. As part of the annual review, a bank must also review the application to each existing account of a non-listed business or payroll customer of the monitoring system that 31 CFR 1020.315(h)(2) requires the bank to maintain (related to suspicious activity monitoring).

Under 31 CFR 1020.315(e), a bank must take steps to assure itself that an exempt person meets the definition of that term (see 31 CFR 1020.315(b), summarized above), document the basis for its conclusion, and document its compliance with the terms of the exemption, including the operating rules in 31 CFR 1020.315(e)(2)–(9). A bank must also take steps to document compliance with its suspicious activity monitoring obligations under 31 CFR 1020.315(h)(2). The steps that the bank takes under 31 CFR 1020.315(e) must be those that a reasonable and prudent bank would take and document to protect itself from fraud or loss based on misidentification of a person's status and, in the case of the suspicious activity monitoring obligations, to identify suspicious transactions.

31 CFR 1020.315(h)(1) states that the CTR exemption rules do not relieve a bank of its obligation to report any suspicious transactions pursuant to 31 CFR 1020.320, including any suspicious transactions or attempted transactions in currency associated with the accounts of an exempt person, or relieve a bank of any other reporting or recordkeeping obligation imposed under the authority of the BSA.

Under 31 CFR 1020.315(h)(2), a bank must establish and maintain a monitoring system that is reasonably designed to detect, for each account of a non-listed business or payroll customer, transactions in currency that would require a bank to file a suspicious activity report (SAR).

Form: FinCEN Report 110—DOEP Report.

Affected Public: Businesses or other for-profit institutions; Not-for-profit institutions.

Estimated Number of Respondents: 11,161.

Frequency of Response: As required.

Estimated Total Number of Annual Responses: 18,141.

Estimated Time per Response: 45 minutes for reporting, 15 minutes for recordkeeping.

Estimated Total Annual Burden Hours: 18,141 hours.

2. Title: Additional records to be made and retained by dealers in foreign exchange and brokers or dealers in securities.

OMB Control Number: 1506–0052 and 1506–0053.

Type of Review: Extension without change of a currently approved collection.

Description: The legislative framework generally referred to as the Bank Secrecy Act (BSA) consists of the Currency and Financial Transactions Reporting Act of 1970, as amended by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act) (Pub. L. 107–56) and other legislation. The BSA is codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, 31 U.S.C. 5311–5314 and 5316–5332, and notes thereto, with implementing regulations at 31 CFR Chapter X.

The BSA authorizes the Secretary of the Treasury, inter alia, to require financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities, to protect against international terrorism, and to implement anti-money laundering (AML) programs and compliance procedures. Regulations implementing Title II of the BSA appear at 31 CFR Chapter X.

a. 31 CFR 1022.410—Additional Records To Be Made and Retained by Dealers in Foreign Exchange

31 CFR 1022.410(a) requires a dealer in foreign exchange to make and maintain a record of the taxpayer identification number of certain persons for whom a transaction account is opened or a line of credit is extended, within 30 days of opening such an account or extending such a line of credit, or longer if the person has applied for a taxpayer identification or social security number. A dealer in foreign exchange must also maintain a list containing the names, addresses, and account or credit line numbers of those persons from whom it has been unable to secure such information despite reasonable efforts. A dealer in foreign exchange need not attempt to secure such information if the person is an agency or instrumentality of a Federal, state, local, or foreign government using an account for public funds, one of several categories of aliens that are not permanent resident aliens, or an unincorporated subordinate unit of a tax exempt organization covered by a group exemption letter.

Under 31 CFR 1022.410(b), a dealer in foreign exchange must also retain the original or a copy of nine types of documents: (1) Statements of accounts from banks, including documents representing the entries reflected on such statements; (2) daily work records, including documents needed to identify and reconstruct currency transactions with customers and foreign banks; (3) a record of each exchange of currency involving transactions in excess of $1,000, including the customer's name and address (and passport or tax identification number unless received by mail or common carrier), the date and amount of the transaction, and the currency name, country, and total amount of each foreign currency; (4) signature cards or other documents evidencing signature authority over each deposit or security account, containing specified items of information about the customer

(including a record of the actual owner of the account if customer accounts are maintained in a code name); (5) each item, including checks, drafts, and transfers of credit, of more than $10,000 remitted or transferred to a person, account, or place outside the United States; (6) a record of each receipt of currency, other monetary instruments, investment securities and checks, and of each transfer of funds or credit, of more than $10,000 received on any one occasion directly and not through a domestic financial institution, from any person, account, or place outside the United States; (7) records prepared or received by the dealer in foreign exchange in the ordinary course of business that would be needed to reconstruct an account and trace a check in excess of $100 deposited in such an account through its internal recordkeeping system to its depository institution, or to supply a description of such a deposited check; (8) a record of the name, address and taxpayer identification number of any person presenting a certificate of deposit for payment, as well as a description of the instrument and the date of the transaction; and (9) a system of books and records that enables the dealer in foreign exchange to prepare an accurate balance sheet and income statement. To the extent that these records include originals or copies of checks, drafts, monetary instruments, investment securities, or other similar instruments, copies of front and back of such instruments must generally be retained. [3] The required records must be maintained for five years.

b. 31 CFR 1023.410—Additional Records To Be Made and Retained by Brokers or Dealers in Securities

Until October 1, 2003, 31 CFR 1023.410(a) required a broker or dealer in securities to make a record of certain information. Until October 1, 2008, a broker or dealer in securities was required to maintain all such records, as well as a list containing the names, addresses, and account or credit line numbers of those persons from whom it had been unable to secure the required information despite reasonable efforts. The customer identification program requirement for brokers or dealers in securities has effectively superseded these requirements.

Under 31 CFR 1023.410(b), a broker or dealer in securities must retain an original or copy of: (1) Each document granting signature or trading authority over each customer's account; (2) a record of each remittance or transfer of funds, currency, checks, other monetary instruments, investment securities, or credit, of more than $10,000 to a person, account, or place outside the United States; (3) a record of each receipt of currency, other monetary instruments, investment securities, or checks, and of each transfer of funds or credit, of more than $10,000 on any one occasion, not through a domestic financial institution, from any person, account, or place outside the United States; and (4) each record described in paragraphs (1), (2), (3), (5), (6), (7), (8), and (9) of 17 CFR 240.17a–3(a), covering records to be made by certain exchange members, brokers and dealers as identified in 17 CFR 240.17a–3. To the extent that these records include originals or copies of checks, drafts, monetary instruments, investment securities, or other similar instruments, copies of front and back of such instruments must generally be retained. The required records must be maintained for five years.

Form: Not applicable.

Affected Public: Businesses or other for-profit institutions; Not-for-profit institutions.

Estimated Number of Respondents: 923 for 1506–0052; 3640 for 1506–0053.

Frequency of Response: As required.

Estimated Time per Response: 16 hours for 1506–0052; 100 hours for 1506–0053.

Estimated Total Annual Burden Hours: 14,768 for 1506–0052; 364,000 for 1506–0053.

3. Title: Purchases of bank checks and drafts, cashier's checks, money orders, and traveler's checks.

OMB Control Number: 1506–0057.

Type of Review: Extension without change of a currently approved collection.

Description: The legislative framework generally referred to as the Bank Secrecy Act (BSA) consists of the Currency and Financial Transactions Reporting Act of 1970, as amended by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act) (Pub. L. 107–56) and other legislation. The BSA is codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, 31 U.S.C. 5311–5314 and 5316–5332, and notes thereto, with implementing regulations at 31 CFR Chapter X.

The BSA authorizes the Secretary of the Treasury, inter alia, to require financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities, to protect against international terrorism, and to implement anti-money laundering (AML) programs and compliance procedures. Regulations implementing Title II of the BSA appear at 31 CFR Chapter X.

The BSA prohibits financial institutions from issuing any ''bank check, cashier's check, traveler's check, or money order to any individual in connection with a transaction or group of such contemporaneous transactions which involves United States coins or currency (or such other monetary instruments as the Secretary may prescribe) in amounts or denominations of $3,000 or more'' unless the individual either has a verified transaction account with the financial institution or furnishes the financial institution with the information required by regulations and that information is verified and recorded by the financial institution; financial institutions must record the method of account verification or the information required to be furnished. To implement these requirements, FinCEN issued a regulation requiring financial institutions to maintain records of the issuance or sale of bank checks and drafts, cashier's checks, money orders, and traveler's checks. The regulation on its face applies to all financial institutions as defined in 31 CFR 1010.100(t). However, as a practical matter banks and money services businesses (MSBs) are the types of financial institutions most likely to be issuing or selling bank checks and drafts, cashier's checks, money orders, and traveler's checks.

Under 31 CFR 1010.415, financial institutions are required to maintain records of certain information related to the issuance or sale of bank checks and drafts, cashier's checks, money orders, and traveler's checks when the issuance or sale involves currency between $3,000–$10,000, inclusive, to any individual purchaser of one or more of these instruments. Under 31 CFR 1010.415(a)(1)(i), if the purchaser has a deposit account with the financial institution, the financial institution is required to maintain records of: (A) The name of the purchaser; (B) the date of purchase; (C) the type(s) of instrument(s) purchased; (D) the serial number(s) of each of the instrument(s) purchased; and (E) the amount in dollars of each of the instrument(s) purchased. Under 31 CFR 1010.415(a)(1)(ii), the financial institution must also verify that the individual is a deposit accountholder or must verify the individual's identity.

Under 31 CFR 1010.415(a)(2)(i), if the purchaser does not have a deposit account with the financial institution, the financial institution must maintain a record of: (A) The name and address of the purchaser; (B) the social security

number of the purchaser, or if the purchaser is an alien and does not have a social security number, the alien identification number; (C) the date of birth of the purchaser; (D) the date of the purchase; (E) the type(s) of instrument(s) purchased; (F) the serial number(s) of the instrument(s) purchased; and (G) the amount in dollars of each of the instrument(s) purchased. Under 31 CFR 1010.415(a)(2)(ii), the financial institution must also verify the purchaser's name and address by examination of a document which is normally acceptable as a means of identification when cashing checks for nondepositors and which contains the name and address of the purchaser, and must record the specific identifying information.

Under 31 CFR 1010.415(b), financial institutions must treat contemporaneous purchases of the same or different types of instruments totaling $3,000 or more as one purchase. Multiple purchases during one business day totaling $3,000 or more must be treated as one purchase if an individual employee, director, officer, or partner of the financial institution has knowledge that these purchases have occurred.

Under 31 CFR 1010.415(c), financial institutions must retain all required records for a period of five years and make those records available to the Secretary upon request at any time.

Form: Not applicable.

Affected Public: Businesses or other for-profit institutions; Not-for-profit institutions.

Estimated Number of Respondents: 15,677.

Frequency of Response: As required.

Estimated Time per Response: 7.5 hours.

Estimated Total Annual Burden Hours: 117,578 hours.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: August 3, 2021.

Molly Stasko,

Treasury PRA Clearance Officer.

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Part II

Securities and Exchange Commission

Order Granting Conditional Substituted Compliance in Connection With Certain Requirements Applicable to Non-U.S. Security-Based Swap Dealers and Major Security-Based Swap Participants Subject to Regulation in the United Kingdom; Notice

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92529; File No. S7–04–21]

Order Granting Conditional Substituted Compliance in Connection With Certain Requirements Applicable to Non-U.S. Security-Based Swap Dealers and Major Security-Based Swap Participants Subject to Regulation in the United Kingdom

July 30, 2021.

I. Overview

The United Kingdom Financial Conduct Authority (''FCA'') has submitted a ''substituted compliance'' application (''FCA Application'') requesting that the Securities and Exchange Commission determine, pursuant to the Securities Exchange Act of 1934 (''Exchange Act'') rule 3a71–6,[1] that security-based swap dealers and major-security based swap participants (''SBS Entities'') subject to regulation in the United Kingdom (''UK'') conditionally may satisfy requirements under the Exchange Act by complying with comparable UK requirements.[2] The FCA Application sought substituted compliance in connection with certain Exchange Act requirements related to risk control; capital and margin; internal supervision and compliance; counterparty protection; and record keeping, reporting, notification, and securities counts.[3] The FCA Application included comparability analyses between the relevant requirements in Exchange Act section 15F and the rules and regulations thereunder and applicable UK law,[4] as well as information regarding UK supervisory and enforcement frameworks.

On April 5, 2021, the Commission issued a notice of the FCA Application, accompanied by a proposed order to grant substituted compliance with conditions in connection with the FCA Application (''proposed Order'').[5] The proposed Order incorporated a number of conditions to tailor the scope of substituted compliance consistent with the prerequisite that relevant UK requirements produce regulatory outcomes that are comparable to relevant requirements under the Exchange Act.

As discussed below, the Commission is adopting a final order (''Order'') that has been modified from the proposed Order in certain respects to address commenter concerns and to make clarifying changes.

II. Substituted Compliance Framework and Prerequisites

A. Substituted Compliance Availability and Purpose

As discussed in the UK Substituted Compliance Notice and Proposed Order, Exchange Act rule 3a71–6 provides a framework whereby non-U.S. SBS Entities may satisfy certain requirements under Exchange Act section 15F by complying with comparable regulatory requirements of a foreign jurisdiction.[6] Because substituted compliance does not constitute exemptive relief, but instead provides an alternative method by which non-U.S. SBS Entities may comply with applicable Exchange Act requirements, the non-U.S. SBS Entities would remain subject to the relevant requirements under section 15F. The Commission accordingly will retain the authority to inspect, examine, and supervise those SBS Entities' compliance and take enforcement action as appropriate. Under the substituted compliance framework, failure to comply with the applicable foreign requirements and other conditions to a substituted compliance order would lead to a violation of the applicable requirements under the Exchange Act and potential enforcement action by the Commission (as opposed to automatic revocation of the substituted compliance order).

Under rule 3a71–6, substituted compliance potentially is available in connection with certain section 15F requirements,[7] but is not available in connection with antifraud prohibitions and certain other requirements under the Federal securities laws.[8] SBS Entities in the UK accordingly must comply directly with those requirements notwithstanding the availability of substituted compliance for other requirements.

The substituted compliance framework reflects the cross-border nature of the security-based swap market, and is intended to promote efficiency and competition by helping to address potential duplication and inconsistency between relevant U.S. and foreign requirements.[9] In practice, substituted compliance may be expected to help SBS Entities leverage their existing systems and practices to comply with relevant Exchange Act requirements in conjunction with their compliance with relevant foreign requirements. Market participants will begin to count security-based swap transactions toward the thresholds for registration with the Commission as an SBS Entity on August 6, 2021, and will be required to begin registering with the

[1] 17 CFR 240.3a71–6.

[2] *See* Letter from Nausicaa Delfas, Executive Director of International, FCA, dated March 19, 2021. The FCA Application is available on the Commission's website at: *https://www.sec.gov/files/uk-financial-conduct-authority-complete-application-substituted-compliance-031921.pdf.*

[3] ''Risk control'' includes requirements related to internal risk management, trade acknowledgment and verification, portfolio reconciliation and dispute resolution, portfolio compression, and trading relationship documentation; ''capital and margin'' includes requirements related to capital applicable to security-based swap dealers without a prudential regulator and to margin applicable to SBS Entities without a prudential regulator; ''internal supervision and compliance'' includes requirements related to diligent supervision, conflicts of interest, information gathering under Exchange Act section 15F(j), 15 U.S.C. 78*o*–10(j), and chief compliance officers; ''counterparty protection'' includes requirements related to disclosure of material risks and characteristics and material incentives or conflicts of interest, ''know your counterparty,'' suitability of recommendations, fair and balanced communications, disclosure of daily marks, and disclosure of clearing rights; and ''record keeping, reporting, notification, and securities counts'' includes requirements related to making and keeping current certain prescribed records, preservation of records, reporting, notification, and securities counts.

[4] Though the UK ceased to be a member of the European Union (''EU'') on January 31, 2020, market participants in the UK remain subject to UK requirements implemented pursuant to EU directives, and to EU regulations that have been added to UK law. In adding EU regulations to UK law, the UK in some cases has adopted UK versions of these regulations that differ from the original EU versions ''as necessary to account for the effects of Brexit.'' *See* FCA Application Appendix A at 7. The Commission has reviewed the FCA Application in light of the UK versions of these regulations.

[5] *See* Exchange Act Release No. 91476 (Apr. 5, 2021), 86 FR 18378 (Apr. 8, 2021) (''UK Substituted Compliance Notice and Proposed Order'').

[6] *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18378; *see also* Exchange Act Release No. 90378 (Nov. 9, 2020), 85 FR 72726, 72727 (Nov. 13, 2020) (''German Substituted Compliance Notice and Proposed Order''); Exchange Act Release No. 90765 (Dec. 22, 2020), 85 FR 85686 (Dec. 29, 2020) (''German Substituted Compliance Order''); Exchange Act Release No. 90766 (Dec. 22, 2020), 85 FR 85720 (Dec. 29, 2020) (''French Substituted Compliance Notice and Proposed Order''); Exchange Act Release No. 91477 (Apr. 5, 2021), 86 FR 18341 (Apr. 8, 2021) (''French Substituted Compliance Re-Opening Release''); Exchange Act Release No. 92484 (Jul. 23, 2021) (''French Substituted Compliance Order'').

[7] *See* Exchange Act rule 3a71–6(d); *see also* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18378.

[8] *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18378 n.5 (addressing unavailability of substituted compliance in connection with certain information-related requirements under section 15F, as well as provisions related to anti-fraud, transactions with counterparties that are not eligible contract participants, segregation of customer assets, required clearing upon counterparty election, regulatory reporting and public dissemination, SBS Entity registration, and registration of offerings).

[9] *See generally* Exchange Act Release No. 77617 (Apr. 14, 2016), 81 FR 29960, 30073 (May 13, 2016) (''Business Conduct Adopting Release'') (stating that U.S. security-based swap regulation has ''the potential to lead to requirements that are duplicative of or in conflict with applicable foreign business conduct requirements, even when the two sets of requirements implement similar goals and lead to similar results'').

Commission on November 1, 2021.[10] Substituted compliance should assist relevant non-U.S. security-based swap market participants in preparing for registration.

B. Specific Prerequisites

1. Comparability of Regulatory Outcomes

Rule 3a71–6, adopted by the Commission in 2016, describes the requirements for the Commission to make a substituted compliance determination. Under that rule, the Commission must determine that the analogous foreign requirements are comparable to otherwise applicable requirements under the Exchange Act (*i.e.,* the relevant requirements in the Exchange Act and the rules and regulations thereunder), after accounting for factors such as ''the scope and objectives of the relevant foreign regulatory requirements'' and ''the effectiveness of the supervisory compliance program administered, and the enforcement authority exercised'' by the foreign authority.[11] The comparability assessments are to be based on a ''holistic approach'' that ''will focus on the comparability of regulatory outcomes rather than predicating substituted compliance on requirement-by-requirement similarity.'' [12]

2. Memorandum of Understanding

Exchange Act rule 3a71–6(a)(2)(ii) further predicates the availability of substituted compliance on the Commission having entered into a memorandum of understanding and/or other arrangement with the relevant foreign financial regulatory authority or authorities ''addressing supervisory and enforcement cooperation and other matters arising under the substituted compliance determination.'' [13] The FCA Application asked the Commission to permit certain entities regulated and supervised by both the FCA and the UK's Prudential Regulation Authority (''PRA'') to use substituted compliance. Accordingly, the Commission recently entered into a memorandum of understanding with the FCA and the Bank of England (including in its capacity as the PRA), thus satisfying this prerequisite.[14]

3. ''Adequate Assurances''

A foreign financial regulatory authority may submit a substituted compliance application only if the authority provides ''adequate assurances'' that no law or policy would impede the ability of any entity that is directly supervised by the authority and that may register with the Commission ''to provide prompt access to the Commission to such entity's books and records or to submit to onsite inspection or examination by the Commission.'' [15] In the UK Substituted Compliance Notice and Proposed Order, the Commission stated that the FCA had satisfied this prerequisite in the Commission's preliminary view, taking into account information and representations that the FCA provided regarding certain UK requirements that are relevant to the Commission's ability to inspect, and access the books and records of, firms using substituted compliance pursuant to the Order.[16] The Commission received no comments on this preliminary view and has not changed its view.

C. Commenter Views

1. Prerequisites to Substituted Compliance

One commenter stated that the Commission should make a positive substituted compliance determination only when the Commission determines that granting substituted compliance promotes the protection of the U.S. financial system.[17] The commenter also stated that grants of substituted compliance must be predicated on a ''well-supported, evidence-based determination'' that the relevant foreign requirements will produce ''substantially similar'' regulatory outcomes.[18] Congress gave the Commission authority in Title VII to implement a security-based swap framework to address the potential effects of security-based swap activity on U.S. market participants, the financial stability of the United States, the transparency of the U.S. financial system and the protection of counterparties.[19] When adopting rules regarding the application of Title VII's definitions of ''security-based swap dealer'' and ''major security-based swap participant'' in the cross-border context, the Commission was guided by the purposes of Title VII and the applicable requirements of the Exchange Act, which include consideration of not only risk to the U.S. financial system but also other factors such as counterparty protection, transparency, prevention of evasion, economic impacts and consultation and coordination with other U.S. financial regulatory authorities and foreign financial regulatory authorities.[20] In its

[10] *See* ''Key Dates for Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants,'' available at: *https://www.sec.gov/page/key-dates-registration-security-based-swap-dealers-and-major-security-based-swap-participants.*

[11] *See* Exchange Act rule 3a71–6(a)(2).

[12] *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18380; *see also* Business Conduct Adopting Release, 81 FR at 30078–79 (recognizing that ''different regulatory systems may be able to achieve some or all of those regulatory outcomes by using more or fewer specific requirements than the Commission, and that in assessing comparability the Commission may need to take into account the manner in which other regulatory systems are informed by business and market practices in those jurisdictions''). The Commission's assessment of a foreign authority's supervisory and enforcement effectiveness—as part of the broader comparability analysis—would be expected to consider not only overall oversight activities, but also oversight specifically directed at conduct and activity relevant to the substituted compliance determination. ''For example, it would be difficult for the Commission to make a comparability determination in support of substituted compliance if oversight is directed solely at the local activities of foreign security-based swap dealers, as opposed to the cross-border activities of such dealers.'' Business Conduct Adopting Release, 81 FR at 30079 (footnote omitted). In the UK Substituted Compliance Notice and Proposed Order, the Commission preliminarily concluded that this comparability prerequisite was met in connection with a number of requirements under the Exchange Act, in some cases with the addition of conditions to help ensure the comparability of regulatory outcomes.

[13] Exchange Act rule 3a71–6(a)(2)(ii).

[14] The Commission expects to publish a copy of the memorandum of understanding on its website at *www.sec.gov* under the ''Substituted Compliance'' tab, which is located on the ''Security-Based Swap Markets'' page in the Division of Trading and Markets section of the site.

[15] *See* Exchange Act rule 3a71–6(c)(3).

[16] *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18379 n.8.

[17] *See* Letter from Dennis M. Kelleher, President and CEO, Stephen Hall, Legal Director and Securities Specialist, and Jason Grimes, Senior Counsel, Better Markets, Inc. (May 3, 2021) (''Better Markets Letter'') at 3–4. Comments may be found on the Commission's website at: *https://www.sec.gov/comments/s7-04-21/s70421.htm.*

[18] *See* Better Markets Letter at 4.

[19] *See* Exchange Act Release No. 72472 (June 25, 2014), 79 FR 47278, 47286 (Aug. 12, 2014) (''Cross-Border Entity Definitions Adopting Release'') (citing Pub. L. 111–203, Preamble (stating that the Dodd-Frank Act was enacted ''[t]o promote the financial stability of the United States by improving accountability and transparency in the financial system, to end 'too big to fail', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes''); Public Law 111–203, sections 701–774 (providing for, among other things, a comprehensive new regulatory framework for security-based swaps, including by: (i) Providing for the registration and comprehensive regulation of security-based swap dealers and major security-based swap participants; (ii) imposing clearing and trade execution requirements on security-based swaps, subject to certain exceptions; and (iii) creating real-time reporting and public dissemination regimes for security-based swaps)).

[20] *See* Cross-Border Entity Definitions Adopting Release, 79 FR at 47292 (purposes of Title VII include consideration of risk to the U.S. financial system and promotion of transparency in the U.S. financial system); Exchange Act section 30(c), 15 U.S.C. 78dd(c) (Commission rulemaking authority to prevent evasion of Title VII); Exchange Act section 3(f), 15 U.S.C. 78c(f) (requirement to consider whether certain Commission rulemaking

Continued

registration rules for these SBS Entities, the Commission determined that a foreign market participant whose U.S.-nexus security-based swap activity qualifies it as an SBS Entity would be required to register as such, without substituted compliance available for registration requirements.[21] The Commission concluded that obliging these foreign persons to register serves an important regulatory function that would be significantly impaired by permitting substituted compliance for registration requirements.[22] This registration requirement thus puts into practice the Commission's consideration of the purposes of Title VII and the applicable requirements of the Exchange Act in its adoption of the definitions of ''security-based swap dealer'' and ''major security-based swap participant'' in the cross-border context, and ensures that such firms will be subject to the jurisdiction of the Commission. Moreover, the rules applicable to these registered foreign SBS Entities reflect the Commission's best judgment for how to achieve the purposes of Title VII and satisfy the requirements of the Exchange Act, including the Commission's consideration of risk to the U.S. financial system.[23] The Commission's rules for registered foreign SBS Entities thus reflect the Commission's consistent consideration of all of the purposes of Title VII and relevant parts of the Exchange Act, first in the context of its adoption of the definitions of ''security-based swap dealer'' and ''major security-based swap participant,'' then in its decision to require foreign SBS Entities to register and finally in its adoption of cross-border rules for SBS Entities pursuant to Title VII.

When making a substituted compliance determination, the Commission's task, as outlined in rule 3a71–6, is to evaluate whether the relevant foreign requirements are comparable to Title VII-based requirements and relevant provisions of the Exchange Act. The comparability assessments are to be based on a ''holistic, outcomes-oriented framework,'' [24] which in the Commission's view—consistent with the commenter's view—includes ''inquiry regarding whether foreign requirements adequately reflect the interests and protections associated with the particular Title VII requirement.'' [25] Also consistent with the commenter's view, the Commission's comparability assessments reflect a close reading of the relevant UK requirements. In addition, the Commission recognizes that ''other regulatory regimes will have exclusions, exceptions, and exemptions that may not align perfectly with the corresponding requirements under the Exchange Act.'' [26] Accordingly, where UK requirements produce comparable outcomes—with or without conditions as discussed in part III.B below—notwithstanding those particular differences, and taking into account the scope and objectives and the effectiveness of supervision and enforcement of those requirements, the Commission has determined that the relevant UK requirements are comparable and has made a positive substituted compliance determination. Conversely, where those exclusions, exemptions, and exceptions lead to outcomes that are not comparable—taking into account potential conditions—the Commission has not made a positive substituted compliance determination.

The Commission also is including certain conditions in the Order. The commenter stated that the inclusion of conditions should be viewed as an indication that the requirements of substituted compliance have not been met and as creating ''ad hoc, custom-made rules to supplement inadequate rules of other jurisdictions.'' [27] Pursuant to rule 3a71–6, the Commission may make a conditional or unconditional substituted compliance determination.[28] As described in greater detail in part III.B below, many of the conditions in the Order are designed to make substituted compliance available only when the relevant UK requirements in fact apply to the relevant security-based swap activity in a way that promotes comparable regulatory outcomes. The commenter correctly states that the Order also employs conditions to promote comparability. For example, substituted compliance in connection with Exchange Act rule 15Fi–3(c) [29] dispute reporting provisions is conditioned in part on the Covered Entity (as such term is defined in the Order) providing the Commission with the dispute reports required under UK law.[30] Consistent with rule 3a71–6, conditioning substituted compliance on the Commission receiving those reports helps to promote timely notice of disputes to support a comparable regulatory outcome.

2. Ensuring Ongoing Appropriateness of Substituted Compliance

One commenter stated that the Commission ''must ensure, on an ongoing basis, that each grant of substituted compliance remains appropriate over time.'' The commenter added that substituted compliance orders and memoranda of understanding should incorporate the obligation that the Commission be apprised of the activities and results of the jurisdiction's supervision and enforcement programs, and to immediately apprise the Commission of

actions would promote efficiency, competition, and capital formation); Exchange Act section 23(a)(2), 15 U.S.C. 78w(a)(2) (requirement to consider the impact of Exchange Act rules and regulations on competition and prohibition on adopting rules or regulations that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act); Dodd-Frank Act section 712(a)(2), 15 U.S.C. 8302 (requirement to consult and coordinate with U.S. financial regulatory authorities on Title VII rulemaking); Dodd-Frank Act section 752(a), 15 U.S.C. 8325 (requirement to consult and coordinate, as appropriate, with foreign regulatory authorities on the establishment of consistent international standards with respect to the regulation of security-based swaps and security-based swap entities)); *see also* Exchange Act Release No. 77104 (Feb. 10, 2016), 81 FR 8598, 8599 (Feb. 19, 2016) (''ANE Adopting Release'') (''A key part of [the Title VII] framework is the regulation of security-based swap dealers, which may transact extensively with counterparties established or located in other jurisdictions and, in doing so, may conduct sales and trading activity in one jurisdiction and book the resulting transactions in another. These market realities and the potential impact that these activities may have on U.S. persons and potentially the U.S. financial system have informed our consideration of these rules.''); Exchange Act Release No. 87780 (Dec. 18, 2019), 85 FR 6270, 6272 and n.26 (Feb. 4, 2020) (''Cross-Border Adopting Release'') (''[T]he Title VII SBS Entity requirements . . . serve a number of regulatory purposes apart from mitigating counterparty and operational risks, 'including enhancing counterparty protections and market integrity, increasing transparency, and mitigating risk to participants in the financial markets and the U.S. financial system more broadly.' '' ''The Commission's actions to mitigate the negative consequences potentially associated with the various uses of [the 'arranged, negotiated, or executed' test] accordingly are designed to do so while preserving the important Title VII interests that the Commission advanced when it incorporated the test into the various cross-border rules.'') (internal citations omitted).

[21] *See* Exchange Act Release No. 75611 (Aug. 5, 2015), 80 FR 48964, 48972–73 (Aug. 14, 2015) (''Registration Adopting Release'').

[22] *See* Registration Adopting Release, 80 FR at 48972–73.

[23] *See* Cross-Border Entity Definitions Adopting Release, 79 FR at 47286 n.65 (''Future rulemakings that depend on [the definitions of 'security-based swap dealer' and 'major security-based swap participant'] are intended to address the transparency, risk, and customer protection goals of Title VII.'').

[24] *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18380; *see also* Business Conduct Adopting Release, 81 FR at 30076, 30078–79.

[25] *See* Business Conduct Adopting Release, 81 FR at 30067.

[26] *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18380; *see also* Business Conduct Adopting Release, 81 FR at 30076, 30078–79.

[27] *See* Better Markets Letter at 4.

[28] *See* Exchange Act rule 3a71–6(a)(1).

[29] 17 CFR 240.15Fi–3(c).

[30] *See* para. (b)(3)(ii) of the Order.

material changes to the foreign regulatory regime.[31]

The Commission concurs that the ongoing availability of substituted compliance should account for relevant changes in the foreign jurisdiction's regulatory requirements and in the effectiveness of that jurisdiction's supervisory and enforcement program.[32] Accordingly, the Commission and the FCA and the Bank of England in its capacity as the PRA recently entered into a substituted compliance memorandum of understanding that addresses ongoing information regarding potential changes to substantive legal requirements and supervisory and enforcement effectiveness.[33] The Commission believes that these arrangements will provide timely information to ensure that the Commission is aware of material developments that may affect the comparability of the relevant UK requirements, including the scope and objectives of those requirements and the effectiveness of the FCA and the Bank of England's supervision and enforcement programs. In response to any such developments, the Commission may amend the Order as needed to ensure that it continues to require a Covered Entity to comply with comparable UK requirements, or may withdraw the Order if the relevant UK requirements are no longer comparable.[34] Moreover, substituted compliance under the Order is conditioned on the Commission having this memorandum of understanding, or another arrangement with the FCA and the Bank of England addressing cooperation with respect to the Order, at the time the Covered Entity makes use of substituted compliance.[35] If the arrangements in the memorandum of understanding prove in practice not to provide information about relevant developments, the Commission could terminate the memorandum of understanding in accordance with its terms and/or amend or withdraw the Order.[36] If the Commission, the FCA, or the Bank of England terminates the memorandum of understanding, Covered Entities would not be able to rely on substituted compliance under the Order to satisfy Exchange Act compliance obligations that arise after the termination takes effect. For these reasons, in the Commission's view, the Order's memorandum of understanding condition, coupled with the ongoing information sharing provisions in the memorandum of understanding with the FCA and the Bank of England, establishes the commenter's suggested mechanism to apprise the Commission of changes that may affect the ongoing appropriateness of substituted compliance.

III. General Availability of Substituted Compliance Under the Order

A. Covered Entities

1. Proposed Approach

Under the proposed Order, the definition of ''Covered Entity'' specified which entities could make use of substituted compliance. Consistent with the availability of substituted compliance under Exchange Act rule 3a71–6, the proposed definition in part would limit the availability of substituted compliance to registered SBS Entities that are not U.S. persons. In addition, to help ensure that firms that rely on substituted compliance are subject to relevant UK requirements and oversight, the proposed definition would require that a Covered Entity is a ''MiFID investment firm'' or ''third country investment firm,'' as such terms are defined in the FCA Handbook Glossary, that (a) has permission from the FCA or PRA under Part 4A of the UK's Financial Services and Markets Act 2000 (''FSMA'') to carry on regulated activities relating to investment services and activities in the UK; (b) is supervised by the FCA under the fixed supervision model; and (c) if the firm is a PRA-authorized person, also is supervised by the PRA as a Category 1 firm.[37]

2. Final Provisions

Commenters did not address the proposed ''Covered Entity'' definition, and the Commission is issuing the definition as proposed.[38] Substituted compliance accordingly is available only to non-U.S. SBS Entities that have the relevant UK regulatory permission and are subject to UK oversight.

B. Additional General Conditions and Other Prerequisites

1. Proposed Approach

The proposed Order incorporated a number of additional general conditions and other prerequisites, to help ensure that the relevant UK requirements that form the basis for substituted compliance in practice will apply to the Covered Entity's security-based swap business and activities, and to promote the Commission's oversight over entities that avail themselves of substituted compliance:

- ''*Subject to and complies with*'' *applicability condition*—For each relevant section of the proposed Order, a positive substituted compliance determination would be subject to the condition that the Covered Entity be subject to and comply with the applicable UK requirements needed to establish comparability.[39]
- ''*Regulated activities*''—For each condition in the proposed Order that requires the application of, and compliance with, provisions of the Senior Management Arrangements, Systems and Controls Sourcebook of the FCA Handbook (''FCA SYSC'') 4, 5, 6, 7, 9, and/or 10, certain parts of the PRA Rulebook and/or MLR 2017, the Covered Entity's relevant security-based swap activities must constitute ''regulated activities'' as defined for purposes of the relevant UK provisions, must be carried on by the Covered Entity from an establishment in the UK and must fall within the scope of the Covered Entity's authorization from the FCA and/or PRA to conduct regulated activities in the UK.[40]
- *UK MiFID* ''*investment services or activities*''—For each condition in the proposed Order that requires the application of, and compliance with, provisions of the Product Intervention and Product Governance Sourcebook of the FCA Handbook (''FCA PROD'') 3 and/or the UK version of Commission Delegated Regulation (EU) 2017/565

[31] *See* Better Markets Letter at 5.

[32] *See* Business Conduct Adopting Release, 81 FR at 30078–79 (stating that order conditions and memorandum of understanding were possible tools for providing that the Commission be notified of material changes).

[33] The memorandum of understanding between the Commission and the FCA and the Bank of England in part provides that the FCA and the Bank of England will provide ''ongoing information sharing'' regarding Firm Information (incorporating supervisory and related information as to the Covered Entities using substituted compliance) and regarding Regulatory Change Information (incorporating information about any material publicly available draft, proposed, or final change in law, regulation, or order of the jurisdiction of the FCA or the Bank of England that may have a material impact on the firms at issue with respect to their relevant activities). *See supra* note 14 (information on publication of memorandum of understanding with the FCA and the Bank of England).

[34] Any such amendment or withdrawal may be at the Commission's own initiative after appropriate notice and opportunity for comment. *See* Exchange Act rule 3a71–6(a)(3).

[35] *See supra* part II.B.2; para. (a)(15) of the Order.

[36] *See supra* note 14.

[37] *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18380.

[38] *See* para. (g)(1) of the Order.

[39] The Commission stated, as an example, that this proposed condition would not be satisfied when the comparable UK requirements would not apply to the security-based swap activities of a non-UK branch of a MiFID investment firm or to a third country investment firm. *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18380.

[40] *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18381.

(''UK MiFID Org Reg''), the Covered Entity's relevant security-based swap activities must constitute ''investment services or activities,'' as defined in the FCA Handbook Glossary, must be carried on by the Covered Entity from an establishment in the UK and must fall within the scope of the Covered Entity's authorization from the FCA and/or PRA to conduct regulated activities in the UK.[41]

• *UK ''MiFID or equivalent third country business''*—For each condition in the proposed Order that requires the application of, and compliance with, provisions of the Conduct of Business Sourcebook of the FCA Handbook (''FCA COBS'') 2, 4, 6, 8A, 9A, 14, and/or 14A, the Covered Entity's relevant security-based swap activities must constitute ''MiFID or equivalent third country business,'' as defined in the FCA Handbook Glossary, must be carried on by the Covered Entity from an establishment in the UK and must fall within the scope of the Covered Entity's authorization from the FCA and/or PRA to conduct regulated activities in the UK.[42]

• *UK ''designated investment business''*—For each condition in the proposed Order that requires the application of, and compliance with, provisions of FCA COBS 11, the Covered Entity's relevant security-based swap activities must constitute ''MiFID business'' that is also ''designated investment business,'' each as defined in the FCA Handbook Glossary, must be carried on by the Covered Entity from an establishment in the UK and must fall within the scope of the Covered Entity's authorization from the FCA and/or PRA to conduct regulated activities in the UK.[43]

• *UK ''MiFID business''*—For each condition in the proposed Order that requires the application of, and compliance with, provisions of the Client Asset Sourcebook of the FCA Handbook (''FCA CASS'') 6 and/or 7, the Covered Entity must not be an ''investment company with variable capital'' as defined in the FCA Handbook Glossary,[44] the Covered Entity's relevant security-based swap activities must constitute ''regulated activities'' as defined for purposes of the relevant UK provisions and ''MiFID business'' as defined in the FCA Handbook Glossary, must be carried on by the Covered Entity from an establishment in the UK and must fall within the scope of the Covered Entity's authorization from the FCA and/or PRA to conduct regulated activities in the UK.[45]

• *Activities covered by FCA SYSC 10A*—For each condition in the proposed Order that requires the application of, and compliance with, provisions of FCA SYSC 10A, the Covered Entity's relevant security-based swap activities must constitute activities described in FCA SYSC 10A.1.1(2)(a), (b) and/or (c), must be carried on by the Covered Entity from an establishment in the UK and must fall within the scope of the Covered Entity's authorization from the FCA and/or PRA to conduct regulated activities in the UK.[46]

• *UK MiFID ''clients''*—For each condition in the proposed Order that requires the application of, and compliance with, provisions of FCA CASS 6 and/or 7, FCA COBS 2, 4, 6, 8A, 9A, 11, 14, and/or 14A, FCA PROD 3, FCA SYSC 10.1.8, FCA SYSC 10A, and/or UK MiFID Org Reg, the Covered Entity's relevant counterparties (or potential counterparties) must be ''clients'' (or potential ''clients'') as defined in FCA COBS 3.2.1R.[47]

• *UK MiFID ''financial instruments''*—For each condition in the proposed Order that requires the application of, and compliance with, provisions of FCA CASS 6 and/or 7, FCA COBS 2, 4, 6, 8A, 9A, 11, 14, and/or 14A, FCA PROD 3, FCA SYSC 10A, the UK version of Market Abuse Regulation (EU) 596/2014 (''UK MAR''), the UK version of Commission Delegated Regulation (EU) 2016/958 (''UK MAR Investment Recommendations Regulation''), and/or UK MiFID Org Reg, the relevant security-based swap must be a ''financial instrument'' as defined in Part 1 of Schedule 2 of the UK Regulated Activities Order.[48]

• *UK CRD/CRR ''institution''*—For each condition in the proposed Order that requires the application of, and compliance with, provisions of the UK version of the Capital Requirements Regulation, Regulation (EU) No 575/2013 (''UK CRR''), the Covered Entity must be an ''institution'' as defined in UK CRR article 4(1)(3).[49]

• *''Common platform firm'' or ''third country firm''*—For each condition in the proposed Order that requires the application of, and compliance with, provisions of FCA SYSC 4, 5, 6, 7, 9, and/or 10, the Covered Entity must be either a ''common platform firm'' (other than a ''UCITS investment firm'') or a ''third country firm,'' each as defined in the FCA Handbook Glossary.[50]

• *''IFPRU investment firm''*—For each condition in the proposed Order that requires the application of, and compliance with, provisions of FCA SYSC 19A, the Prudential Sourcebook for Investment Firms of the FCA Handbook (''FCA IFPRU''), and/or the Prudential Sourcebook for Banks, Building Societies and Investment Firms of the FCA Handbook (''FCA BIPRU''), the Covered Entity must be an ''IFPRU investment firm'' as defined in the FCA Handbook Glossary.[51]

• *''UK bank'' or ''UK designated investment firm''*—For each condition in the proposed Order that requires the application of, and compliance with, provisions of FCA SYSC 19D and/or certain parts of the PRA Rulebook, the Covered Entity must be a ''UK bank'' or ''UK designated investment firm,'' each as defined in the FCA Handbook Glossary (in the case of chapter 19D of FCA SYSC) or in the PRA Rulebook Glossary (in the case of a part of the PRA Rulebook).[52]

• *Covered Entity's counterparties as UK EMIR ''counterparties''*—For each condition in the proposed Order that requires the application of, and compliance with, provisions of the UK version of the European Market Infrastructure Regulation (''EMIR''), Regulation (EU) No 648/2012 (''UK EMIR''), the UK version of Commission Delegated Regulation (EU) No 149/2013 (''UK EMIR RTS''), and/or the UK version of Commission Delegated Regulation (EU) 2016/2251 (''UK EMIR Margin RTS''), if the counterparty to the Covered Entity is not a ''financial counterparty'' or ''non-financial counterparty'' as defined in UK EMIR articles 2(8) or 2(9), respectively, the

[41] *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18381.

[42] *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18381. In the final Order, the Commission has corrected the typographical error in paragraph (a)(3) by changing FCA COBS 14A to 16A. *See* para. (a)(3) of the Order.

[43] *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18381.

[44] *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18381.

[45] *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18381.

[46] *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18381.

[47] *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18381. In the final Order, the Commission has corrected the typographical error in paragraph (a)(7) by changing FCA COBS 14A to 16A. *See* para. (a)(7) of the Order.

[48] *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18381–82. In the final Order, the Commission has corrected the typographical error in paragraph (a)(8) by changing FCA COBS 14A to 16A. *See* para. (a)(8) of the Order.

[49] *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18382.

[50] *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18382.

[51] *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18382.

[52] *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18382.

Covered Entity must comply with the applicable condition as if the counterparty were a financial counterparty or non-financial counterparty. If the Covered Entity reasonably determines that the counterparty conducts a financial business that would cause it to be a financial counterparty if it were UK-established and UK-authorized, then the proposed Order would require the Covered Entity to treat the counterparty as a financial counterparty; otherwise, the proposed Order would require the Covered Entity to treat the counterparty as a non-financial counterparty. In addition, the proposed Order would provide that a Covered Entity complying with UK EMIR could not apply substituted compliance by complying with third country requirements that UK authorities may determine to be equivalent to UK EMIR.[53]

• *Security-based swap status under UK EMIR*—For each condition in the proposed Order that requires the application of, and compliance with, provisions of UK EMIR, UK EMIR RTS, and/or UK EMIR Margin RTS, either: (1) The relevant security-based swap must be an ''OTC derivative'' or ''OTC derivative contract,'' as defined in UK EMIR article 2(7), that has not been cleared by a central counterparty and otherwise is subject to the provisions of UK EMIR article 11, UK EMIR RTS articles 11 through 15, and UK EMIR Margin RTS article 2; or (2) the relevant security-based swap must have been cleared by a central counterparty that has been authorized or recognized to clear derivatives contracts in the UK.[54]

• *Memorandum of understanding*—Consistent with the requirements of rule 3a71–6 and the Commission's need for access to information regarding registered entities, substituted compliance under the proposed Order would be conditioned on the Commission having an applicable memorandum of understanding or other arrangement with the FCA and the PRA addressing cooperation with respect to the Order at the time the Covered Entity makes use of substituted compliance.[55]

• *Notice of reliance on substituted compliance*—To assist the Commission's oversight of firms that avail themselves of substituted compliance, a Covered Entity relying on the Order would have to provide notice of its intent to rely on the Order by notifying the Commission in writing. In the notice, the Covered Entity would need to identify each specific substituted compliance determination in the Order for which the Covered Entity intends to apply substituted compliance. The Covered Entity would have to promptly update the notice if it intends to modify its reliance on substituted compliance.[56]

2. Commenter Views and Final Provisions

One commenter expressed general support for several of the general conditions, subject to certain changes and clarifications.[57] Another commenter stated that, if the Commission makes a positive substituted compliance determination, it must ensure that the conditions in the proposed Order are applied ''with full force and without exception or dilution.[58] The Commission is issuing the general conditions largely as proposed,[59] and details its responses to the requested changes and clarifications below. In the Commission's view, the conditions are structured appropriately to predicate a positive substituted compliance determination on the applicability of relevant UK requirements needed to establish comparability, as well as on the continued effectiveness of the requisite memorandum of understanding, and the provision of notice to the Commission regarding the Covered Entity's intent to rely on substituted compliance.

a. UK Territorial Condition

A commenter stated that the Commission should delete the requirement in paragraphs (a)(1) through (a)(6) of the Order that, for purposes of certain UK requirements, a Covered Entity's relevant security-based swap activities be ''carried on . . . from an establishment in the United Kingdom.'' [60] The commenter stated that this UK territorial aspect of the conditions was not necessary because some of the UK requirements listed in these conditions apply to a Covered Entity with respect to activities wherever they are carried on.[61] The commenter suggested that the Commission instead add a new general condition that would require a Covered Entity, when relying on a part of the Order that requires it to be subject to and comply with the UK requirements listed in paragraphs (a)(1) through (a)(6) of the Order, to carry on the relevant security-based swap activities from a UK establishment, but only to the extent that those UK requirements ''are limited in their applicability to activity carried on from [a UK establishment].'' [62] The commenter did not identify any specific instances in which it believes that a Covered Entity would carry on a particular security-based swap activity outside the United Kingdom and that activity would be subject to the UK requirements listed in paragraphs (a)(1) through (a)(6) of the Order.

Many, though not all, of these UK requirements contain clearly articulated scoping provisions that apply the requirements to Covered Entities only when the relevant activity is carried on from an establishment in the UK.[63] Other requirements contain more complex scoping provisions, and the Commission is aware that in limited cases it is possible for these requirements to apply to some aspects of a Covered Entity's activities carried on from an establishment outside the UK. For example, the FCA commented that certain organizational requirements generally apply in a prudential context to activities wherever they are carried on.[64] In addition, PRA General

[53] *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18382.

[54] *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18382.

[55] *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18382. The Commission has entered into a memorandum of understanding with the FCA and the PRA to address substituted compliance cooperation. *See supra* note 14. Consistent with the final Order, Covered Entities must ensure that this memorandum of understanding remains in place at the time the Covered Entity relies on substituted compliance.

[56] *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18382.

[57] *See* Letter from Kyle L. Brandon, Managing Director, Head of Derivatives Policy, SIFMA (May 3, 2021) (''SIFMA 5/3/2021 Letter'') at 3–9.

[58] *See* Better Markets Letter at 2.

[59] *See* paras. (a)(1) through (16) of the Order. The Commission is correcting typographical errors in paragraphs (a)(3), (a)(7), and (a)(8) of the Order by replacing references to FCA COBS 14A with references to FCA COBS 16A.

[60] *See* SIFMA 5/3/2021 Letter at 3–4.

[61] *See* SIFMA 5/3/2021 Letter at 3.

[62] *See* SIFMA 5/3/2021 Letter at 3–4 and Appendix A. Together with its request to amend the UK territorial condition in paragraphs (a)(1) through (a)(6) of the Order, the commenter requested that the Commission delete, where feasible, references to compliance with territorially limited UK laws as conditions to substituted compliance. *See* SIFMA 5/3/2021 Letter at 4. The Commission addresses this additional request below in the relevant parts of this release.

[63] *See* FCA SYSC 1 Annex 1 2.15R (The common platform requirements, which include FCA SYSC 4, 5, 6, 7, and 10, apply in relation to activities carried on from an establishment in the UK.); FCA SYSC 10A.1.1R(2) (FCA SYSC 10A applies only to activities carried on from an establishment in the UK.); Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (''MLR 2017'') Regulation 8 (The relevant requirements of MLR 2017 apply to persons acting in the course of business carried on by them in the UK.); FCA CASS 1.3.2R (FCA CASS 6 and 7 apply to regulated activities carried on from an establishment in the UK.).

[64] *See* comments from FCA (May 20, 2021) (''FCA Comments'') (noting that common platform organizational requirements, including FCA SYSC 4 to 9, and parallel PRA General Organisational Requirements, generally apply in a prudential context to activities wherever they are carried on).

Organisational Requirements, PRA Recordkeeping Rules, PRA Risk Control Rules, and PRA Remuneration Rules generally apply to a Covered Entity that is a ''CRR firm'' with respect to activities carried on from a UK establishment,[65] but also apply to activities anywhere in the world ''in a prudential context,'' [66] which the PRA defines to mean when the Covered Entity's activities have, or might reasonably be regarded as likely to have, a negative effect on the Covered Entity's safety and soundness or its ability to continue to meet certain other UK regulatory tests.[67] The Commission cannot, however, determine *ex ante* whether a Covered Entity's particular activity outside the UK would fall within these limited wider scope provisions. The commenter also did not identify any circumstances that would trigger the limited wider scope of these provisions. Moreover, it is unclear whether any such wider scope even would be relevant in the context of the Order or, if so, how that wider scope would impact the operation of the Order in practice. For these reasons, the Commission is retaining the requirement in paragraph (a)(1) of the Order for the Covered Entity to carry on the relevant activities from an establishment in the UK.[68]

Other UK requirements listed in paragraphs (a)(2) through (a)(4) of the Order apply to limited activities outside the UK for which a Covered Entity might apply substituted compliance. UK MiFID Org Reg generally applies to a Covered Entity that is a third country investment firm only when it carries on the relevant security-based swap activity from an establishment in the UK,[69] but provisions of UK MiFID Org Reg in some instances can apply to a broader range of activities if the Covered Entity is a MiFID investment firm. Similarly, FCA PROD 3 and FCA COBS generally apply to a Covered Entity with respect to activities carried on from an establishment in the UK,[70] but also apply to a Covered Entity with respect to certain activities with a client in the UK that are carried on from an establishment outside the UK.[71] The Commission is amending the general conditions in paragraphs (a)(2) through (a)(4) of the Order to provide that a Covered Entity's relevant security-based swap activities must be either carried on by the Covered Entity from an establishment in the UK or from any other place that would cause UK MiFID Org Reg, FCA PROD 3, and/or the relevant provision(s) of FCA COBS, as applicable, to apply to those activities.

In applying these amended general conditions, a Covered Entity still must satisfy all of the applicable general conditions, as well as the other applicable provisions of the Order, relating to a particular Exchange Act requirement for which it applies substituted compliance. A Covered Entity will satisfy the conditions of the Order only when it is subject to and complies with all of the comparable UK requirements listed in the relevant provision(s) of the Order. If any one of these comparable UK requirements is subject to a general condition with a territorial limitation, the relevant security-based swap activity for which the Covered Entity applies substituted compliance would have to satisfy that territorial limitation, even if another of the comparable UK requirements applies to a wider scope of activities. As a result, in these instances a Covered Entity would be able to use substituted compliance only for security-based swap activities that satisfy the territorial limitation.

b. Scope of Substituted Compliance

The same commenter requested that the Commission delete, where feasible, references in the Order to territorially limited UK requirements.[72] Where these deletions are not feasible, the commenter requested that the Commission confirm that, in relation to entity-level Exchange Act requirements, a Covered Entity may (a) rely on substituted compliance for its relevant security-based swap activities carried on from an establishment in the UK and (b) comply with Exchange Act requirements or another applicable substituted compliance order for its relevant security-based swap activities carried on from an establishment outside the UK.[73] The Commission is addressing here the commenter's request for clarification of the availability of substituted compliance for entity-level Exchange Act requirements, and is addressing the commenter's various requested deletions below in the relevant parts of this release.[74]

In the proposed Order, the Commission stated that a Covered Entity applying substituted compliance for one or more entity-level Exchange Act requirements (including risk control, capital, margin, internal supervision and chief compliance officer requirements, as well as recordkeeping and reporting requirements other than those linked to counterparty protection requirements) would have to apply substituted compliance at an entity level, *i.e.,* to all of its activities subject to that particular Exchange Act requirement.[75] By contrast, the Commission stated that a Covered Entity applying substituted compliance for one or more transaction-level Exchange Act requirements (including counterparty protection requirements, as well as recordkeeping and reporting requirements linked to them) could choose to apply substituted compliance under the proposed Order for some activities and comply directly with Exchange Act requirements for other activities.[76] The proposed Order thus would provide substituted compliance for transaction-level Exchange Act requirements ''in relation to [a specific security-based swap, counterparty, recommendation, or communication];'' the proposed Order did not include this proviso in relation to substituted compliance for entity-level Exchange Act requirements.[77] The Commission proposed this approach in the context of assisting Covered Entities in choosing between applying substituted compliance pursuant to the Order or complying directly with relevant Exchange Act requirements. This approach did not address, and does not

[65] *See* PRA General Organisational Requirements Rule 1.1(1); PRA Recordkeeping Rule 1.1(1); PRA Risk Control Rule 1.1(1); *see also* PRA Remuneration Rule 1.1(1)(a) (PRA Remuneration Rules apply to a CRR firm in relation to its ''UK activities.'').

[66] *See* PRA General Organisational Requirements Rule 1.1(3); PRA Recordkeeping Rule 1.1(3); PRA Risk Control Rule 1.1(3); PRA Remuneration Rule 1.1(c).

[67] *See* PRA Rulebook Glossary.

[68] The Commission also is retaining the same requirement in paragraphs (a)(5) and (a)(6) of the Order, as the UK requirements referenced in those paragraphs apply only to activities carried on from an establishment in the UK.

[69] *See* General Provisions Sourcebook of the FCA Handbook (''FCA GEN'') 2.2.22AR.

[70] *See* FCA PROD 1.3.4R.

[71] *See* FCA PROD 1.3.5R(1) (general UK territorial rule for FCA PROD 3); FCA COBS 4.1.8R (general UK territorial rule for FCA COBS 4) (citing FCA COBS 1.1.1R); *but see* FCA PROD 1.3.5(2) (exclusions from FCA PROD 3 for activities from an establishment outside the UK); FCA COBS 1 Annex 1 Part 2 2.1R (exclusions from FCA COBS 4 for activities from an establishment outside the UK).

[72] *See* SIFMA 5/3/2021 Letter at 4.

[73] *See* SIFMA 5/3/2021 Letter at 4.

[74] *See infra* parts IV.B, V.B, VI.B, VII.B, and VIII.B.

[75] *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18384 (risk control requirements), 18386–87 (capital and margin requirements), 18389–90 (internal supervision and chief compliance officer requirements), 18395–96 (recordkeeping, reporting, notification, and securities count requirements other than those linked to counterparty protection requirements).

[76] *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18392 (counterparty protection requirements), 18396 (recordkeeping and reporting requirements linked to counterparty protection requirements).

[77] *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18413–20.

apply to, security-based swap business for which a Covered Entity could not apply substituted compliance under the proposed Order because the Covered Entity is not subject to the relevant UK requirements listed in the Order with respect to that business.[78]

Consistent with the commenter's request, for any particular set of entity-level Exchange Act requirements,[79] a Covered Entity must choose either (1) to apply substituted compliance pursuant to the Order with respect to all security-based swap business that is subject to the relevant UK requirements listed in the Order and that can satisfy any general conditions related to those UK requirements (including any applicable UK territorial condition) (''UK business''), or (2) to comply directly with the Exchange Act with respect to all UK business. A Covered Entity may not choose to apply substituted compliance for those entity-level requirements in respect of some of its UK business and comply directly with the Exchange Act in respect of another part of its UK business. However, if the conditions in the relevant part of the Order require the Covered Entity to comply with UK requirements that are subject to a UK territorial condition, the Covered Entity's UK business would not include business carried on from an establishment outside the UK, as that business would not be subject to the relevant UK requirements and would not satisfy the applicable UK territorial condition. Rather, the Covered Entity could apply substituted compliance for the Exchange Act requirements in that part of the Order so long as it applies substituted compliance for all of its business that is subject to the relevant UK requirements and can satisfy any general conditions related to those UK requirements, which in this example would include only business that is carried on from an establishment in the UK and that otherwise is both subject to the relevant UK requirements and able to satisfy any other general conditions related to those requirements. Also consistent with the commenter's request, for any particular set of entity-level Exchange Act requirements, if the Covered Entity also has security-based swap business that is not subject to the relevant UK requirements[80] or that cannot satisfy an applicable general condition related to those UK requirements (including business carried on from an establishment outside the UK where the Order imposes a UK territorial condition) the Covered Entity must either comply directly with the Exchange Act for that business or comply with the terms of another applicable substituted compliance order.[81] Consistent with the proposed Order, for transaction-level Exchange Act requirements, a Covered Entity may decide to apply substituted compliance for some of its security-based swap business and to comply directly with the Exchange Act (or comply with another applicable substituted compliance order) for other parts of its security-based swap business.[82] The Commission believes that this scope of substituted compliance strikes the right balance to ensure that substituted compliance is consistent with Commission's classification of Exchange Act requirements as either entity-level or transaction-level requirements. The Commission has made no changes to the text of the Order in connection with these issues.

In the Covered Entity's notice to the Commission pursuant to paragraph (a)(16) of the Order, the Covered Entity must specify the parts of its security-based swap business for which it will apply substituted compliance consistent with the individual parts of the Order. Every SBS Entity registered with the Commission, whether complying directly with Exchange Act requirements or relying on substituted compliance as a means of complying with the Exchange Act, is required to satisfy the inspection and production requirements imposed on such entities under the Exchange Act,[83] and specificity as to the scope of the entity's reliance on substituted compliance is

[78] For example, this approach did not address and would not apply to a Covered Entity's security-based swap business carried on from an establishment outside the UK, when the relevant part of the proposed Order would require the Covered Entity to comply with one or more UK requirements to which a UK territorial condition applies.

[79] A Covered Entity may use substituted compliance consistent with the Order for any one or more sets of entity-level Exchange Act requirements specified in the Order. *See supra* note 74 and accompanying text. For example, a Covered Entity could use substituted compliance for internal risk management, trade acknowledgment and verification, internal supervision, and chief compliance officer requirements, but comply directly with Exchange Act portfolio reconciliation and dispute reporting, portfolio compression, trading relationship documentation, recordkeeping, reporting, notification, and securities count requirements.

[80] In the context of the UK EMIR counterparties condition in paragraph (a)(13) of the Order, a Covered Entity must choose (1) to apply substituted compliance pursuant to the Order—including compliance with paragraph (a)(13) as applicable—for a particular set of entity-level requirements with respect to all of its business that would be subject to the relevant UK EMIR-based requirement if the counterparty were the relevant type of counterparty, or (2) to comply directly with the Exchange Act with respect to such business. *See infra* note 106 and accompanying text.

[81] A third country investment firm regulated in the UK might be able to satisfy the definitions of ''Covered Entity'' in both this Order and the German Substituted Compliance Order, and thus may be eligible to apply substituted compliance under both orders. This Order defines Covered Entities to include both MiFID investment firms (*i.e.,* firms with a UK head office) and third country investment firms (*i.e.,* firms with a head office outside the UK). The German Substituted Compliance Order defines Covered Entities to include only investment firms and credit institutions ''authorized by BaFin to provide investment services or perform investment activities in the Federal Republic of Germany.'' *See* German Substituted Compliance Order, 85 FR at 85700. A non-EU firm (such as a UK firm) registered by the European Securities and Markets Authority (''ESMA'') to provide investment services and/or perform investment activities to certain counterparties in the EU pursuant to articles 46 through 48 of the Markets in Financial Instruments Regulation is not ''authorized by BaFin'' and thus does not satisfy the Covered Entity definition in the German Substituted Compliance Order. Accordingly, an investment firm or credit institution authorized by BaFin and regulated in the UK as a third country investment firm may, for example, be eligible for substituted compliance under both this Order and the German Substituted Compliance Order. If such a firm has security-based swap business that is not UK business, but is subject to the relevant German requirements under the German Substituted Compliance Order, it may choose to comply directly with the relevant Exchange Act requirements or to use substituted compliance pursuant to the terms of the German Substituted Compliance Order. If such a firm has security-based swap business that is both UK business and subject to the relevant German requirements under the German Substituted Compliance Order, it may choose to comply with the conditions to both orders or, alternatively, it may choose one order that it will comply with in respect of that business. For each set of entity-level Exchange Act requirements, such a firm must apply this choice to all such dually regulated security-based swap business. Such a firm must specify this choice in its notice to the Commission pursuant to para. (a)(16) of the Order. A firm's choice to comply with only one applicable substituted compliance order in respect of security-based swap business that is subject to the relevant foreign requirements listed in multiple substituted compliance orders will not affect the firm's ability to apply substituted compliance for Exchange Act entity-level requirements in respect of other, non–dually regulated security-based swap business under the other substituted compliance order(s).

[82] For example, a Covered Entity may use substituted compliance consistent with the Order for fair and balanced communications requirements in respect of communications with UK counterparties that are subject to the Exchange Act and comply directly with Exchange Act fair and balanced communications requirements in respect of U.S. person counterparties. A Covered Entity also may use substituted compliance consistent with the Order for any one or more sets of transaction-level Exchange Act requirements specified in the Order. *See supra* note 76 and accompanying text. For example, a Covered Entity could use substituted compliance for fair and balanced communications requirements, but comply directly with Exchange Act requirements related to disclosure of information regarding material risks and characteristics, disclosure of information regarding material incentives or conflicts of interest, ''know your counterparty,'' suitability, and daily mark disclosure.

[83] *See, e.g.,* Exchange Act section 15F(f); Exchange Act rule 18a–6(g).

necessary to facilitate the Commission's oversight under the Order.

c. Activities as UK ''Designated Investment Business''

One commenter recommended deleting paragraph (a)(4) of the proposed Order because ''MiFID business'' is a subset of ''designated investment business.'' [84] The commenter instead suggested adding FCA COBS 11 to the general condition in paragraph (a)(3) of the proposed Order, which is identical to paragraph (a)(4) except for the reference to ''designated investment business'' in paragraph (a)(4).

The only provision of FCA COBS 11 included in the Order is FCA COBS 11.7A.3R.[85] By its terms, FCA COBS 11.7A.3R applies to a firm's ''designated investment business.'' FCA COBS 11.7A.1R further states that FCA COBS 11.7A.3R applies, in relevant part, to a firm in relation to its ''MiFID or equivalent third country business.'' The condition as proposed thus accurately reflects the activities that FCA COBS describes as subject to FCA COBS 11.7A.3R. The Commission believes that deleting the reference to ''designated investment business'' would be inconsistent with the terms of the relevant provisions of FCA COBS 11. Moreover, the definitions of ''designated investment business'' and ''MiFID or equivalent third country business'' vary substantially. ''Designated investment business'' includes, among other things, dealing in investments as principal or agent, arranging deals in investments, making arrangements with a view to transactions in investments, managing investments, and advising on investments.[86] By contrast, ''MiFID or equivalent third country business'' includes, among other things, reception and transmission of orders in relation to one or more financial instruments, execution of orders on behalf of clients, dealing on own account, portfolio management, and the making of a personal recommendation.[87] Given the lack of overlap in terminology used in these two definitions, the Commission believes that deleting the reference to ''designated investment business'' could cause confusion among Covered Entities, while keeping the reference would not restrict a Covered Entity from being able to comply with the condition in respect of MiFID or equivalent third country business that is a subset of designated investment business. Accordingly the Commission has determined not to delete this paragraph.

d. Activities as UK ''MiFID Business''

One commenter recommended deleting paragraph (a)(5) of the proposed Order to reflect its recommendations to delete any FCA CASS provisions elsewhere in the Order as conditions to substituted compliance.[88] The commenter believes that the FCA CASS rules, which address client asset requirements, expand the scope of applicable Exchange Act requirements and are inappropriate as conditions to substituted compliance.[89] As discussed below in the relevant parts of this release,[90] the Commission has determined to retain the citations to FCA CASS as conditions to substituted compliance and, accordingly, has not deleted this paragraph.

e. Covered Entity as UK ''IFPRU Investment Firm''

One commenter recommended deleting paragraph (a)(11) of the proposed Order because the UK requirements listed in that paragraph do not apply to UK banks or UK designated investment firms and the commenter expects only ''banks and PRA-designated investment firms'' to apply substituted compliance pursuant to the Order.[91] These requirements apply to IFPRU investment firms—that is, certain investment firms regulated by the FCA but not the PRA—and are nearly identical to requirements that apply to UK banks and UK designated investment firms. For the same reason, the commenter also recommended deleting the references to firms regulated only by the FCA from the general conditions in paragraphs (a)(1) through (a)(3) and (a)(6) of the proposed Order and the UK requirements in paragraphs (b), (d), and (e) of the proposed Order that apply only to IFPRU investment firms.[92] The proposed Order would not require a Covered Entity that is a UK bank or UK designated investment firm to be subject to and comply with these requirements. Rather, in each place that the proposed Order refers to these requirements that are unique to IFPRU investment firms, the proposed Order would require the Covered Entity to be subject to and comply with either the provisions that apply to IFPRU investment firms (in which case paragraph (a)(11) of the proposed Order would require the Covered Entity to be an IFPRU investment firm) or analogous provisions of the FCA Handbook and PRA Rulebook that apply to UK banks and UK designated investment firms (in which case paragraph (a)(12) of the proposed Order would require the Covered Entity to be a UK bank or UK designated investment firm). Moreover, the FCA Application requested substituted compliance for all investment firms, and was not limited to the entities described by the commenter. Accordingly, the Commission is retaining the references to these requirements in paragraph (a)(11) and in paragraphs (b), (d), and (e) of the Order and the references to firms regulated only by the FCA in paragraphs (a)(1) through (a)(6) of the Order.

f. Counterparties as UK MiFID ''Clients''

A commenter requested that the Commission modify paragraph (a)(7) of the proposed Order to permit a Covered Entity to treat an agent, rather than the agent's principal, as the Covered Entity's client for purposes of the MiFID-based requirements listed in the Order.[93] The commenter stated that this modification would be consistent with the FCA's ''agent as client'' rule, which provides that a firm, if it is aware that a person with or for whom it is providing services is acting as agent for another person and satisfies certain other conditions, must treat the agent, and not the agent's principal, as the firm's client in respect of that business.[94] The firm may override the ''agent as client'' rule by agreeing in writing with the agent to treat the agent's principal as the firm's client instead.[95]

The proposed Order would require a Covered Entity to be ''subject to and comply with'' relevant MiFID-based requirements. The Commission proposed that requirement of the proposed Order to ensure that comparable MiFID-based requirements in practice would apply to a Covered Entity using substituted compliance. The condition in paragraph (a)(7) to the proposed Order would ensure that the Covered Entity's counterparty—*i.e.,* the entity to whom it owes its various duties under the Exchange Act—is the ''client'' to whom the Covered Entity owes its performance of the duties to which it is subject under the

[84] *See* SIFMA 5/3/2021 Letter Appendix A.

[85] *See* para. (d)(3)(ii) of the Order.

[86] *See* FCA Handbook Glossary, definition of ''designated investment business.''

[87] *See* FCA Handbook Glossary, definitions of ''MiFID or equivalent third country business,'' ''MiFID business,'' ''equivalent third country business,'' and ''investment services and/or activities.''

[88] *See* SIFMA 5/3/2021 Letter Appendix A.

[89] *See* SIFMA 5/3/2021 Letter Appendix A.

[90] *See infra* part VI.B.1.

[91] *See* SIFMA 5/3/2021 Letter Appendix A.

[92] *See* SIFMA 5/3/2021 Letter Appendix A parts (a), (b), (d), and (e).

[93] *See* SIFMA 5/3/2021 Letter at 4–6.

[94] *See* FCA COBS 2.4.3R.

[95] *See* FCA COBS 2.4.3R(2).

comparable MiFID-based requirements.[96] The Commission believes that, in the case of an agent acting on behalf of a principal, if the principal is the counterparty for purposes of the relevant Exchange Act requirement, then this condition should require the principal, as the counterparty, to be the ''client'' for purposes of the relevant MiFID-based requirements. If the Covered Entity instead treats the agent as the ''client,'' then the Covered Entity would not be ''subject to'' UK requirements that are comparable to Exchange Act requirements related to counterparties. Accordingly, the Commission is not amending the condition in paragraph (a)(7) to permit a Covered Entity to treat an agent, rather than the agent's principal, as its client with regard to the relevant MiFID-based requirements. In taking this position, the Commission does not prohibit Covered Entities from working with agents or others acting on behalf of a counterparty. Rather, the Covered Entity must ensure that, in working with the agent, it fulfills any duties owed to a ''client'' (or potential ''client'') in relation to the counterparty.[97]

g. UK EMIR Counterparties

A commenter requested that the Commission clarify that the condition in paragraph (a)(13) of the proposed Order would not require a Covered Entity to treat as financial counterparties or non-financial counterparties certain public sector counterparties, such as multilateral development banks, that are exempt from UK EMIR or counterparties that are not ''undertakings'' for purposes of UK EMIR's definitions of ''financial counterparty'' and ''non-financial counterparty.'' [98]

This condition addresses the fact that some of the UK EMIR-based requirements [99] are expressed to apply only to transactions between specified types of counterparties, such as transactions between financial counterparties and non-financial counterparties, between financial counterparties and non-financial counterparties above the clearing threshold, and/or between counterparties that are not excluded from the application of UK EMIR. The definitions of ''financial counterparty'' and ''non-financial counterparty'' are predicated on the counterparty being an ''undertaking'' established in the UK.[100] In addition, UK EMIR does not apply to transactions with certain excluded counterparties.[101] The condition is not based upon the concern that some industry participants may not be able to take advantage of substituted compliance, but, rather, the condition is intended to help ensure that the relevant UK EMIR-based requirements will apply in practice regardless of the counterparty's location or status as ''an undertaking.'' The condition provides that the Covered Entity must comply with the applicable condition of this Order as if the counterparty were the type of counterparty that would trigger the application of the relevant UK EMIR-based requirements. If the Covered Entity reasonably determines that its counterparty would be a financial counterparty[102] if not for the counterparty's location and/or lack of regulatory authorization in the UK, the condition further requires the Covered Entity to treat the counterparty as if the counterparty were a financial counterparty, rather than as another type of counterparty to which the relevant UK EMIR-based requirements may apply.[103] By requiring a Covered Entity to treat its counterparty as a type of counterparty that would trigger the application of the relevant UK EMIR-based requirements, the condition will require the Covered Entity to perform the relevant obligations pursuant to those UK EMIR-based requirements and thus to act in a way that is comparable to Exchange Act requirements. Accordingly, the Commission is retaining this condition to ensure that a Covered Entity can apply substituted compliance only when it treats its counterparty as a type of counterparty that will trigger the Covered Entity's performance of obligations pursuant to those UK EMIR-based requirements.[104] Because each UK EMIR-based requirement applies to different types of counterparties, the Commission is amending the condition to make clear that a Covered Entity must treat its

[96] Some provisions of the MiFID-based requirements cited in the condition, such as certain organizational requirements, do not pertain to counterparties or clients. In those cases, there is no ''relevant counterparty (or potential counterparty)'' for purposes of the condition, and the condition would have no effect.

[97] FCA COBS 2.4.4R permits firms to rely upon information about a client received from another UK-regulated firm. Under this provision, the other firm is legally responsible for the completeness and accuracy of any information about the client that the other firm receives from the first firm. The Commission believes that it is appropriate to permit a Covered Entity to rely on information about its client communicated by another UK-regulated firm on behalf of the client. Accordingly, the application of this provision would not cause the Covered Entity to be not ''subject to'' the relevant UK requirements listed in the Order, and thus would not impact the Covered Entity's ability to use substituted compliance in relation to those communications. On the other hand, FCA COBS 2.4.4R also provides that the other firm is legally responsible for the suitability of advice and recommendations provided to the client. The other firm, however, may not be a Covered Entity applying substituted compliance pursuant to the Order. Accordingly, the Commission believes that a Covered Entity relying on the suitability assessment of another firm pursuant to FCA COBS 2.4.4R is not ''subject to'' the relevant UK suitability requirements listed in the Order, and thus may not apply substituted compliance for those recommendations.

[98] *See* SIFMA 5/3/2021 Letter at 6 and Appendix A part (a) (recommending that the order text of paragraph (a)(13) of the Order require application of the condition ''if the counterparty to the Covered Entity is not a ''financial counterparty'' or ''non-financial counterparty'' as defined in UK EMIR articles 2(8) or 2(9) respectively, *solely because the counterparty is not established in the United Kingdom*'').

[99] *See, e.g.,* UK EMIR RTS article 12 (timely confirmation requirements for OTC derivatives contracts concluded between financial counterparties and non-financial counterparties).

[100] *See* UK EMIR article 2(8) (financial counterparties include specified UK financial firms and generally exclude non-UK entities); UK EMIR article 2(9) (non-financial counterparties include UK undertakings that are not financial counterparties and generally exclude natural persons, central counterparties, and non-UK entities).

[101] *See* UK EMIR articles 1(4) and 1(5) (UK EMIR does not apply to certain public sector and multilateral entities). Several of the multilateral development banks that the commenter mentioned are exempt from the definition of ''U.S. person'' in Exchange Act rule 3a71–3, 17 CFR 240.3a71–3, and, as a result, transactions between a foreign SBS Entity and one of those banks (without being arranged, negotiated, or executed by U.S. personnel) are not subject to most Exchange Act business conduct requirements. *See* UK EMIR article 1(5)(a) (exempting from UK EMIR multilateral development banks listed in UK CRR article 117); UK CRR article 117 (listed multilateral development banks include, among others, the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, and the African Development Bank); Exchange Act rules 3a71–3(a)(4)(iii), (a)(7), (a)(8)(i), (a)(9) and (c); Exchange Act rules 3a67–10(a)(4), (a)(6) and (d)(1), 17 CFR 240.3a67–10(a)(4), (a)(6) and (d)(1).

[102] UK EMIR article 2(8) defines ''financial counterparty'' to encompass investment firms, credit institutions, insurers, and certain other types of businesses that have been authorized in accordance with UK law. Under UK EMIR, the distinction between financial counterparties and other types of counterparties such as non-financial counterparties is manifested, *inter alia,* in connection with confirmation timing standards. *See* UK EMIR RTS article 12.

[103] *See* para. (a)(13) of the Order. The condition will help clarify that the Covered Entity would be subject to the relevant UK EMIR-based requirements even if the counterparty is not an ''undertaking'' (such as by virtue of being a natural person), is not established in the EU (by virtue of being a U.S. person or otherwise being established outside the UK), or is excluded from the application of UK EMIR to its transactions (by virtue of being one of the public sector or multilateral entities identified in UK EMIR articles 1(4) and (5)).

[104] *See* para. (a)(13) of the Order. To correct a typographical error in the UK Substituted Compliance Notice and Proposed Order, in paragraph (a)(13) of the Order the Commission is changing the phrase ''paragraphs (b) through (e) of this Order'' to ''paragraphs (b) through (f) of this Order.'' This correction is consistent with the description of the proposed condition in the UK Substituted Compliance Notice and Proposed Order. *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18382.

counterparty as if the counterparty were the type of counterparty specified in the relevant UK EMIR-based requirement. The Commission also is amending the Order to clarify that the condition applies only if the relevant UK EMIR-based requirement applies solely to the Covered Entity's activities with specified types of counterparties. If the relevant UK EMIR-based requirement applies to a Covered Entity's activities without regard to the status of its counterparty,[105] the Covered Entity would not be required to treat its counterparty as any particular type of counterparty for purposes of that UK EMIR-based requirement.

As discussed in part III.B.2.b above, for any particular set of entity-level Exchange Act requirements, a Covered Entity must choose either (1) to apply substituted compliance pursuant to the Order with respect to all UK business, *i.e.,* security-based swap business that is subject to the relevant UK requirements listed in the Order and that can satisfy any general conditions related to those UK requirements; or (2) to comply directly with the Exchange Act with respect to all UK business. In the context of the UK EMIR counterparties condition in paragraph (a)(13), this scoping means that a Covered Entity's UK business includes security-based swap business that, but for the counterparty's failure to qualify as a type of counterparty specified in the relevant UK EMIR-based requirement, would be subject to the relevant UK EMIR-based requirement, and otherwise is subject to all other relevant UK requirements listed in the Order and can satisfy any other applicable general conditions.[106] Accordingly, a Covered Entity must choose (1) to apply substituted compliance pursuant to the Order—including compliance with paragraph (a)(13) as applicable—for a particular set of entity-level requirements with respect to all UK business, including its business that would be subject to the relevant UK EMIR-based requirement if the counterparty were the relevant type of counterparty; or (2) to comply directly with the Exchange Act with respect to all UK business.

H. Security-Based Swap Status Under UK EMIR

A commenter asked the Commission to amend the condition in paragraph (a)(14) of the proposed Order to permit a Covered Entity to apply substituted compliance for transactions cleared by a non-UK-regulated central counterparty.[107] As proposed, the condition helps to ensure that the relevant UK EMIR-based requirements will require the Covered Entity to treat its security-based swap in a manner comparable to Exchange Act requirements, while also clarifying that a Covered Entity still may apply substituted compliance in respect of transactions cleared by a UK-regulated central counterparty, even if the relevant UK EMIR-based requirements do not require the Covered Entity to take any action in respect of such a centrally cleared transaction. Many of the UK EMIR-based requirements cited in the Order relate to risk mitigation techniques for non-centrally cleared transactions and apply only to a non-centrally cleared OTC derivative,[108] consistent with analogous Exchange Act risk mitigation and margin requirements for non-centrally cleared security-based swaps.[109] However, transactions that have been cleared by any central counterparty, whether or not it is regulated by UK authorities, are exempt from these UK EMIR-based requirements, while only transactions that have been cleared by an SEC-registered or exempt clearing agency are exempt from their Exchange Act analogues. With respect to non-centrally cleared security-based swaps, the Commission believes that these UK requirements produce comparable outcomes to the analogous Exchange Act requirements, as both sets of requirements impose similar obligations on the Covered Entity. In addition, to the extent that these UK EMIR-based requirements do not require the Covered Entity to apply risk mitigation techniques to a security-based swap cleared by a UK-regulated central counterparty, the Commission also believes that these UK requirements produce comparable outcomes to the analogous Exchange Act requirements. The Commission reached this conclusion because neither set of requirements imposes risk mitigation techniques on transactions that have been cleared by central counterparties subject to regulation in the jurisdiction of the authority that supervises compliance with the risk mitigation requirements. However, to the extent that these UK EMIR-based requirements do not require the Covered Entity to apply risk mitigation techniques to the relevant security-based swap because it has been cleared by a non-UK-regulated central counterparty, the Commission does not believe that these UK requirements produce comparable outcomes to Exchange Act trade acknowledgment and verification, portfolio reconciliation and dispute reporting, portfolio compression, and trading relationship documentation requirements for non-centrally cleared security-based swaps. The Commission reached this conclusion because these Exchange Act requirements exempt centrally cleared security-based swaps only if they have been cleared by an SEC-registered clearing agency (or, in the case of portfolio reconciliation and dispute reporting, portfolio compression, and trading relationship documentation requirements, a clearing agency that the Commission has exempted from registration). Security-based swaps that have been cleared by a central counterparty that is not SEC-registered or exempt or UK-regulated are subject to those Exchange Act requirements, but are not subject to the UK EMIR-based risk mitigation requirements. Accordingly, the Commission is issuing the condition as proposed to require that the relevant security-based swap is either (a) an OTC derivative or OTC derivative contract that has not been cleared by any central counterparty and is otherwise subject to the relevant UK EMIR-based requirements or (b) cleared by a UK-regulated central counterparty.[110]

As an alternative to its suggested amendments to the condition, the commenter asked the Commission to permit the Covered Entity to comply directly with the Exchange Act (or with another applicable substituted compliance order) with respect to transactions cleared by a non-UK-

[105] *See, e.g.,* UK EMIR articles 39(4) and (5).

[106] A Covered Entity's business that is not subject to other non-UK EMIR-based requirements listed in the Order or that does not satisfy any other applicable general condition would not form part of a Covered Entity's UK business for which the Covered Entity must make a single choice between using substituted compliance or complying directly with the Exchange Act. For example, for purposes of its choice to apply substituted compliance or comply directly with Exchange Act internal risk management requirements, a Covered Entity need not treat as UK business a transaction that is not subject to FCA SYSC 4.1.1R(1) or that cannot satisfy the general conditions in paragraphs (a)(1) and (a)(10) of the Order, even if the sole reason the transaction is not subject to UK EMIR Margin RTS article 2 is that the counterparty is not the type of counterparty to which that requirement applies.

[107] *See* SIFMA 5/3/2021 Letter at 6–7.

[108] *See, e.g.,* UK EMIR article 11.

[109] *See, e.g.,* Exchange Act rules 15Fi–2, 17 CFR 240.15Fi–2 through 15Fi–4, 17 CFR 240.15Fi–4; Exchange Act rule 18a–3, 17 CFR 240.18a–3.

[110] *See* para. (a)(14) of the Order. To correct a typographical error in the UK Substituted Compliance Notice and Proposed Order, in paragraph (a)(14) of the Order the Commission is changing the phrase ''paragraphs (b) through (e) of this Order'' to ''paragraphs (b) through (f) of this Order.'' This correction is consistent with the description of the proposed condition in the UK Substituted Compliance Notice and Proposed Order. *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18382.

regulated central counterparty, and to do so without affecting the Covered Entity's ability to apply substituted compliance for entity-level requirements with respect to other security-based swap business that does satisfy the condition.[111] Consistent with the discussion of the scope of substituted compliance for entity-level requirements in part III.B.2.b above, for entity-level Exchange Act requirements, a Covered Entity must choose either (1) to apply substituted compliance pursuant to the Order with respect to all UK business (that is, security-based swap business that is both subject to the relevant UK requirements listed in the Order and that can satisfy any general conditions related to those UK requirements, including paragraph (a)(14)); or (2) to comply directly with the Exchange Act with respect to all UK business. A transaction cleared by a non-UK-regulated central counterparty does not satisfy the condition in paragraph (a)(14) of the Order. As a result, paragraph (a)(14) would not permit a Covered Entity to use substituted compliance for any Exchange Act requirements that apply to that transaction if the relevant conditions in parts (b) through (f) of the Order include a requirement for the Covered Entity to be subject to and comply with provisions of UK EMIR, UK EMIR RTS, UK EMIR Margin RTS, and/or other UK requirements adopted pursuant to those provisions. Instead, a Covered Entity must either comply directly with the Exchange Act for such a transaction or comply with the terms of another applicable substituted compliance order that the transaction is able to satisfy.[112] Such a transaction would not be included in the UK business for which a Covered Entity must elect a single choice—use substituted compliance under the Order or comply directly with the Exchange Act—when complying with entity-level Exchange Act requirements.

The commenter also requested that the Commission revise the condition's description of UK-regulated central counterparties to clarify that it includes UK-regulated third country central counterparties, which may have a domicile outside the UK and thus may not be viewed as ''recognized to clear derivatives contracts *in* the UK.'' [113] Similarly, the commenter asked the Commission to further revise the description to encompass the UK's temporary recognition regime for third country central counterparties implemented as a consequence of the UK's exit from the European Union.[114] The Commission intends the condition's description of UK-regulated central counterparties to include third country central counterparties that relevant UK authorities allow to provide clearing services to UK clearing members or trading venues.[115] These central counterparties include those ''taken to be'' recognized pursuant to the UK's temporary recognition regime for third country central counterparties.[116] Accordingly, the Commission is amending the condition's description of UK-regulated central counterparties so that it describes ''a central counterparty that is authorized, recognized, or taken to be recognized by a relevant UK authority to provide clearing services to clearing members or trading venues established in the UK.'' [117]

Finally, the Commission is amending the condition to clarify that the condition applies only if the relevant UK EMIR-based requirement applies to OTC derivatives that have not been cleared by a central counterparty, as some provisions of UK EMIR cited in the Order, such as UK EMIR articles 39(4) and (5), are not limited in their application to non-centrally cleared OTC derivatives. Consistent with the condition in paragraph (a)(13) of the Order, the Commission also is adding references to UK EMIR RTS and UK EMIR Margin RTS.

i. Memorandum of Understanding

As proposed, the Commission would need to have a supervisory and enforcement memorandum of understanding and/or other arrangement with the FCA and the PRA addressing cooperation with respect to the Order at the time the Covered Entity makes use of substituted compliance.[118] This condition has been modified from the proposed Order to reflect that the executed version of the memorandum of understanding is between the Commission, on the one hand, and the FCA and the Bank of England (including in its capacity as the PRA), on the other hand.

j. Notice of Reliance on Substituted Compliance

Commenters did not address the requirement in paragraph (a)(16) of the proposed Order for the Covered Entity to notify the Commission in writing of its intent to rely on substituted compliance, and the Commission is adopting this requirement as proposed.[119]

[111] *See* SIFMA 5/3/2021 Letter at 7.

[112] *See supra* note 80.

[113] *See* SIFMA 5/3/2021 Letter at 7.

[114] *See* SIFMA 5/3/2021 Letter at 7.

[115] *See* UK EMIR article 25(1) (a third country central counterparty may provide clearing services to UK clearing members or trading venues only if it is recognized by the Bank of England); *see also* The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (2020/646), regulation 20(2).

[116] *See* The Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018 (2018/1184), part 6.

[117] *See* para. (a)(14)(ii) of the Order. The Commission also is amending the condition so that it applies to conditions of the Order that require the application of, and the Covered Entity's compliance with, UK EMIR, UK EMIR RTS, UK EMIR Margin RTS, and/or other UK requirements adopted pursuant to those requirements.

[118] *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18412.

[119] *See* para. (a)(16) of the Order. If the Covered Entity intends to rely on all the substituted compliance determinations in a given paragraph of the Order, it can cite that paragraph in the notice. For example, if the Covered Entity intends to rely on the capital and margin determinations in paragraph (c) of the Order, it can indicate in the notice that it is relying on the determinations in paragraph (c). However, if the Covered Entity intends to rely on the margin determination but not the capital determination, it will need to indicate in the notice that it is relying on paragraph (c)(2) of the Order (the margin determination). In this case, paragraph (c)(1) of the Order (the capital determination) will be excluded from the notice and the Covered Entity will need to comply with the Exchange Act capital requirements. Further, as discussed below in part VIII.B.1, the recordkeeping and reporting determinations in the Order have been structured to provide Covered Entities with a high level of flexibility in selecting specific requirements within those rules for which they want to rely on substituted compliance. For example, paragraph (f)(1)(i) of the Order sets forth the Commission's substituted compliance determinations with respect to the requirements of Exchange Act rule 18a–5, 17 CFR 240.18a–5. These determinations are set forth in paragraphs (f)(1)(i)(A) through (O) of the Order. If a Covered Entity intends to rely on some but not all of the determinations, it will need to identify in the notice the specific determinations in this paragraph it intends to rely on (*e.g.,* paragraphs (f)(1)(i)(A), (B), (C), (D), (G), (H), (I), and (O)). For any determinations excluded from the notice, the Covered Entity will need to comply with the Exchange Act rule 18a–5 requirement. Finally, a Covered Entity is able to apply substituted compliance at the transaction level (rather than the entity level) for certain counterparty protection requirements and the recordkeeping requirements that are linked to them. In this case, the notice will need to indicate the class of transactions (*e.g.,* transactions with UK counterparties) for which the Covered Entity is applying substituted compliance with respect to the Exchange Act counterparty protection requirements and linked recordkeeping requirements. Similarly, as discussed above, a Covered Entity is able to apply substituted compliance for entity-level Exchange Act requirements to all of its security-based swap business that is eligible for substituted compliance under the Order, and may either comply directly with the Exchange Act or apply substituted compliance under another applicable order for its security-based swap business that is not eligible for substituted compliance under the Order. In this case, the notice will need to indicate the scope of security-based swap business (*e.g.,* security-based swap business carried on from an establishment in the UK) for which the Covered Entity is applying substituted compliance with respect to the relevant Exchange Act entity-level requirements. A Covered

Continued

k. Notification Requirements Related to Changes in Capital

In response to the French Substituted Compliance Notice and Proposed Order, a commenter requested that the Commission make more granular substituted compliance determinations with respect to the Exchange Act recordkeeping requirements.[120] The commenter stated that for ''operational reasons'' a Covered Entity may ''prefer to comply directly with certain Exchange Act requirements (*i.e.,* not to rely on substituted compliance with those requirements).'' [121] The Commission took this approach in the proposed Order with respect to the Exchange Act recordkeeping, reporting, and notification requirements.[122] As part of this approach, the Commission also conditioned substituted compliance with certain of the discrete recordkeeping, reporting, and notification requirements on the Covered Entity applying substituted compliance with respect to the substantive Exchange Act requirement to which they were linked.[123] This linked condition was designed to ensure that a Covered Entity consistently applies substituted compliance with respect to the substantive Exchange Act requirement and the Exchange Act recordkeeping, reporting, or notification requirement that complements the substantive requirement.

On further consideration and in light of the more granular approach requested by the commenter, the Commission believes it necessary to do the reverse with respect to certain substantive financial responsibility requirements: Condition substituted compliance with respect to the substantive requirement on the Covered Entity applying substituted compliance with respect to the linked recordkeeping, reporting, or notification requirement. The Exchange Act financial responsibility requirements addressed in this Order (capital, margin, recordkeeping, reporting, notification, and securities count requirements) are highly integrated. Therefore, implementing the reverse conditional link is designed to ensure that the granular approach requested by the commenter results in comparable regulatory outcomes in terms of obligations to make and preserve records, and to submit reports and notifications to the Commission concerning the Covered Entity's compliance with the financial responsibility rules. It also is designed to provide clarity as to the obligations of a Covered Entity under this Order when using the granular approach to the Exchange Act recordkeeping, reporting, and notification requirements linked to the financial responsibility rules.

For example, because of the granular approach, a Covered Entity could elect to apply substituted compliance with respect to a substantive Exchange Act requirement such as the capital requirements of Exchange Act rule 18a–1 but elect not to apply substituted compliance with respect to a linked requirement under Exchange Act rule 18a–8 to provide the Commission notice of a capital deficiency under Exchange Act rule 18a–1. In this scenario, the Covered Entity would not be subject to the condition for applying substituted compliance with respect to Exchange Act rule 18a–8; namely, that the firm provide the Commission copies of notifications relating to UK capital requirements required under UK law. Consequently, as discussed below in this section and other sections of this release, the Commission is conditioning substituted compliance with respect to certain substantive Exchange Act requirements on the Covered Entity applying substituted compliance with respect to linked recordkeeping, reporting, or notification requirements.

Exchange Act Rule 18a–8(c)

Exchange Act rule 18a–8(c) generally requires every prudentially regulated security-based swap dealer that files a notice of adjustment of its reported capital category with the Federal Reserve Board, the Office of the Comptroller of the Currency, or the Federal Deposit Insurance Corporation to give notice of this fact that same day by transmitting a copy to the Commission of the notice of adjustment of reported capital category in accordance with Exchange Act rule 18a–8(h).[124] Exchange Act rule 18a–8(h) sets forth the manner in which every notice or report required to be given or transmitted pursuant to Exchange Act rule 18a–8 must be made.[125] While Exchange Act rule 18a–8(c) is not linked to a substantive Exchange Act requirement, it is linked to substantive capital requirements applicable to prudentially regulated SBS Entities in the U.S. (*i.e.,* capital requirements of the Federal Reserve Board, the Office of the Comptroller of the Currency, or the Federal Deposit Insurance Corporation). Therefore, to implement the granular approach requested by the commenter, the Commission is adding a general condition that Covered Entities with a prudential regulator relying on the final Order for substituted compliance must apply substituted compliance with respect to the requirements of Exchange Act rule 18a–8(c) and the requirements of Exchange Act rule 18a–8(h) as applied to Exchange Act rule (c).[126]

In its application, the FCA cited several UK provisions as providing similar outcomes to the notification requirements of Exchange Act rule 18a–8.[127] This general condition is necessary

Entity would modify its reliance on the positive substituted compliance determinations in the Order, and thereby trigger the requirement to update its notice, if it adds or subtracts determinations for which it is applying substituted compliance or completely discontinues its reliance on the Order.

[120] *See* Letter from Kyle Brandon, Managing Director, Head of Derivative Policy, SIFMA (Jan. 25, 2021) (''SIFMA 1/25/2021 Letter'') at 8.

[121] SIFMA 1/25/2021 Letter at 8.

[122] *See* UK Substituted Compliance Notice and Proposed Order, 86 FR 18394–403, 18415–420.

[123] *See* UK Substituted Compliance Notice and Proposed Order, 86 FR 18394–403, 18415–420.

[124] *See* 17 CFR 240.18a–8(c).

[125] *See* 17 CFR 240.18a–8(h).

[126] Better Markets Letter at 2–3.

[127] These UK provisions include: (1) FCA PRIN 2.1.1R (Principle 11) and PRA Fundamental Rule 7 requiring firms to deal with regulators in an open and cooperative way, and to disclose to regulators anything relating to the firm of which the regulator would reasonably expect notice; (2) Supervision Sourcebook of the FCA Handbook (''FCA SUP'') 15.3.1R and PRA Notification Rule 2.1, which require immediate notification if a firm becomes aware that certain events have occurred or may occur in the foreseeable future, including the failure of the firm to satisfy certain threshold conditions, any matter which could have a significant adverse impact on the firm's reputation or that could affect the firm's ability to continue to provide adequate services to its customers or result in serious detriment to its customers, or any matter which could result in serious financial consequences to the UK financial system or other firms; (3) FCA SUP 15.3.11R and PRA Notification Rule 2.4, which generally require, among other things, notification of a significant breach of a rule or certain specified provisions or regulations, or the bringing of a prosecution related to certain offenses; (4) FCA SUP 15.3.15R and PRA Notification Rule 2.6, which require a firm to provide immediate notification in the event that civil proceedings or other specified actions are brought against the firm, if disciplinary measures or sanctions are imposed on the firm, if the firm is prosecuted for, or convicted of, any offense involving fraud, or it is removed as a trustee of an occupational pension scheme by a court order; (5) FCA SUP 15.17R and PRA Notification Rule 2.8, which require a firm to provide notification in the event that, among other things, the firm becomes aware that an employee, or another person whether or not employed by the firm, may have committed a fraud against a customer, or the firm identifies irregularities in its accounting or other records; (6) FCA SUP 15.3.21R and PRA Notification Rule 2.9, which require a firm to provide immediate notification upon the calling of a meeting to consider a resolution, or the presentation of a petition, for winding up the firm, an application to dissolve the firm, or other similar matters; (7) FCA CASS 6.6.57R and 7.15.33R, which require, among other things, notification if a firm's internal records and accounts related to client assets and money are materially out of date, inaccurate, or invalid, the firm fails or is unable to respond to shortfalls as required, or the firm fails or is unable to conduct an internal asset reconciliation, external custody reconciliation, or internal and external client money reconciliations; and (8) FCA SYSC 18.6.1R and PRA Organisational Requirements 2A.1(2), 2A.2, and 2A.3 through 2A.6, which require firms

in order to clarify that a prudentially regulated Covered Entity must provide the Commission with copies of any notifications regarding changes in the Covered Entity's capital situation required by UK law. In particular, a prudentially regulated Covered Entity could elect not to apply substituted compliance with respect to Exchange Act rule 18a–8(c). However, because the Covered Entity is not required to provide any notifications to the Federal Reserve Board, the Office of the Comptroller of the Currency, or the Federal Deposit Insurance Corporation, ''compliance'' with the provisions of Exchange Act rule 18a–8(c) raises a question as to the Covered Entity's obligations under this Order to provide the Commission with notification of changes in capital.

Moreover, a commenter stated that foreign financial services firms were among the entities that used emergency lending facilities in the U.S. along with other U.S. measures to address the 2008 financial crisis.[128] The Commission adopted Exchange Act rule 18a–8(c) to require SBS Entities with a prudential regulator to give notice to the Commission when filing an adjustment of reported capital category because such notices may indicate that the entity is in or is approaching financial difficulty.[129] The Commission has a regulatory interest in being notified of changes in the capital of a prudentially regulated Covered Entity, as it could signal the firm is in or approaching financial difficulty and presents a risk to U.S. security-based swap markets and participants. For the foregoing reasons, the Commission is conditioning applying substituted compliance pursuant to the Order on the general condition that a prudentially regulated Covered Entity apply substituted compliance with respect to Exchange Act rule 18a–8(c) and the requirements of Exchange Act rule 18a–8(h) as applied to Exchange Act rule 18a–8(c).

IV. Substituted Compliance for Risk Control Requirements

A. Proposed Approach

The FCA Application in part requested substituted compliance in connection with risk control requirements relating to:

- Internal risk management—Internal risk management system requirements that address the obligation of registered entities to follow policies and procedures reasonably designed to help manage the risks associated with their business activities.
- Trade acknowledgment and verification—Trade acknowledgment and verification requirements intended to help avoid legal and operational risks by requiring definitive written records of transactions and procedures to avoid disagreements regarding the meaning of transaction terms.
- Portfolio reconciliation and dispute reporting—Portfolio reconciliation and dispute reporting provisions that require that counterparties engage in portfolio reconciliation and resolve discrepancies in connection with uncleared security-based swaps, and to provide prompt notification to the Commission and applicable prudential regulators regarding certain valuation disputes.
- Portfolio compression—Portfolio compression provisions that require that SBS Entities have procedures addressing bilateral offset, bilateral compression, and multilateral compression in connection with uncleared security-based swaps.
- Trading relationship documentation—Trading relationship documentation provisions that require SBS Entities to have procedures to execute written security-based swap trading relationship documentation with their counterparties prior to, or contemporaneously with, executing certain security-based swaps.[130]

Taken as a whole, these risk control requirements help to promote market stability by mandating that registered entities follow practices that are appropriate to manage the market, counterparty, operational, and legal risks associated with their security-based swap businesses.

In proposing to provide conditional substituted compliance in connection with this part of the FCA Application, the Commission preliminarily concluded that the relevant UK requirements in general would help to produce regulatory outcomes that are comparable to those associated with Exchange Act risk control requirements, by subjecting Covered Entities to risk mitigation and documentation practices that are appropriate to the risks associated with their security-based swap businesses.[131] Substituted compliance under the proposed Order was to be conditioned in part on Covered Entities being subject to and complying with the specified UK provisions that in the aggregate help to produce outcomes that are comparable to those associated with the risk control requirements under the Exchange Act.[132]

Substituted compliance under the proposed Order further would be subject to certain additional conditions to help ensure the comparability of outcomes. First, substituted compliance for Exchange Act trading relationship documentation requirements would not extend to certain disclosures regarding legal and bankruptcy status.[133] Second, substituted compliance for portfolio reconciliation and dispute reporting requirements would be conditioned on the Covered Entity having to provide the Commission with reports regarding disputes between counterparties on the same basis as the Covered Entity provides those reports to the FCA pursuant to UK law.[134]

to have arrangements or procedures in place for employees to report potential or actual breaches or reportable concerns.

[128] Better Markets Letter at 2.

[129] *See* Exchange Act Release No. 71958 (September 19, 2019), 84 FR 68550, 68589–90 (Dec. 16, 2019) (''Recordkeeping and Reporting Adopting Release'') (citing Exchange Act Release No. 71958 (Aug. 17, 2014) 79 FR 25193 (May 2, 2014) at 25249).

[130] *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18383.

[131] *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18383.

[132] *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18383 and n.61. Each of the comparable UK requirements listed in the proposed Order applies to a uniquely defined set of UK-authorized firms. *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18384–85 and n.70. To assist UK firms in determining whether they are subject to these requirements, the Commission preliminarily determined that any Covered Entity that is an ''IFPRU investment firm,'' ''UK bank'' or ''UK designated investment firm,'' each as defined for purposes of UK law, would be subject to all of the required UK requirements related to internal risk management requirements and thus eligible to apply substituted compliance for internal risk management requirements. The Commission also preliminarily determined that a Covered Entity that is a ''financial counterparty'' would be subject to the required UK requirements related to trade acknowledgment and verification, portfolio reconciliation and dispute reporting, portfolio compression, and trading relationship documentation and thus eligible to apply substituted compliance in these areas. *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18384–85.

[133] *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18383. The trading relationship documentation provisions of rule 15Fi–5(b)(5), 17 CFR 240.15Fi–5(b)(5), require certain disclosures regarding the status of the SBS Entity or its counterparty as an insured depository institution or financial counterparty, and regarding the possible application of the insolvency regime set forth under Title II of the Dodd-Frank Act or the Federal Deposit Insurance Act. Documentation requirements under applicable UK law would not be expected to address the disclosure of information related to insolvency procedures under U.S. law.

[134] *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18383. Under the Exchange Act requirement, SBS Entities must promptly report, to the Commission, valuation disputes in excess of $20 million that have been outstanding for three or five business days (depending on counterparty types). UK requirements provide that firms must report at least monthly, to the FCA, disputes between counterparties in excess of €15 million and outstanding for at least 15 business days.

B. Commenter Views and Final Provisions

After considering commenters' recommendations regarding the risk control requirements, the Commission is making positive substituted compliance determinations in connection with internal risk management, trade acknowledgment and verification, portfolio reconciliation and dispute reporting, portfolio compression, and trading relationship documentation requirements. As discussed below, the final Order has been changed from the proposed Order in certain respects in response to comments.[135]

One commenter expressed general support for the proposed approach toward substituted compliance for the risk control provisions.[136] Another commenter stated that UK requirements are not sufficiently comparable to Exchange Act requirements.[137] The Commission continues to conclude that, taken as a whole, applicable requirements under UK law subject Covered Entities to risk mitigation and documentation practices that are appropriate to the risks associated with their security-based swap businesses, and thus help to produce regulatory outcomes that are comparable to the outcomes associated with the relevant risk control requirements under the Exchange Act. Although the Commission recognizes that there are differences between the approaches taken by the relevant risk control requirements under the Exchange Act and relevant UK requirements, the Commission continues to believe that those differences on balance should not preclude substituted compliance for these requirements, as the relevant UK requirements taken as a whole help to produce comparable regulatory outcomes.

To help ensure the comparability of outcomes, substituted compliance for risk control requirements is subject to certain conditions. Substituted compliance for internal risk management, trade acknowledgment and verification, portfolio reconciliation and dispute reporting, portfolio compression, and trading relationship documentation requirements is conditioned on the Covered Entity being subject to, and complying with, relevant UK requirements.[138] In addition, consistent with the proposed Order, substituted compliance for portfolio reconciliation and dispute reporting requirements is conditioned on the Covered Entity providing the Commission with reports regarding disputes between counterparties on the same basis as the Covered Entity provides those reports to the FCA pursuant to UK law.[139] Finally, consistent with the proposed Order, substituted compliance for trading relationship documentation does not extend to disclosures regarding legal and bankruptcy status that are required by Exchange Act rule 15Fi–5(b)(5) when the counterparty is a U.S. person.[140] A Covered Entity that is unable to comply with an applicable condition—and thus is not eligible to use substituted compliance for the particular set of Exchange Act risk control requirements related to that condition—nevertheless may use substituted compliance for another set of Exchange Act requirements addressed in the Order if it complies with the conditions to the relevant parts of the Order.

Under the Order, substituted compliance for risk control requirements (relating to internal risk management, trade acknowledgment and verification, portfolio reconciliation and dispute reporting, portfolio compression, and trading relationship documentation) is not subject to a condition that the Covered Entity apply substituted compliance for related recordkeeping requirements in Exchange Act rules 18a–5 and 18a–6. A Covered Entity that applies substituted compliance for one or more risk control requirements, but does not apply substituted compliance for the related recordkeeping requirements in Exchange Act rules 18a–5 and 18a–6, will remain subject to the relevant provisions of Exchange Act rules 18a–5 and 18a–6. Those rules require the Covered Entity to make and preserve records of its compliance with Exchange Act risk control requirements and of its security-based swap activities required or governed by those requirements. A Covered Entity that applies substituted compliance for a risk control requirement, but complies directly with related recordkeeping requirements in rules 18a–5 and 18a–6, therefore must make and preserve records of its compliance with the relevant conditions to the Order and of its security-based swap activities required or governed by those conditions and/or referenced in the relevant parts of rules 18a–5 and 18a–6.

The Commission details below its consideration of comments on the proposed Order.

1. Internal Risk Management

Exchange Act section 15F(j)(2) requires a registered SBS Entity to establish robust and professional risk

[135] *See* para. (b) of the Order.

[136] *See* SIFMA 5/3/2021 Letter at 9. The commenter also requested that the Commission not require a Covered Entity to be subject to and comply with some of the UK risk control requirements listed in the proposed Order. *See* SIFMA 5/3/2021 Letter at 9 and Appendix A part (b). The Commission addresses those requests in the relevant sections of this part IV below.

[137] *See* Better Markets Letter at 2. The commenter also stated that, if the Commission nevertheless makes a positive substituted compliance determination, it must at a minimum ensure that the conditions in the proposed Order ''are applied with full force and without exceptions or dilution.'' The Commission addresses that comment in the relevant sections of this part IV below.

[138] *See* paras. (b)(1) through (b)(5) of the Order.

[139] *See* paras. (b)(3)(ii) of the Order. This condition promotes comparability with the Exchange Act rule requiring reports to the Commission regarding significant valuation disputes, while leveraging UK reporting provisions to avoid the need for Covered Entities to create additional reporting frameworks. When it proposed the condition to report valuation disputes, the Commission recognized that valuation inaccuracies may lead to uncollateralized credit exposure and the potential for loss in the event of default. *See* Exchange Act Release No. 84861 (Dec. 19, 2018), 84 FR 4614, 4621 (Feb. 15, 2019). It thus is important that the Commission be informed regarding valuation disputes affecting SBS Entities. The principal difference between the Exchange Act and UK valuation dispute reporting requirements concerns the timing of notices. Exchange Act rule 15Fi–3 requires SBS Entities to report promptly to the Commission valuation disputes in excess of $20 million that have been outstanding for three or five business days (depending on the counterparty type). UK EMIR RTS article 15(2) requires financial counterparties to report to the FCA at least monthly any disputes between counterparties in excess of €15 million and outstanding for at least 15 business days. The Commission is mindful that the UK provision does not provide for notice as quickly as rule 15Fi–3, but in the Commission's view on balance this difference would not be inconsistent with the conclusion that the two sets of requirements, taken as a whole, promote comparable regulatory outcomes.

[140] *See* para. (b)(5) of the Order. The Exchange Act rule 15Fi-5 disclosures address information regarding (1) the status of the SBS Entity or its counterparty as an insured depository institution or financial counterparty and (2) the possibility that in certain circumstances the SBS Entity or its counterparty may be subject to the insolvency regime set forth in Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act or the Federal Deposit Insurance Act, which may affect rights to terminate, liquidate, or net security-based swaps. *See* Exchange Act Release No. 87782 (Dec. 18, 2019), 85 FR 6359, 6374 (Feb. 4, 2020) (''Risk Mitigation Adopting Release''). Documentation requirements under applicable UK law do not address the disclosure of information related to insolvency procedures under U.S. law. However, the absence of such disclosures would not appear to preclude a comparable regulatory outcome when the counterparty is not a U.S. person, as the insolvency-related consequences that are the subject of the disclosure would not apply to non-U.S. counterparties in most cases. Moreover, UK EMIR Margin RTS article 2 requires counterparties to establish, apply, and document risk management procedures providing for or specifying the terms of agreements entered into by the counterparties, including applicable governing law for non–centrally cleared derivatives. When counterparties enter into a netting or collateral exchange agreement, they also must perform an independent legal review of the enforceability of those agreements.

management systems adequate for managing its day-to-day business. In addition, Exchange Act rule 15Fh–3(h)(2)(iii)(I) [141] requires an SBS Entity to establish and maintain a system to supervise, and to diligently supervise, its business and the activities of its associated persons. This system of internal supervision must include, in relevant part, the establishment, maintenance, and enforcement of written policies and procedures reasonably designed, taking into consideration the nature of the SBS Entity's business, to comply with its duty under Exchange Act section 15F(j)(2) to establish an internal risk management system.

The Commission continues to believe that UK internal risk management requirements promote regulatory outcomes comparable to Exchange Act requirements, and is making a positive substituted compliance determination for internal risk management requirements that is consistent with the proposed Order except for the addition of certain risk management requirements. A commenter requested that the Commission not require a Covered Entity to be subject to and comply with certain of the UK requirements specified in the proposed Order.[142] By contrast, another commenter stated that, if the Commission makes a positive substituted compliance determination, it must at a minimum ensure that the conditions in the proposed Order ''are applied with full force and without exceptions or dilution.'' [143] The Commission details below its consideration of comments received.

A commenter stated that the Commission should delete from the Order the provisions of FCA IFPRU, FCA BIPRU, and FCA SYSC 19A listed in paragraphs (b)(1)(i) and (b)(1)(iv) of the proposed Order. These provisions apply only to IFPRU investment firms, and the commenter stated that it expects only ''banks and PRA-designated investment firms'' will register as SBS Entities.[144] For the reasons described in part III.B.2.e above, the Commission is retaining the references to these provisions.

Similarly, the commenter stated that the Commission should delete from the Order the provisions of FSMA and FCA COND listed in paragraph (b)(1)(v) of the proposed Order that apply to firms regulated only by the FCA, rather than to firms dually regulated by both the FCA and the PRA.[145] The commenter again stated that it expects only dually regulated ''banks and PRA-designated investment firms'' will register as SBS Entities.[146] The proposed Order would not require a Covered Entity that is a dually regulated firm to be subject to and comply with these provisions. Rather, paragraph (b)(1)(v) of the proposed Order would require the Covered Entity to be subject to and comply with either the provisions of FSMA and FCA COND that apply to solo-regulated firms or analogous provisions that apply to dually regulated firms. Accordingly, the Commission is retaining the references to these provisions.

The commenter also recommended that the Commission delete from the Order the following provisions because they do not correspond to and go beyond Exchange Act internal risk management requirements: [147]

- PRA Internal Capital Adequacy Assessment Rules 4.1 through 4.4, which implement CRD article 79, address a Covered Entity's management of credit and counterparty risk. PRA Internal Capital Adequacy Assessment Rule 5.1, which implements CRD article 80, addresses a Covered Entity's management of residual risk. PRA Internal Capital Adequacy Assessment Rule 6.1, which implements CRD article 81, addresses a Covered Entity's management of concentration risk. PRA Internal Capital Adequacy Assessment Rules 7.1 and 7.2, which implement CRD article 82, address a Covered Entity's management of securitization risk. PRA Internal Capital Adequacy Assessment Rules 8.1 through 8.5, which implement CRD article 83, address a Covered Entity's management of market risk. PRA Internal Capital Adequacy Assessment Rule 9.1, which implements CRD article 84, addresses a Covered Entity's management of interest rate risk. PRA Internal Capital Adequacy Assessment Rules 10.1 and 10.2, which implement CRD article 85, address a Covered Entity's management of operational risk. PRA Internal Liquidity Adequacy Assessment Rules 3.1 through 3.3, 4.1, 7.2, 8.1, 9.2, 11.1, 11.2, 11.4, 12.1, 12.3, and 12.4, which implement CRD article 86, address a Covered Entity's management of liquidity risk and funding risk. PRA Internal Capital Adequacy Assessment Rules 11.1 through 11.3, which implement CRD article 87, address a Covered Entity's management of risk from excessive leverage.
- FCA SYSC 4.1.1R, which implements a portion of CRD article 74(1), requires a Covered Entity to have robust governance arrangements, including effective processes to identify, manage, monitor, and report the risks it is or might be exposed to. FCA SYSC 4.1.2R and PRA General Organisational Requirement Rule 2.2, which implement CRD article 74(2), requires these arrangements and processes to be comprehensive and proportionate to the nature, scale, and complexity of the risks of the Covered Entity's business and activities. FCA SYSC 7.1.4R, 7.1.17R, 7.1.18R, 7.1.18BR, 7.1.19R, 7.1.20R, 7.1.21R, and 7.1.22R and PRA Risk Control Rules 2.3, 2.7, and 3.1 through 3.5, which implement CRD article 76, address the Covered Entity's internal governance structures for risk management.
- FCA SYSC 19D.2.1R and PRA Remuneration Rule 6.2 require a Covered Entity to establish and maintain a remuneration policy, practices, and procedures that are consistent with and that promote sound and effective risk management.[148]
- FSMA schedule 6 part 3C and FCA COND 2.4.1C, which address issues similar to MiFID articles 16(4) and (5), require the Covered Entity's non-financial resources to be appropriate in relation to its regulated activities, taking into account factors such as the nature and scale of the business, the risks to the continuity of the Covered Entity's services, the Covered Entity's membership in a group or any effect that membership may have, the skills and experience of those managing the Covered Entity's affairs, and whether the Covered Entity's non-financial resources are sufficient to enable it to comply with applicable requirements of the FCA. FSMA schedule 6 part 5D, which also addresses issues similar to MiFID articles 16(4) and (5), requires the Covered Entity's business to be conducted in a prudent manner, which requires the Covered Entity to have appropriate financial and non-financial resources, taking into account factors such as the nature and complexity of the

[141] 17 CFR 240.15Fh–3(h)(2)(iii)(I).

[142] *See* SIFMA 5/3/2021 Letter at 20–21 and Appendix A part (d)(3).

[143] *See* Better Markets Letter at 2.

[144] *See* SIFMA 5/3/2021 Letter Appendix A part (b)(1).

[145] *See* SIFMA 5/3/2021 Letter Appendix A part (b)(1).

[146] *See* SIFMA 5/3/2021 Letter Appendix A part (b)(1) n.2.

[147] *See* SIFMA 5/3/2021 Letter Appendix A part (b)(1).

[148] The FCA also recommended that the Commission delete from the Order the requirement for a Covered Entity to be subject to and comply with provisions of FCA SYSC 19D and PRA Remuneration Rule 6.2 (along with corollary provisions of FCA SYSC 19A applicable to IFPRU firms) as a condition to substituted compliance for internal risk management requirements. *See* FCA Comments (stating that ''these provisions appear in excess of what is strictly required for substituted compliance with the US provision'').

Covered Entity's regulated activities, the nature and scale of the business, and the risks to the continuity of the Covered Entity's services. To have appropriate non-financial resources, the Covered Entity in particular must have resources to identify, monitor, measure, and take action to remove or reduce risks to the accuracy of the Covered Entity's valuation of its assets and liabilities, be managed to a reasonable standard of effectiveness and have non-financial resources sufficient to enable it to comply with applicable requirements of the PRA. PRA Fundamental Rules 3 through 6 similarly require the Covered Entity to act in a prudent manner, maintain adequate financial resources at all times, have effective risk strategies and risk management systems and organize and control its affairs responsibly and effectively.

• UK CRR article 286 requires a Covered Entity to establish and maintain a counterparty credit risk management framework, including policies, processes, and systems to ensure the identification, measurement, approval, and internal reporting of counterparty credit risk and procedures for ensuring that those policies, processes, and systems are complied with. UK CRR article 287 addresses the internal governance of risk control and collateral management functions for Covered Entities that use internal models to calculate capital requirements. UK CRR article 288 requires the Covered Entity to conduct regular, independent reviews of its counterparty credit risk management systems and any risk control and collateral management functions required by UK CRR article 287. UK CRR article 293 addresses internal governance of the Covered Entity's internal risk management systems and validation of risk models that the Covered Entity uses.

• UK EMIR Margin RTS article 2 requires counterparties to non-centrally cleared OTC derivative contracts to establish, apply, and document risk management procedures for the exchange of collateral.

• UK MiFID Org Reg article 21 [149] addresses a Covered Entity's systems, internal controls, and arrangements for management of a variety of risk areas, including internal decision-making, allocation, proper discharge of responsibilities, compliance with decisions and internal procedures, employment of personnel able to discharge their responsibilities, internal reporting and communication of information, adequate and orderly recordkeeping, safeguarding information, business continuity, and accounting policies and procedures, as well as regular evaluation of the adequacy and effectiveness of those systems, internal controls, and arrangements. UK MiFID Org Reg article 22 addresses a Covered Entity's policies and procedures for detecting and minimizing risk of failure to comply with its obligations under UK provisions that implement MiFID, as well as the Covered Entity's independent compliance function that monitors and assesses the adequacy and effectiveness of those policies and procedures. UK MiFID Org Reg article 24 addresses a Covered Entity's internal audit function that evaluates the adequacy and effectiveness of the Covered Entity's systems, internal controls, and arrangements.

Taken as a whole, these UK requirements help to produce regulatory outcomes comparable to Exchange Act requirements to establish robust and professional internal risk management systems adequate for managing the Covered Entity's day-to-day business. The comparability analysis requires consideration of Exchange Act requirements as a whole against analogous UK requirements as a whole, recognizing that U.S. and non-U.S. regimes may follow materially different approaches in terms of specificity and technical content. This ''as a whole'' approach—which the Commission is following in lieu of requiring requirement-by-requirement similarity—further means that the conditions to substituted compliance should encompass all UK requirements that establish comparability with the applicable regulatory outcome, and helps to avoid ambiguity in the application of substituted compliance. It would be inconsistent with the holistic approach to excise relevant requirements and leave only the residual UK provisions that most closely resemble the analogous Exchange Act requirements.[150] Moreover, because Exchange Act internal risk management requirements serve the purpose of establishing internal systems to manage the Covered Entity's risks, including risks of non-compliance with applicable laws, it would be paradoxical to conclude that an SBS Entity that fails to implement requisite internal supervision practices nonetheless may be considered to be following internal risk management standards that are sufficient to meet the regulatory outcomes required under the Exchange Act; an internal supervision-related failure necessarily also constitutes a risk management failure. For these reasons, the Commission concludes that these UK provisions appropriately constitute part of the substituted compliance conditions for internal risk management requirements and is retaining the references to these provisions. In reaching this conclusion, the Commission emphasizes the importance of ensuring that substituted compliance is grounded on the comparability of regulatory outcomes. Retaining the conditions of the Order related to these UK provisions also should address another commenter's concern that any substituted compliance determination not weaken the internal risk management conditions in the proposed Order.[151]

In addition, the Commission is adding a requirement for a Covered Entity using substituted compliance for internal risk management requirements to be subject to and comply with provisions that implement MiFID articles 16 and 23, provisions of UK MiFID Org Reg related to MiFID articles 16 and 23, and provisions that implement CRD articles 88(1), 91(1), (2), and (7) through (9), 92, 94, and 95.[152] These provisions address additional aspects of a Covered Entity's management of the risks posed by internal governance and organization, business operations, conflicts of interest with and between clients, and senior staff remuneration policies. In deciding to make a positive substituted compliance determination for UK internal risk management requirements, the Commission considers that the Order's condition requiring a Covered Entity to be subject to and comply with all of the UK internal risk management requirements listed in paragraph (b)(1) of the Order help to produce regulatory outcomes comparable to Exchange Act internal risk management requirements. In deciding to make a positive substituted compliance determination for UK internal risk management requirements, the Commission considers that the Order's condition requiring a Covered Entity to be subject to and comply with all of the UK requirements listed in paragraph (b)(1)

[149] The commenter stated that these requirements are more appropriately addressed in connection with substituted compliance for internal supervision and chief compliance officer requirements. As discussed below, the Commission believes that these UK requirements are relevant to substituted compliance for Exchange Act internal risk management requirements.

[150] The Commission further believes that those conditions to substituted compliance do not expand the scope of Exchange Act requirements because substituted compliance is an option available to non-U.S. person SBS Entities—not a mandate.

[151] *See* Better Markets Letter at 2.

[152] *See* para. (b)(1) of the Order.

of the Order help to produce regulatory outcomes comparable to Exchange Act internal risk management requirements. The Commission recognizes that some of the UK requirements related to internal risk management follow a more granular approach than the high-level approach of Exchange Act internal risk management requirements, but these UK requirements, taken as a whole, are crafted to promote a Covered Entity's risk management. Within the requisite outcomes-oriented approach for analyzing comparability, the Commission concludes that a Covered Entity's failure to comply with any of those UK internal risk management requirements would be inconsistent with a Covered Entity's obligations under Exchange Act internal risk management requirements and that compliance with the full set of UK internal risk management requirements listed in paragraph (b)(1) of the Order would promote comparable regulatory outcomes.

2. Trade Acknowledgement and Verification

The Commission continues to believe that UK trade acknowledgment and verification requirements promote regulatory outcomes comparable to Exchange Act requirements, and is making a positive substituted compliance determination for trade acknowledgment and verification requirements consistent with the proposed Order. The Commission details below its consideration of comments received.

One commenter stated that the Commission inappropriately attempted to compensate for inadequate UK trade acknowledgment and verification requirements by relying on guidance.[153] The same commenter stated that, if the Commission nevertheless makes a positive substituted compliance determination, it must at a minimum ensure that the conditions in the proposed Order ''are applied with full force and without exceptions or dilution.'' [154] The commenter misinterpreted the role of guidance in the Commission's comparability analysis.

UK EMIR article 11 requires ''financial counterparties'' and ''non-financial counterparties'' to ensure appropriate procedures and arrangements are in place to achieve timely confirmation of the terms of an OTC derivative contract.[155] Similarly, UK EMIR RTS article 12 requires non-centrally cleared OTC derivative contracts between ''financial counterparties'' and ''non-financial counterparties'' to be confirmed.[156] These counterparty categories do not include entities organized outside the UK, such as U.S. persons.[157] Confirmation means the documentation of the agreement of the counterparties to all the terms of the OTC derivative contract.[158] The UK requirements as a whole thus require a Covered Entity [159] to provide a confirmation that serves as a trade acknowledgment, without regard to where its counterparty is organized, and also require the Covered Entity's counterparty, when it is a financial counterparty or non-financial counterparty, to provide a confirmation that serves as the trade verification, and the Commission considers these requirements to promote regulatory outcomes comparable to Exchange Act trade acknowledgment and verification requirements for those counterparties. The UK requirements in most instances do not require a Covered Entity's counterparty that is organized outside the UK to provide a confirmation that serves as the Exchange Act trade verification,[160] though they do require the Covered Entity to confirm the transaction.[161] Confirmation is defined as documenting the agreement of the Covered Entity and its counterparty to all the terms of the OTC derivative contract.[162]

To confirm that the Commission's analysis of the UK requirements for OTC derivatives contracts with non-UK-organized counterparties is consistent with the FCA's view of these requirements, the Commission considered the requirements together with guidance on this exact point from the FCA and ESMA.[163] In interpreting EU confirmation requirements that are identical to the relevant UK requirements, ESMA's guidance provides that ''when an EU counterparty is transacting with a third country entity, the EU counterparty would be required to ensure that the requirements for . . . timely confirmation . . . are met for the relevant . . . transactions even though the third country entity would not itself be subject to EMIR.'' [164] That guidance also provides that compliance with the EMIR confirmation requirements means ''reach[ing] a legally binding agreement to all the terms of an OTC derivative contract.'' [165] The FCA has published guidance indicating that ESMA's guidance ''will remain relevant [after the UK's exit from the EU] to the FCA and market participants in their compliance with regulatory requirements.'' [166] This

[153] *See* Better Markets Letter at 5–6 (arguing that the Commission's reliance ''on multiple layers of non-binding guidance, one of which is issued by a jurisdiction the UK does not belong to, one of which is so vague as to border on useless, would be an abdication of the SEC's responsibility to protect the U.S. financial system'').

[154] *See* Better Markets Letter at 2.

[155] *See* UK EMIR article 11(1)(a).

[156] *See* UK EMIR RTS articles 12(1) and (2).

[157] *See* UK EMIR article 2(8) (definition of ''financial counterparty''); UK EMIR article 2(9) (definition of ''non-financial counterparty'').

[158] *See* UK EMIR RTS article 1(c).

[159] The Order defines a Covered Entity to include a MiFID investment or a third country investment firm. A MiFID investment firm is included in the definition of ''financial counterparty,'' so a Covered Entity that is a MiFID investment firm is also a financial counterparty and thus is ''subject to'' UK EMIR article 11 and related provisions of UK EMIR RTS and UK EMIR Margin RTS for purposes of the Order. A third country investment firm is not included in the definitions of ''financial counterparty'' or ''non-financial counterparty,'' but may nevertheless be ''subject to'' UK EMIR article 11 and related provisions of UK EMIR RTS and UK EMIR Margin RTS for purposes of the Order if its OTC derivative contract would be subject to those obligations if it were established in the UK and either the contract has a direct, substantial, and foreseeable effect within the UK or applying UK EMIR article 11 is necessary or appropriate to prevent evasion of UK EMIR. *See* UK EMIR article 11(12).

[160] *See* UK EMIR article 2(8) (definition of ''financial counterparty'' limited to entities defined or authorized in a manner that in most instances is reserved for UK-established entities); UK EMIR article 2(9) (definition of ''non-financial counterparty'' limited to UK-established entities); UK EMIR article 11(1)(a), 11(12) (confirmation requirement applies to financial counterparties, non-financial counterparties, and third-country entities that would be subject to the confirmation requirement if established in the UK and either the relevant contract has a direct, substantial, and foreseeable effect in the UK or the obligation is necessary or appropriate to prevent the evasion of any provision of UK EMIR).

[161] Paragraph (b)(2) of the Order requires the Covered Entity to be subject to and comply with UK EMIR-based trade acknowledgment and verification requirements. A Covered Entity will be subject to those requirements only if it is a financial counterparty, non-financial counterparty, or third-country entity that would be subject to the confirmation requirement if established in the UK and either the relevant contract has a direct, substantial, and foreseeable effect in the UK or the obligation is necessary or appropriate to prevent the evasion of any provision of UK EMIR. *See* UK EMIR article 11(1)(a), 11(12).

[162] *See* UK EMIR RTS article 1(c).

[163] *See* European Securities and Markets Authority, Questions and Answers: Implementation of the Regulation (EU) No 648/2012 on OTC Derivatives, Central Counterparties and Trade Repositories (EMIR), available at: *https://www.esma.europa.eu/sites/default/files/library/esma70-1861941480-52_qa_on_emir_implementation.pdf* (''ESMA EMIR Q&A'').

[164] *See* ESMA EMIR Q&A, OTC Answer 12(b).

[165] *See* ESMA EMIR Q&A, OTC Answer 5(a).

[166] *See* Financial Conduct Authority, ''Brexit: our approach to EU non-legislative materials,'' para. 9, available at: *https://www.fca.org.uk/publication/corporate/brexit-our-approach-to-eu-non-legislative-materials.pdf* (''FCA Brexit Guidance''); *see also* FCA Brexit Guidance at para. 12 (''We will continue to have regard to other EU non-legislative material where and if they are relevant, taking account of Brexit and ongoing domestic legislation. Firms, market participants and stakeholders should also continue to do so.'').

guidance thus is consistent with the Commission's analysis of the legally binding UK requirements discussed above, and provides the Commission additional comfort that its analysis of complex UK requirements is consistent with the FCA's view of those requirements. For these reasons, the Commission disagrees with the commenter and believes that the UK trade acknowledgment and verification requirements promote regulatory outcomes comparable to Exchange Act requirements.

The Commission agrees with the comments in the Better Markets Letter that the proposed conditions to substituted compliance for trade acknowledgment and verification requirements should be retained. To further ensure that a Covered Entity using substituted compliance for trade acknowledgment and verification requirements will be required to document the agreement of the counterparties to all the terms of the relevant transaction, the Commission is issuing the Order as proposed with general conditions that will require the Covered Entity to treat its counterparty as a counterparty with whom UK trade acknowledgment and verification requirements require the Covered Entity to reach an agreement to all the terms of the OTC derivative contract and to ensure that the relevant security-based swap is either non-centrally cleared and subject to UK EMIR or centrally cleared by a UK central counterparty.[167]

Another commenter expressed general support for the proposed approach toward substituted compliance for the risk control provisions, but requested that the Commission not require a Covered Entity to be subject to and comply with UK EMIR RTS article 12(4) because it does not relate to and goes beyond Exchange Act trade acknowledgment and verification requirements.[168] As part of the UK's framework for trade acknowledgment and verification, UK EMIR RTS article 12(4) requires a Covered Entity to have the necessary procedure to report on a monthly basis to the FCA the number of unconfirmed, non-centrally cleared OTC derivative transactions that have been outstanding for more than five business days. Though Exchange Act rule 15Fi–2 does not have a similar requirement to report unconfirmed trades, the Commission considers that UK EMIR RTS article 12(4)'s requirement to report unconfirmed trades to the FCA is an inseparable part of the UK's framework for trade acknowledgment and verification, as those reports support the UK framework's mandate to confirm transactions. Requiring a Covered Entity to be subject to and comply with UK EMIR RTS article 12(4) thus is consistent with a holistic approach for comparing regulatory outcomes that reflects the whole of a jurisdiction's relevant requirements. Accordingly, the Order retains as a condition to substituted compliance for trade acknowledgment and verification requirements the requirement that the Covered Entity be subject to and comply with the entirety of UK EMIR RTS article 12.

In summary, the Commission continues to believe that UK requirements promote the goal of avoiding legal and operational risks through requirements for written records of transactions and procedures to avoid disagreements regarding the meaning of transaction terms, in a manner that is comparable to the purpose of Exchange Act rule 15Fi–2. The Commission is retaining the proposed conditions to substituted compliance for trade acknowledgment and verification, consistent with the approach advocated by a commenter.[169] While the Commission recognizes the differences between UK requirements and Exchange Act trade acknowledgment and verification requirements, in the Commission's view those differences on balance would not preclude substituted compliance, particularly as requirement-by-requirement similarity is not needed for substituted compliance. The commenter's request for a ''well-supported, evidence-based determination'' has been met here in the context of the requisite holistic analysis,[170] and the commenter's suggestion that there is a need for analysis regarding protection of the American financial system has been addressed above.[171]

3. Portfolio Reconciliation and Dispute Reporting

One commenter expressed general support for the proposed approach toward substituted compliance for the risk control provisions.[172] Another commenter stated that, if the Commission makes a positive substituted compliance determination, it must at a minimum ensure that the conditions in the proposed Order ''are applied with full force and without exceptions or dilution.'' [173] The Commission continues to believes that UK portfolio reconciliation and dispute reporting requirements promote regulatory outcomes comparable to Exchange Act requirements, by subjecting Covered Entities to risk mitigation practices that are appropriate to the risks associated with their security-based swap businesses, and is making a positive substituted compliance determination for portfolio reconciliation and dispute reporting requirements consistent with the proposed Order.[174] Substituted compliance in connection with the dispute reporting requirements is conditioned in part on the Covered Entities providing the Commission with reports regarding disputes between counterparties on the same basis as the entities provide those reports to competent authorities pursuant to UK law, to allow the Commission to obtain notice regarding key information in a manner that makes use of existing obligations under UK law.[175]

4. Portfolio Compression

One commenter expressed general support for the proposed approach toward substituted compliance for the risk control provisions.[176] Another commenter stated that, if the Commission makes a positive substituted compliance determination, it must at a minimum ensure that the conditions in the proposed Order ''are applied with full force and without exceptions or dilution.'' [177] The

[167] *See* paras. (a)(13) and (a)(14) of the Order.

[168] *See* SIFMA 5/3/2021 Letter at 9 and Appendix A part (b)(2).

[169] *See* Better Markets Letter at 2.

[170] *See* Better Markets Letter at 4 (requesting the Commission make a ''well-supported, evidence-based determination''). As discussed in part II.C.1 above, the Commission believes that the present approach toward comparability analyses—which are based on a close reading of relevant foreign requirements and careful consideration of regulatory outcomes—appropriately reflects the holistic comparability approach and the rejection of requirement-by-requirement similarity.

[171] *See* Better Markets Letter at 3–4 (stating that the Commission must provide analysis that the substituted compliance determination would protect the American financial system). As discussed in part II.C.1 above, the Commission believes that additional conditions related to protection of the American financial system would not be useful.

[172] *See* SIFMA 5/3/2021 Letter at 9.

[173] *See* Better Markets Letter at 2.

[174] *See* para. (b)(3) of the Order.

[175] *See* para. (b)(3)(ii) of the Order. The Commission recognizes the differences between the two sets of requirements—under which Exchange Act rule 15Fi–3 requires SBS Entities to report valuation disputes in excess of $20 million that have been outstanding for three or five business days (depending on counterparty types), while UK EMIR RTS article 15(2) requires firms to report disputes between counterparties in excess of €15 million and outstanding for at least 15 business days. In the Commission's view, the two requirements produce comparable regulatory outcomes notwithstanding those differences.

[176] *See* SIFMA 5/3/2021 Letter at 9.

[177] *See* Better Markets Letter at 2.

Commission continues to believe that UK portfolio compression requirements promote regulatory outcomes comparable to Exchange Act requirements, by subjecting Covered Entities to risk mitigation practices that are appropriate to the risks associated with their security-based swap businesses, and is making a positive substituted compliance determination for portfolio compression requirements consistent with the proposed Order.[178]

5. Trading Relationship Documentation

The Commission continues to believe that UK trading relationship documentation requirements promote regulatory outcomes comparable to Exchange Act requirements, and is making a positive substituted compliance determination for trading relationship documentation requirements consistent with the proposed Order. The Commission details below its consideration of comments received.

One commenter stated that the Commission inappropriately attempted to compensate for inadequate UK trading relationship documentation requirements by relying on guidance.[179] The same commenter stated that, if the Commission nevertheless makes a positive substituted compliance determination, it must at a minimum ensure that the conditions in the proposed Order ''are applied with full force and without exceptions or dilution.'' [180] The commenter misinterpreted the role of guidance in the Commission's comparability analysis. The proposed Order would require a Covered Entity to be subject to and comply with UK EMIR article 11(1)(a), UK EMIR RTS article 12, and UK EMIR Margin RTS article 2. The Commission highlights the special importance of UK EMIR Margin RTS article 2, which addresses risk management procedures related to the exchange of collateral, including procedures related to the terms of all necessary agreements to be entered into by counterparties (*e.g.,* payment obligations, netting conditions, events of default, calculation methods, transfers of rights and obligations upon termination, and governing law). Those obligations are denoted as being connected to collateral exchange obligations, and the Commission believes that they are necessary to help produce a regulatory outcome that mitigates risk in a manner that is comparable to the outcome associated with the Exchange Act trading relationship documentation requirements. To bridge any gap left by UK EMIR Margin RTS article 2, the Commission is also requiring compliance with UK EMIR article 11(1)(a) and UK EMIR RTS article 12, which, as discussed in part IV.B.2 above, require the Covered Entity to confirm the transaction, with confirmation defined as documentation of the agreement of the counterparties to all the terms of the OTC derivative contract. Also as discussed in part IV.B.2 above, the Commission consulted guidance from the FCA and ESMA to confirm that the Commission's analysis of those complex UK requirements was consistent with the FCA's view of those requirements.[181] The Commission thus agrees with the commenter that the proposed conditions to substituted compliance for trading relationship documentation requirements should be retained. To further ensure that a Covered Entity using substituted compliance for trading relationship documentation requirements will be required to document the agreement of the counterparties to all the terms of the relevant transaction, the Commission is issuing the Order as proposed with two general conditions that will require the Covered Entity to treat its counterparty as a financial counterparty or non-financial counterparty when complying UK trade acknowledgment and verification requirements.[182]

Another commenter expressed general support for the proposed approach toward substituted compliance for the risk control provisions, but requested that the Commission not require a Covered Entity to be subject to and comply with UK EMIR RTS article 12(4) because it does not relate to and goes beyond Exchange Act trading relationship documentation requirements.[183] For the reasons described in part IV.B.2 above, the Commission is retaining the reference to this provision.

Accordingly, the Commission continues to believe that UK requirements promote regulatory outcomes comparable to Exchange Act trading relationship documentation requirements. While the Commission recognizes that these and certain other differences between UK requirements and Exchange Act trading relationship documentation requirements, in the Commission's view those differences on balance would not preclude substituted compliance, particularly as requirement-by-requirement similarity is not needed for substituted compliance.

V. Substituted Compliance for Capital and Margin Requirements

A. Proposed Approach

The FCA Application in part requested substituted compliance in connection with capital and margin requirements relating to:

- *Capital*—Capital requirements pursuant to Exchange Act section 15F(e) and Exchange Act rule 18a–1 and its appendices (collectively ''Exchange Act rule 18a–1'') applicable to certain SBS Entities.[184] Exchange Act rule 18a–1 helps to ensure the SBS Entity maintains at all times sufficient liquid assets to promptly satisfy its liabilities, and to provide a cushion of liquid assets in excess of liabilities to cover potential market, credit, and other risks. The rule's net liquid assets test standard protects customers and counterparties and mitigates the consequences of an SBS Entity's failure by promoting the ability of the firm to absorb financial shocks and, if necessary, to self-liquidate in an orderly manner.[185] As part of the capital requirements, security-based swap dealers without a prudential regulator also must comply with the internal risk management control requirements of Exchange Act

[178] *See* para. (b)(4) of the Order.

[179] *See* Better Markets Letter at 5–6.

[180] *See* Better Markets Letter at 2.

[181] *See* ESMA EMIR Q&A, OTC Answers 5(a), 12(b); FCA Brexit Guidance at paras. 9, 12.

[182] *See* para. (a)(13) of the Order.

[183] *See* SIFMA 5/3/2021 Letter at 9 and Appendix A part (b)(5).

[184] 17 CFR 240.18a–1 through 18a–1d. Exchange Act rule 18a–1 applies to security-based swap dealers that: (1) Do not have a prudential regulator and (2) are either: (a) Not dually registered with the Commission as a broker-dealer; or (b) are dually registered with the Commission as a special purpose broker-dealer known as an OTC derivatives dealer. Security-based swap dealers that are dually registered with the Commission as a full-service broker-dealer are subject to the capital requirements of Exchange Act rule 15c3–1 (17 CFR 240.15c3–1) for which substituted compliance is not available. *See* 17 CFR 240.3a71–6(d)(4)(i) (making substituted compliance available only with respect to the capital requirements of Exchange Act section 15F(e) and Exchange Act rule 18a–1).

[185] *See* Exchange Act Release No. 86175 (June 21, 2019), 84 FR 43872, 43879–83 (Aug. 22, 2019) (''Capital and Margin Adopting Release''). The capital standard of Exchange Act rule 18a–1 is based on the net liquid assets test of Exchange Act rule 15c3–1 applicable to broker-dealers. *See* Capital and Margin Adopting Release, 84 FR 43872, 43879–83. The net liquid assets test seeks to promote liquidity by requiring that a firm maintain sufficient liquid assets to meet all liabilities, including obligations to customers, counterparties, and other creditors, and, in the event a firm fails financially, to have adequate additional resources to wind-down its business in an orderly manner without the need for a formal proceeding. *See* Capital and Margin Adopting Release, 84 FR at 43879. *See* FCA Application Appendix B, Annex V (Side Letter Addressing Capital Requirements).

rule 15c3–4 with respect to certain activities.[186]

• *Margin*—Margin requirements pursuant to Exchange Act section 15F(e) and Exchange Act rule 18a–3 for non-prudentially regulated SBS Entities.[187] The margin requirements are designed to protect SBS Entities from the consequences of a counterparty's default.[188]

Taken as a whole, these capital and margin requirements help to promote market stability by mandating that SBS Entities follow practices to manage the market, credit, liquidity, solvency, counterparty, and operational risks associated with their security-based swap businesses.

In proposing to provide conditional substituted compliance in connection with this part of the FCA Application, the Commission preliminarily concluded that substituted compliance with respect to the Exchange Act capital requirements would be subject to certain additional conditions.[189] The conditions were designed to help ensure the comparability of regulatory outcomes between Exchange Act rule 18a–1 (which imposes a net liquid assets test) and the capital requirements applicable to nonbank security-based swap dealers in the UK that are expected to register with the Commission. Those capital requirements are based on the international capital standard for banks (''Basel capital standard'').[190]

In proposing to provide conditional substituted compliance in connection with this part of the FCA Application, the Commission preliminarily concluded that relevant UK margin requirements would produce regulatory outcomes that are comparable to those associated with the Exchange Act margin requirements.[191]

Finally, the proposed Order would permit a Covered Entity to apply substituted compliance for the capital *and/or* margin requirements.[192] Thus, a Covered Entity could apply substituted compliance for Exchange Act margin requirements by complying with UK margin requirements but comply with Exchange Act capital requirements (rather than applying substituted compliance to those requirements) and vice versa. However, as to the various requirements within the capital and margin rules, the Commission found the rules to be entity-level when adopting amendments to Exchange Act rule 3a71–6 to make substituted compliance available with respect to them. Consequently, under the proposed Order, a Covered Entity must apply substituted compliance with respect to capital and margin requirements at an entity level.

B. Commenter Views and Final Provisions

1. Capital

Consistent with the proposed Order, the first capital condition requires the covered entity to be subject to and comply with certain identified UK capital requirements.[193] As discussed at the end of this section, the Commission made some modifications to the UK laws and regulations cited in this condition.[194] For the reasons discussed below, there are two additional conditions to applying substituted compliance with respect to Exchange Act rule 18a–1.

For the reasons discussed above in part III.B.2.k of this release, the first additional capital condition is that the Covered Entity applies substituted compliance with respect to Exchange Act rules 18a–5(a)(9) (a record making requirement), 18a–6(b)(1)(x) (a record preservation requirement), and 18a–8(a)(1)(i), (a)(1)(ii), (b)(1), (b)(2), and (b)(4) (notification requirements).[195] These recordkeeping and notification requirements are directly linked to the capital requirements of Exchange Act rule 18a–1. The proposed Order conditioned substituted compliance with respect to these recordkeeping and notification requirements on the Covered Entity applying substituted compliance with respect to Exchange Act rule 18a–1.[196] This additional capital condition is designed to provide clarity as to the Covered Entity's obligations under these recordkeeping and notification requirements when applying substituted compliance with respect to Exchange Act rule 18a–1 pursuant this Order.

The second additional capital condition builds on and modifies the proposed capital condition that was designed to address potential different regulatory outcomes between Exchange Act rule 18a–1and the UK capital requirements. In particular, the Commission proposed a four pronged condition with respect to applying substituted compliance to the capital requirements of Exchange Act rule 18a–1.[197] The first prong would require a Covered Entity to maintain an amount of assets that are allowable under Exchange Act rule 18a–1, after applying applicable haircuts under the Basel capital standard, that equals or exceeds the Covered Entity's current liabilities coming due in the next 365 days.[198] The second prong was linked to the first prong as it would require that a Covered Entity make a quarterly record listing: (1) The assets maintained pursuant to the first prong, their value, and the amount of their applicable haircuts; and (2) the aggregate amount of the liabilities coming due in the next 365 days. The third prong would require the Covered Entity to maintain at least $100 million of equity capital composed of highly liquid assets as defined in the Basel capital standard. The fourth prong would require the Covered Entity to include its most recently filed statement of financial condition whether audited or unaudited with its initial notice to the Commission of its intent to rely on substituted compliance.

One commenter recommended that the Commission consider denying substituted compliance for capital requirements on the basis that the UK's capital requirements do not produce comparable regulatory outcomes.[199] This commenter stated that ''granting substituted compliance with multiple conditions intended to mimic the Commission's capital requirements would seem to undermine the entire point of substituted compliance in the first place; namely, protecting the stability of the U.S. financial system by allowing substituted compliance *only*

[186] *See* 17 CFR 240.15c3–4 and 18a–1(f).

[187] 17 CFR 240.18a–3.

[188] *See* Capital and Margin Adopting Release, 84 FR at 43947, 43949 (''Obtaining collateral is one of the ways OTC derivatives dealers manage their credit risk exposure to OTC derivatives counterparties. Prior to the financial crisis, in certain circumstances, counterparties were able to enter into OTC derivatives transactions without having to deliver collateral. When ''trigger events'' occurred during the financial crisis, those counterparties faced significant liquidity strains when they were required to deliver collateral'').

[189] *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18385–89, 18413.

[190] *See, e.g.,* Basel Committee on Banking Supervision (''BCBS''), The Basel Framework, available at: *https://www.bis.org/basel_framework/*.

[191] *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18386, 18413.

[192] *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18386–87.

[193] *See* para. (c)(1)(i) of the Order. *See also* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18386.

[194] *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18386, n.81.

[195] *See* para. (c)(1)(ii) of the Order.

[196] *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18395–18403, 18416–17, 19419.

[197] *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18387–89 (discussing the additional conditions).

[198] As used in this part V.B.1. of the release, the term ''Covered Entity'' refers to a security-based swap dealer located in the UK that does not have a prudential regulator.

[199] *See* Better Markets Letter at 8.

when foreign regimes are comparable.'' [200]

In describing the differences in the capital frameworks between the net liquid assets test and the Basel capital standard, this commenter highlighted the treatment of initial margin posted to a counterparty.[201] Specifically, the commenter stated that in the UK initial margin posted to a counterparty counts as capital for that entity, while in the U.S. initial margin only counts as capital if the security-based swap dealer has a special loan agreement with an affiliate. The commenter stated that the U.S. requirement is intended to mitigate counterparty credit risk with respect to the return of the initial margin. The commenter argued that the result is that, not only are the UK requirements different from the Commission's in both form and substance, but the regulatory outcome is not comparable.

This commenter also stated that if a positive substituted compliance determination is made regarding capital, the Commission should not weaken the proposed additional capital condition in response to industry commenters, because these market participants are primarily concerned with reducing their own operational costs, without any regard to the systemic risk that would doing so would pose.[202] This commenter also stated that any determination to find the UK's capital requirements comparable to and as comprehensive as the Commission's capital framework without conditions at least as strong as proposed would not only contravene the Commission's own conception of substituted compliance ''but expose the U.S. financial system to very risks Dodd-Frank instructed the SEC to contain.'' [203]

Another commenter supported the proposed additional capital condition.[204] This commenter stated that the Commission should require Covered Entities to comply with the net liquid assets test under Exchange Act rule 18a–1, rather than the Basel capital standards.[205] The commenter stated that the net liquid assets test ''appropriately limits uncollateralized lending, fixed assets, and other illiquid assets such as real estate which have been proven repeatedly to be unreliable forms of capital but are currently counted'' as allowable capital under the Basel capital standard.[206] This commenter also agreed with the Commission that ''the initial margin that is posted is not available for other purposes and therefore, under the Basel standard, could swiftly result in less balance sheet liquidity than the standards under the Exchange Act's Rule 18a–1.'' [207]

A commenter supported the Commission's proposed Order to grant substituted compliance in connection with the Exchange Act capital requirements.[208] This commenter, however, opposed the proposed additional four pronged capital condition. The commenter stated that it was unnecessary, unduly rushed, and highly likely to be costly and disruptive to market participants and inconsistent with the Commission's substituted compliance framework.[209] More specifically, this commenter stated that the proposed capital condition was unnecessary because Covered Entities transact predominantly in securities and derivatives, do not extensively engage in unsecured lending or other activities more typical of banks, and are already subject to extensive liquidity requirements.[210] The commenter also expressed concern that the proposed capital condition was inconsistent with the Commission's substituted compliance framework in that it was duplicative of and would contradict the liquidity requirements established by the PRA.[211] This commenter stated that the imposition of the proposed capital condition would effectively substitute the Commission's judgment for the PRA's in terms of the best way to address liquidity risk, and may lead other regulators to refuse to extend deference to the Commission's regulatory determinations.[212]

With respect to the using the concept of ''allowable'' and ''nonallowable'' assets under Exchange Act rule 18a–1, the commenter stated that the first and second prongs of the capital condition do not define these terms and there is no analogous concept in the capital framework applicable in the UK.[213] The commenter stated this would require firms to re-categorize every asset on their balance sheets, which would not be feasible in the near term.[214] Further, this commenter asked the Commission to clarify what it means by ''haircuts'' with respect to the first and second prongs, since the Basel capital standard does not apply ''haircuts'' to assets, but instead applies a risk-weighted approach.[215]

This commenter also stated that the third prong of the proposed additional capital condition requiring ''at least $100 million of equity capital composed of 'highly liquid assets' as defined in the Basel capital standard,'' includes concepts that require clarification.[216] For example, this commenter stated that is unclear how a firm would calculate the amount of its ''equity capital'' that is ''composed of highly liquid assets,'' since ''equity'' generally refers to a firm's paid-in capital, retained earnings, and other items on the liabilities/shareholders' equity side of the balance sheet.[217] Finally, this commenter asserted that because it is approximately three months until the August 6th counting date, and firms may encounter significant operational challenges to meet the proposed or revised capital condition, the proposed condition may cause firms to exit the U.S. security-based swap market, or hope that the conditions are modified and delayed in a manner that will make it feasible to satisfy them.[218]

Overall, this commenter stated that the Commission should take a more incremental and deliberative approach to additional capital conditions, and specifically recommended that the Commission: (1) Delete the first prong of the capital condition; (2) replace the second prong with a requirement that a nonbank Covered Entity provide the same reports concerning liquidity metrics that the Covered Entity provides to the PRA; (3) modify the third prong to require a nonbank Covered Entity to maintain at least $100 million of high quality liquid assets, as defined in the Basel capital standard; and (4) issue an order on October 6, 2024, determining whether to maintain, delete, modify, or supplement the condition, based on consideration of the liquidity of nonbank Covered Entities, and after publishing a notice of any such changes

[200] Better Markets Letter at 8 (emphasis in the original).

[201] Better Markets Letter at 7.

[202] Better Markets Letter at 7–8.

[203] Better Markets Letter at 7–8.

[204] *See* Letter from Americans for Financial Reform Education Fund (May 3, 2021) (''Americans for Financial Reform Education Fund Letter'') at 1.

[205] *See* Americans for Financial Reform Education Fund Letter at 1 (''We support the Commission's proposal to require foreign security-based swap dealers and participants (''Covered Entities'') to abide by capital and initial margin requirements that reflect Exchange Act rule 18a–1 standards appropriate for broker-dealers, as opposed to Basel capital requirements for banks that permit illiquid assets to count toward capital minimums.'').

[206] *See* Americans for Financial Reform Education Fund Letter at 1.

[207] *See* Americans for Financial Reform Education Fund Letter at 2.

[208] SIFMA 5/3/2021 Letter at 10.

[209] SIFMA 5/3/2021 Letter at 10, 17.

[210] SIFMA 5/3/2021 Letter at 10–15.

[211] SIFMA 5/3/2021 Letter at 15.

[212] SIFMA 5/3/2021 Letter at 15–17.

[213] SIFMA 5/3/2021 Letter at 17.

[214] SIFMA 5/3/2021 Letter at 17.

[215] SIFMA 5/3/2021 Letter at 17–18.

[216] SIFMA 5/3/2021 Letter at 18.

[217] SIFMA 5/3/2021 Letter at 18.

[218] SIFMA 5/3/2021 Letter at 19.

for at least 90 days of public comment.[219]

The Commission agrees with the commenters who point out the differences between the capital standard of Exchange Act rule 18a–1 (*i.e.,* the net liquid assets test) and the Basel capital standard applicable to Covered Entities, and who therefore believe that—at a minimum—additional conditions are necessary to achieve comparable regulatory outcomes.[220] As the Commission explained when proposing the additional capital condition, the net liquid assets test is designed to promote liquidity.[221] In particular, Exchange Act rule 18a–1 allows an SBS Entity to engage in activities that are part of conducting a securities business (*e.g.,* taking securities into inventory) but in a manner that places the firm in the position of holding at all times more than one dollar of highly liquid assets for each dollar of unsubordinated liabilities (*e.g.,* money owed to customers, counterparties, and creditors).[222] For example, Exchange Act rule 18a–1 allows securities positions to count as allowable net capital, subject to standardized or internal model-based haircuts. The rule, however, does not permit most unsecured receivables to count as allowable net capital. This aspect of the rule limits the ability of SBS Entities to engage in activities, such as uncollateralized lending, that generate unsecured receivables. The rule also does not permit fixed assets or other illiquid assets to count as allowable net capital, which creates disincentives for SBS Entities to own real estate and other fixed assets that cannot be readily converted into cash. For these reasons, Exchange Act rule 18a–1 incentivizes SBS Entities to confine their business activities and devote capital to security-based swap activities.

The net liquid assets test is imposed through how an SBS Entity is required to compute net capital pursuant to Exchange Act rule 18a–1. The first step is to compute the SBS Entity's net worth under U.S. generally accepted accounting principles (''GAAP''). Next, the SBS Entity must make certain adjustments to its net worth to calculate net capital, such as deducting illiquid assets and taking other capital charges and adding qualifying subordinated loans.[223] The amount remaining after these deductions is defined as ''tentative net capital.'' Exchange Act rule 18a–1 prescribes a minimum tentative net capital requirement of $100 million for SBS Entities approved to use models to calculate net capital. An SBS Entity that is meeting its minimum tentative net capital requirement will be in the position where each dollar of unsubordinated liabilities is matched by more than a dollar of highly liquid assets.[224] The final step in computing net capital is to take prescribed percentage deductions (standardized haircuts) or model-based deductions from the mark-to-market value of the SBS Entity's proprietary positions (*e.g.,* securities, money market instruments, and commodities) that are included in its tentative net capital. The amount remaining is the firm's net capital, which must exceed the greater of $20 million or a ratio amount.

In comparison, Covered Entities in the UK are subject to the Basel capital standard. The Basel capital standard counts as capital assets that Exchange Act rule 18a–1 would exclude (*e.g.,* loans and most other types of uncollateralized receivables, furniture and fixtures, real estate). The Basel capital standard accommodates the business of banking: making loans (including extending unsecured credit) and taking deposits. While the Covered Entities that will apply substituted compliance with respect to Exchange Act rule 18a–1 will not be banks, the Basel capital standard allows them to count illiquid assets such as real estate and fixtures as capital. It also allows them to treat unsecured receivables related to activities beyond dealing in security-based swaps as capital notwithstanding the illiquidity of these assets.

Further, one critical example of the difference between the requirements of Exchange Act rule 18a–1 and the Basel capital standard relates to the treatment of initial margin with respect to security-based swaps and swaps. Under the UK margin requirements, Covered Entities will be required to post initial margin to counterparties unless an exception applies.[225] Under Exchange Act rule 18a–1, an SBS Entity cannot count as capital the amount of initial margin posted to a counterparty unless it enters into a special loan agreement with an affiliate.[226] The special loan agreement requires the affiliate to fund the initial margin amount and the agreement must be structured so that the affiliate—rather than the SBS Entity—bears the risk that the counterparty may default on the obligation to return the initial margin. The reason for this restrictive approach to initial margin posted away is that it ''would not be available [to the SBS Entity] for other purposes, and, therefore, the firm's liquidity would be reduced.''[227] Under the Basel capital standard, a Covered Entity can count initial margin posted

[219] SIFMA 5/3/2021 Letter at 19–20.

[220] *See* Americans for Financial Reform Education Fund Letter at 1–2; Better Markets Letter at 7–8.

[221] *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18387 (explaining the differences between Exchange Act rule 18a–1 and the Basel capital standard).

[222] *See, e.g.,* Exchange Act Release No. 8024 (Jan. 18, 1967), 32 FR 856 (Jan. 25, 1967) (''Rule 15c3–1 (17 CFR 240.15c3–1) was adopted to provide safeguards for public investors by setting standards of financial responsibility to be met by brokers and dealers. The basic concept of the rule is liquidity; its object being to require a broker-dealer to have at all times sufficient liquid assets to cover his current indebtedness.'') (footnotes omitted); Exchange Act Release No. 10209 (June 8, 1973), 38 FR 16774 (June 26, 1973) (Commission release of a letter from the Division of Market Regulation) (''The purpose of the net capital rule is to require a broker or dealer to have at all times sufficient liquid assets to cover its current indebtedness. The need for liquidity has long been recognized as vital to the public interest and for the protection of investors and is predicated on the belief that accounts are not opened and maintained with broker-dealers in anticipation of relying upon suit, judgment and execution to collect claims but rather on a reasonable demand one can liquidate his cash or securities positions.''); Exchange Act Release No. 15426 (Dec. 21, 1978), 44 FR 1754 (Jan. 8, 1979) (''The rule requires brokers or dealers to have sufficient cash or liquid assets to protect the cash or securities positions carried in their customers' accounts. The thrust of the rule is to insure that a broker or dealer has sufficient liquid assets to cover current indebtedness.''); Exchange Act Release No. 26402 (Dec. 28, 1988), 54 FR 315 (Jan. 5, 1989) (''The rule's design is that broker-dealers maintain liquid assets in sufficient amounts to enable them to satisfy promptly their liabilities. The rule accomplishes this by requiring broker-dealers to maintain liquid assets in excess of their liabilities to protect against potential market and credit risks.'') (footnote omitted).

[223] *See* 17 CFR 240.15c3–1(c)(2).

[224] The highly liquid assets under Exchange Act rule 18a–1 are otherwise known as ''allowable assets'' because they are not deducted when computing net capital. *See* Exchange Act Release No. 87005 (Sept. 19, 2019), 84 FR 68673, 68673–74, 68677–80 (Dec. 19, 2019) (''Books and Records Adopting Release'')(the sections of the amended Part II of the FOCUS Report setting forth the assets side of the balance sheet and the net capital computation). Illiquid assets otherwise known as ''non-allowable assets'' are deducted when computing net capital. *See* Books and Records Adopting Release, 84 FR at 68673–74, 68677–80. Allowable assets include cash, certain unsecured receivables from broker-dealers and clearing organizations, reverse repurchase agreements, securities borrowed, fully secured customer margin loans, and proprietary securities, commodities, and swaps positions. *See* Books and Records Adopting Release, 84 FR at 68673–74, 68677–80. The term ''high quality liquid assets'' or ''HQLA'' are defined under the Basel capital standard's liquidity coverage ratio (''LCR'') and generally consist of cash and specific classes of liquid securities. *See* BCBS, *LCR30 under the Basel capital standards,* available at: *https://www.bis.org/basel_framework/chapter/LCR/30.htm?tldate=20191231&inforce=2019121.* Generally, cash and securities that qualify as HQLA under the LCR would be allowable assets under Exchange Act rule 18a–1.

[225] Exchange Act rule 18a–3 does not require SBS Entities to post initial margin (though it does not prohibit the practice).

[226] *See* Capital and Margin Adopting Release, 84 FR at 43887–88.

[227] *See* Capital and Margin Adopting Release, 84 FR at 43887.

away as capital without the need to enter into a special loan arrangement with an affiliate. Consequently, because of the ability to include illiquid assets and margin posted away as capital, Covered Entities subject to the Basel capital standard may have less balance sheet liquidity than SBS Entities subject to Exchange Act rule 18a–1.

For these reasons, the Commission disagrees with the commenter who stated that additional capital conditions were unnecessary and inconsistent with the Commission's substituted compliance framework.[228] As discussed above, there are key differences between the net liquid assets test of Exchange Act rule 18a–1 and the Basel capital standard applicable to Covered Entities. Those differences in terms of the types of assets that count as regulatory capital and how regulatory capital is calculated lead to different regulatory outcomes.[229] In particular, the net liquid assets test produces a regulatory outcome in which the SBS Entity has more than one dollar of highly liquid assets for each dollar of unsubordinated liabilities.[230] The Basel capital standard—while having measures designed to promote liquidity—does not produce this regulatory outcome.[231] Therefore, an additional capital condition is needed to bridge the gap between these two capital standards and thereby achieve more comparable regulatory outcomes in terms of promoting liquid balance sheets for SBS Entities and Covered Entities.

However, in seeking to bridge this regulatory gap, the additional condition should take into account that Covered Entities are or will be subject to UK laws and measures designed to promote liquidity. As a commenter stated, Covered Entities are or will be subject to: (1) Requirements to hold an amount of HQLA to meet expected payment obligations under stressed conditions for thirty days (''LCR requirement'');[232] (2) requirements to hold a diversity of stable funding instruments sufficient to meet long-term obligations under both normal and stressed conditions (''NSFR requirements'');[233] (3) requirements to perform liquidity stress tests and manage liquidity risk (''internal liquidity assessment requirements'');[234] and (4) regular PRA reviews of a Covered Entity's liquidity risk management processes (''PRA liquidity review process'').[235] These UK laws and measures will require Covered Entities to hold significant levels of liquid assets. However, the laws and measures on their own, do not impose a net liquid assets test. Therefore, an additional condition is necessary to supplement these requirements.

The Commission has taken into account the UK liquidity laws and measures discussed above in making a substituted compliance determination with respect to Exchange Act rule 18a–1, and in tailoring additional capital conditions designed to achieve comparable regulatory outcomes. The LCR, NSFR, and internal liquidity assessment requirements collectively will require Covered Entities to maintain pools of unencumbered HQLA to cover potential cash outflows during a 30-day stress period, to fund long-term obligations with stable funding instruments, and to manage liquidity risk. These requirements—coupled with the PRA's supervisory reviews of the liquidity risk management practices of Covered Entities—will require Covered Entities to hold significant levels of liquid assets. These requirements and measures in combination with the other capital requirements applicable to Covered Entities provide a starting foundation for making a positive substituted compliance determination with respect to the capital requirements of Exchange Act section 15F(e) and Exchange Act rule 18a–1.[236] However, more is needed to achieve a comparable regulatory outcome to the net liquid assets test of Exchange Act rule 18a–1.

For these reasons, the Order includes an additional capital condition that will impose a simplified net liquid assets test.[237] This simplified test will require the Covered Entity to hold more than one dollar of liquid assets for each dollar of liabilities. The simplified net liquid assets test—when coupled with the PRA capital requirements,[238] LCR requirements, NSFR requirements, internal liquidity assessment requirements, and PRA liquidity review process—is designed to produce a regulatory outcome that is comparable to the net liquid assets test of Exchange Act rule 18a–1 (*i.e.,* sufficient liquidity to cover liabilities and to promote the maintenance of highly liquid balance sheets).

In response to comments, the Commission has modified the first three prongs of the additional capital condition from the proposed Order.[239] In particular, the first and third prongs are being combined into a single prong of the second additional capital condition.[240] Under this prong, the Covered Entity must maintain liquid assets (as defined in the capital condition) that have an aggregate market value that exceeds the amount of the Covered Entity's total liabilities by at least: (1) $100 million before applying a deduction (specified in the capital condition); and (2) $20 million after applying the deduction.[241] Thus, the condition increases the scope of the liquid assets requirement so that it must

[228] SIFMA 5/3/2021 Letter at 10.

[229] *See* Better Markets Letter at 6–7 (comparing the differences between Exchange Act rule 18a–1 and the Basel capital standard and stating that ''not only are the UK's capital requirements different from the SEC's in both form and substance, but the regulatory outcome is not comparable'').

[230] As discussed above, highly liquid assets under Exchange Act rule 18a–1 are also known as ''allowable assets'' and generally are consistent the LCR's HQLA.

[231] The Basel capital standard does not preclude a firm from having more than a dollar of highly liquid assets for each dollar of unsubordinated liabilities. Thus, a firm operating pursuant to the standard may structure its assets and liabilities in a manner that achieves this result. However, the standard does not mandate this result. Rather, it will accommodate a firm that seeks to maintain this level of liquidity on its own accord.

[232] *See* Liquidity Coverage Requirement—UK Designated Investment Firms part of PRA Rulebook.

[233] *See* UK CRR, Article 413; *see also* PRA, Consultation Paper CP5/21, Implementation of Basel

Standards (February 2021) (proposed to take effect on January 1, 2022).

[234] *See* Internal Liquidity Adequacy Assessment part of the PRA Rulebook.

[235] *See* SIFMA 5/3/2021 Letter at 12–15.

[236] *See* Better Markets Letter at 8 (recommending that the Commission consider denying substituted compliance with respect to these Exchange Act capital requirements).

[237] *See* Americans for Financial Reform Education Fund Letter at 1 (''The Commission should require that SBS entities who want to operate in the U.S. comply with the Net Liquid Assets test under the Exchange Act rule 18a–1 rather than the Basel capital standards applicable under UK and EU regulations.'').

[238] *See, e.g.,* CRR, Part 1 (Own Funds, including Tier 1 capital) and Part 2 (Capital Requirements).

[239] *See* Americans for Financial Reform Education Fund Letter at 1 (''The Commission should require that SBS entities who want to operate in the U.S. comply with the Net Liquid Assets test under the Exchange Act rule 18a–1 rather than the Basel capital standards''); SIFMA 5/3/2021 Letter at 17 (raising concerns that the use of the concept of ''allowable'' assets under Exchange Act rule 18a–1 in the first condition would require Covered Entities to re-categorize every asset on their balance sheets, which also pertains to the second condition, and seeking clarification on to how to calculate ''equity capital'' and allocate it to highly liquid assets equal to or greater than $100 million).

[240] The first prong of the proposed capital condition would have required a Covered Entity to maintain an amount of assets that are allowable under Exchange Act rule 18a–1, after applying applicable haircuts under the Basel capital standard, that equals or exceeds the Covered Entity's current liabilities coming due in the next 365 days. The second prong would have required the Covered Entity to make a quarterly record related to the first prong. The third prong would have required the Covered Entity to maintain at least $100 million of equity capital composed of highly liquid assets as defined in the Basel capital standard. *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18387–88.

[241] *See* para. (c)(1)(iii)(A)(*1*) of the Order. The definition of ''liquid assets'' and the method of calculating the deductions are discussed below.

cover all liabilities (rather than those maturing in 365 days as was proposed).

These modifications align the first prong more closely to the $100 million tentative net capital requirement of Exchange Act rule 18a–1 applicable to SBS Entities approved to use models. As discussed above, Exchange Act rule 18a–1 requires SBS Entities that have been approved to use models to maintain at least *$100 million* in tentative net capital. And, tentative net capital is the amount that an SBS Entity's liquid assets exceed its total unsubordinated liabilities *before applying haircuts.* The first prong will require the Covered Entity to subtract total liabilities from total liquid assets. The amount remaining will need to equal or exceed $100 million. The modifications also align the condition more closely to the $20 million fixed-dollar minimum net capital requirement of Exchange Act rule 18a–1. As discussed above, net capital is calculated by *applying haircuts* (deductions) to tentative net capital and the fixed-dollar minimum requires that net capital must equal or exceed *$20 million.* The first prong will require the Covered Entity to subtract total liabilities from total liquid assets and then apply the deduction to the difference. The amount remaining after the deduction will need to equal or exceed $20 million.

For the purposes of the first prong of the second additional capital condition, ''liquid assets'' are defined as: (1) Cash and cash equivalents; (2) collateralized agreements; (3) customer and other trading related receivables; (4) trading and financial assets; and (5) initial margin posted by the Covered Entity to a counterparty or third-party (subject to certain conditions discussed below).[242] These categories of liquid assets are designed to align with assets that are considered allowable assets for purposes of calculating net capital under Exchange Act rule 18a–1.[243] Further, the first four categories of liquid assets also are designed to align with how Covered Entities categorize liquid assets on their financial statements.[244] In addition, a commenter submitted a table summarizing categories of liquid assets on the balance sheets of six UK dealers (''Balance Sheet Table'') that the commenter expects will register with the Commission as security-based swap dealers, and that do not have a prudential regulator and therefore would be subject to Exchange Act rule 18a–1.[245]

The first category of liquid assets is cash and cash equivalents.[246] These assets consist of cash and demand deposits at banks (net of overdrafts) and highly liquid investments with original maturities of three months or less that are readily convertible into known amounts of cash and subject to insignificant risk of change in value.[247] The second category of liquid assets is collateralized agreements.[248] These assets consist of secured financings where securities serve as collateral such as repurchase agreements and securities loaned transactions.[249] The third category of liquid assets is customer and other trading related receivables.[250] These assets consist of customer margin loans, receivables from broker-dealers, receivables related to fails to deliver, and receivables from clearing organizations.[251] The fourth category of liquid assets is trading and financial assets.[252] These assets consist of cash market securities positions and listed and over-the-counter derivatives positions.[253]

As discussed above, initial margin posted to a counterparty is treated differently under Exchange Act rule 18a–1 and the Basel capital standard, and commenters highlighted this difference.[254] The fifth category of liquid assets is initial margin posted by the Covered Entity to a counterparty or a third-party custodian, provided: (1) The initial margin requirement is funded by a fully executed written loan agreement with an affiliate of the Covered Entity; (2) the loan agreement provides that the lender waives repayment of the loan until the initial margin is returned to the Covered Entity; and (3) the liability of the Covered Entity to the lender can be fully satisfied by delivering the collateral serving as initial margin to the

[242] *See* para. (c)(1)(iii)(B) of the Order.

[243] *See supra* notes 224 and 230 (describing allowable assets under Exchange Act rule 18a–1).

[244] The Bank of England publishes a list of the investment firms that have been designated to the PRA (''PRA-designated investment firms''). This list is available at: *https://www.bankofengland.co.uk/prudential-regulation/authorisations/which-firms-does-the-pra-regulate.* As part of the application process, the FCA has stated that the only nonbank (*i.e.,* non-prudentially regulated) UK dealers that will register with the Commission as security-based swap dealers are PRA-designated investment firms. The commenter that provided the table showing the balance sheets of six UK investment firms makes the same statement. *See* SIFMA 5/3/2021 Letter Appendix A (''We expect all covered entities to be banks or PRA-designated investment firms''). According to the Bank of England, the following dealers are PRA-designated investment firms (as of January 4, 2021): Barclays Capital Securities Limited, Citigroup Global Markets Limited, Credit Suisse Securities (Europe) Ltd, Goldman Sachs International, Merrill Lynch International, MUFG Securities EMEA plc, Morgan Stanley & Co. International Plc, and Nomura International Plc. These PRA-designated investment firms publish annual audited financial statements. *See, e.g.,* Barclays Capital Securities Limited 2020 Annual Report, available at: *https://find-and-update.company-information.service.gov.uk/company/01929333/filing-history*; Citigroup Global Markets Limited 2019 Annual Report, available at: *https://find-and-update.company-information.service.gov.uk/company/01763297/filing-history*; Credit Suisse Securities (Europe) Limited Annual Report 2020, available at: *https://www.credit-suisse.com/ch/en/investment-banking/financial-regulatory/european-financials.html*; Goldman Sachs International Annual Report 2020, available at: *https://www.goldmansachs.com/investor-relations/financials/current/subsidiary-financial-info/gsi/12–31–20-financial-statements.pdf*; Merrill Lynch International 2020 Annual Report, available at: *https://d1io3yog0oux5.cloudfront.net/_9d85f1cf3d21160d5542784492310fed/bankofamerica/db/914/9397/pdf/Merrill+Lynch+International+2020+Financial+Statements.pdf*; MUFG Securities EMEA plc 2020 Annual Report, available at: *https://www.mufgemea.com/images/mufg/MUS_EMEA_Financial_Statement_2020.pdf*; Morgan Stanley & Co. International Plc 2020 Annual Report, available at: *https://www.morganstanley.com/about-us-ir/pdf/MSIP_Group_Accounts_31_December_2020.pdf*; and Nomura International Plc 2020 Annual Report, available at: *https://find-and-update.company-information.service.gov.uk/company/01550505/filing-history.*

[245] *See* SIFMA 5/3/2021 Letter at 10–11, Appendix C. The categories of liquid assets identified in the Balance Sheet Table are: (1) ''Cash/Cash Equivalents; (2) ''Collateralised Agreements;'' (3) ''Trade/Other Receivables; cash collateral pledged;'' and (4) ''Trading/Financial Assets.'' SIFMA 5/3/2021 Letter Appendix C.

[246] *See* para. (c)(1)(iii)(B)(*1*) of the Order.

[247] *See, e.g.,* International Financial Reporting Standards Foundation (''IFRS''), *IAS 7 Statement of Cash Flows* (defining ''cash'' as comprising cash on hand and demand deposits and ''cash equivalents'' as short-term, highly liquid investments that are readily convertible to known amounts of cash and which are subject to an insignificant risk of changes in value). *See also* Books and Records Adopting Release, 84 FR at 68673–74 (the section of the amended Part II of the FOCUS Report setting forth the assets side of the balance sheet and identifying cash as an allowable asset in Box 200).

[248] *See* para. (c)(1)(iii)(B)(*2*) of the Order.

[249] *See* Books and Records Adopting Release, 84 FR at 68673–74 (the section of the amended Part II of the FOCUS Report setting forth the assets side of the balance sheet and identifying securities borrowed as an allowable asset in Boxes 240 and 250 and securities purchased under agreements to resell as an allowable asset in Box 360).

[250] *See* para. (c)(1)(iii)(B)(*3*) of the Order.

[251] *See* Books and Records Adopting Release, 84 FR at 68673–74 (the section of the amended Part II of the FOCUS Report setting forth the assets side of the balance sheet and identifying fails to deliver as allowable assets in Boxes 220 and 230, receivables from clearing organizations as allowable assets in Boxes 280 and 290, and receivables from customers as allowable assets in Boxes 310, 320, and 330).

[252] *See* para. (c)(1)(iii)(B)(*4*) of the Order.

[253] *See* Books and Records Adopting Release, 84 FR at 68673–74 (the section of the amended Part II of the FOCUS Report setting forth the assets side of the balance sheet and identifying securities, commodities, and swaps positions as allowable assets in Box 12019).

[254] *See* Better Markets Letter at 7; Americans for Financial Reform Education Fund Letter at 2. *See also* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18387 (discussing the different treatment of initial margin posted to a counterparty).

lender.[255] As discussed above, one critical difference between Exchange Act rule 18a–1 and the Basel capital standard is that an SBS Entity cannot count as capital the amount of initial margin posted to a counterparty or third-party custodian unless it enters into a special loan agreement with an affiliate.[256] Under the Basel capital standard, a Covered Entity can count initial margin posted away as capital without the need to enter into a special loan arrangement with an affiliate. Consequently, to count initial margin posted away as a liquid asset for purposes of the second additional capital condition, the Covered Entity must enter into the same type of special agreement that an SBS Entity must execute to count initial margin as an allowable asset for purposes of Exchange Act rule 18a–1.[257]

If an asset does not fall within one of the five categories of ''liquid assets'' as defined in the Order,[258] it will be considered non-liquid, and could not be treated as a liquid asset for purposes of the second additional capital condition in the Order. For example, one commenter listed the following categories of non-liquid assets on the Balance Sheet Table: (1) ''Investments;'' (2) ''Loans;'' and (3) ''Other Assets.'' [259] These categories of assets generally could not be treated as liquid asset. The non-liquid ''investment'' category would include the Covered Entity's ownership interests in subsidiaries or other affiliates. The non-liquid ''loans'' category would include unsecured loans and advances. The non-liquid ''other'' assets category refers to assets that do not fall into any of the other categories of liquid or non-liquid assets. These non-liquid ''other'' assets would include furniture, fixtures, equipment, real estate, property, leasehold improvements, deferred tax assets, prepayments, and intangible assets.

As discussed above, the first prong of the second additional capital condition will require the Covered Entity to subtract total liabilities from total liquid assets and then apply a deduction (haircut) to the difference.[260] The amount remaining after the deduction will need to equal or exceed $20 million. The method of calculating the amount of the deduction relies on the calculations Covered Entities must make under the Basel capital standard.[261] In particular, under the Basel capital standard, Covered Entities must risk-weight their assets. This involves adjusting the nominal value of each asset based on the inherent risk of the asset. Less risky assets are adjusted to lower values (*i.e.,* have less weight) than more risky assets. As a result, Covered Entities must hold lower levels of regulatory capital for less risky assets and higher levels of capital for riskier assets. Similarly, under Exchange Act rule 18a–1, less risky assets incur lower haircuts than riskier assets and, therefore, require less net capital to be held in relation to them. Consequently, the process of risk-weighting assets under the Basel capital standard provides a method to account for the inherent risk in an asset held by a Covered Entity similar to how the haircuts under the Exchange Act rule 18a–1 account for the risk of assets held by SBS Entities. For these reasons, it is appropriate to use the process of risk-weighting assets under the Basel capital standard to determine the amount of the deduction (haircuts) under the first prong of the second additional capital condition.

Under the Basel capital standard, Covered Entities must hold regulatory capital equal to at least 8% of the amount of their risk-weighted assets.[262] Therefore, the deduction (haircut) required for purposes of the first prong of the second additional capital condition is determined by dividing the amount of the Covered Entity's risk-weighted assets by 12.5 (*i.e.,* the reciprocal of 8%).[263] In sum, the Covered Entity must maintain an excess of liquid assets over total liabilities that equals or exceeds $100 million before the deduction (derived from the firm's risk-weighted assets) and $20 million after the deduction.[264]

The second prong of the second additional capital condition requires the Covered Entity to make and preserve for three years a quarterly record that: (1) Identifies and values the liquid assets maintained pursuant to the first prong; (2) compares the amount of the aggregate value the liquid assets maintained pursuant to the first prong to the amount of the Covered Entity's total liabilities and shows the amount of the difference between the two amounts (''the excess liquid assets amount''); and (3) shows the amount of the deduction required under the first prong and the amount that deduction reduces the excess liquid assets amount.[265] This prong has been modified from the proposed Order to conform to the modifications to the first and third prongs of the proposed capital condition discussed above (*i.e.,* combining them into a single prong that imposes a simplified net liquid assets test). Under the Order, the quarterly record will include details showing whether the Covered Entity is meeting the $100 million and $20 million requirements of the first prong.

The third prong of the second additional capital condition requires the Covered Entity to notify the Commission in writing within 24 hours in the manner specified on the Commission's website if the Covered Entity fails to meet the requirements of the first prong and include in the notice the contact information of an individual who can provide further information about the failure to meet the requirements.[266] As discussed above, the first additional capital condition requires the Covered Entity to apply substituted compliance with respect to notification requirements of Exchange Act rule 18a–8 relating to capital.[267] A Covered Entity applying substituted compliance with respect to Exchange

[255] *See* para. (c)(1)(iii)(B)(*5*) of the Order.

[256] *See* Capital and Margin Adopting Release, 84 FR at 43887–88.

[257] *See* Capital and Margin Adopting Release, 84 FR at 43887–88.

[258] *See* para. (c)(1)(iii)(B) of the Order.

[259] *See* SIFMA 5/3/2021 Letter Appendix C.

[260] *See* para. (c)(1)(ii)(A)(*1*) of the Order.

[261] *See* BCBS, *Risk-based capital requirements (RBC20),* available at: *https://www.bis.org/basel_framework/chapter/RBC/20.htm?inforce=20191215&published=20191215.*

[262] *See* BCBS, *Risk-based capital requirements (RBC20).*

[263] *See* para. (c)(1)(iii)(C) of the Order. The Commission acknowledges that a Covered Entity's risk-weighted assets will include components in addition to market and credit risk charges (*e.g.,* operational risk charges). However, the Commission expects the combined market and credit risk charges will make up the substantial majority of the risk-weighted assets. In addition, the Commission believes that this method of calculating the deduction in the first prong of the second additional capital condition is a reasonable approach in that it addresses market and credit risk similar to the process used by security-based swap dealers authorized to use internal models to compute market and credit risk deductions under Exchange Act rule 18a–1. *See, e.g.,* Exchange Act rule 18a–1(e) (prescribing requirements to calculate market and credit risk charges, including use of an 8% multiplication factor for calculating the credit risk charges).

[264] For example, assume a Covered Entity has total assets of $600 million (of which $595 million are liquid and $5 million are illiquid) and total liabilities of $450 million. In this case, the Covered Entity's liquid assets would exceed total liabilities by $145 million ($590 million minus $450 million) and, therefore, the Covered Entity would have excess liquid assets greater than $100 million as required by the first prong of the second additional capital condition. Assume further that the Covered Entity's risk-weighted assets under the Basel capital standard equal $400 million. In this case, the Covered Entity's deduction would equal $32 million ($400 million divided by 12.5). Subtracting $32 million from $145 million leaves $113 million, which exceeds $20 million. Therefore, the Covered Entity would meet the second requirement of the first prong of the second additional capital condition.

[265] *See* para. (c)(1)(iii)(A)(*2*) of the Order.

[266] *See* para. (c)(1)(iii)(A)(*3*) of the Order.

[267] *See* para. (c)(1)(ii) of the Order.

Act rule 18a–8 must simultaneously submit to the Commission any notifications relating to capital that it must submit to the UK authorities. However, UK notification requirements do not address a failure to adhere to the simplified net liquid assets test required by the first prong of the second additional capital condition. Moreover, due to the differences between Exchange Act rule 18a–1 and the Basel capital standard discussed above, a Covered Entity could fall out of compliance with the requirements of the first prong but still remain in compliance with the requirements of the Basel capital standard. Accordingly, the third prong requires the Covered Entity to notify the Commission if the firm fails to meet the requirements of the first prong. This will alert the Commission of potential issues with the Covered Entity's financial condition that could pose risks to the firm's customers and counterparties.

The fourth prong of the additional capital condition in the proposed Order would have required the Covered Entity to include its most recently filed statement of financial condition (whether audited or unaudited) with its initial notice to the Commission of its intent to rely on substituted compliance. No commenters raised specific concerns with this condition and the Order includes it as proposed, but now it is the fourth prong of the *second* additional capital condition.[268]

The commenter who opposed additional capital conditions stated that their burdens would be disruptive to market participants and could cause Covered Entities to exit the U.S. security-based swap market.[269] However, as discussed below, based on other comments and staff analysis of the balance sheets of the PRA-designated firms, this may not be case. For example, the commenter stated that the Covered Entities expected to register with the Commission transact predominantly in securities and derivatives and do not extensively engage in unsecured lending or other activities more typical of banks.[270] The commenter based this statement on a high-level review of public information about the balance sheets of six Covered Entities undertaken to create the Balance Sheet Table.[271] Based on this review, the commenter stated that the ''vast majority of each firm's total assets consists of cash and cash equivalents, collateralized agreements, trade and other receivables, and other trading and financial assets. The commenter characterized these assets as being ''liquid.'' The commenter stated further that the amount of illiquid assets held by these firms as a proportion of their balance sheets is comparable to the proportion of illiquid assets held by U.S. broker-dealers. The commenter also stated that the long-term debt, subordinated debt, and equity of the Covered Entities, as a proportion of their total liabilities and equity, also was comparable to U.S. broker-dealers. Moreover, based on the Balance Sheet Table and the staff's analysis of the public financial reports of the PRA-designated investment firms, these firms report total liquid assets that exceed total liabilities and, in most cases, substantially in excess of $100 million.

This information suggests that Covered Entities may be able to meet the second additional capital condition without having to significantly adjust their assets, liabilities, and equity. Moreover, the modifications to the second additional capital condition that incorporate how Covered Entities categorize liquid and illiquid assets and calculate risk-weighted assets, will allow them to use existing processes to derive the measures needed to adhere to the condition. Therefore, while the condition imposes a simplified net liquid assets test and associated recordkeeping requirement, it may not cause Covered Entities to withdraw from the U.S. security-based swap market. Nonetheless, it is possible that the simplified net liquid assets test and associated recordkeeping burden could cause a Covered Entity to withdraw from the U.S. security-based swap market. However, as discussed above, this additional capital condition is designed to produce a comparable regulatory outcome with respect to SBS Entities subject to Exchange Act rule 18a–1 and Covered Entities applying substituted compliance with respect to that rule.

In response to a specific request for comment in the proposed Order, a commenter stated that the capital conditions would not be necessary if the balance sheets of the Covered Entities seeking to apply substituted compliance with respect to Exchange Act rule 18a–1 were similar to the balance sheets of U.S. broker-dealers.[272] However, the Commission also sought comment on whether the capital conditions would serve to ensure that these firms do not engage in non-securities business activities that could impair their liquidity.[273] Two commenters expressed support for the capital conditions.[274] The fact that today certain Covered Entities have liquid balance sheets does not mean this will hold true in the future or with respect to other potential registrants. For these reasons, it is appropriate to include the additional capital condition with respect to applying substituted compliance to Exchange Act rule 18a–1.

It would not be appropriate to take a more incremental approach to the additional capital conditions as suggested by a commenter.[275] Substituted compliance is premised on comparable regulatory outcomes. As discussed above, the additional capital condition is designed to supplement the UK capital laws in order to achieve a comparable regulatory outcome in terms of the net liquid assets test of Exchange Act rule 18a–1. Delaying the implementation of the additional capital condition would mean that Covered Entities are operating as registered security-based swap dealers under a capital standard that does impose the net liquid assets test. This would be inconsistent with the objective of substituted compliance and could increase risk to the U.S. security-based swap markets and participants in those markets. Moreover, the modifications to the capital condition discussed above may ease the implementation burdens.

In addition, the Commission does not believe a commenter's suggestion for an alternative capital condition requiring a Covered Entity to maintain $100 million of HQLA as defined in the LCR requirements would be adequate in terms of achieving comparable regulatory outcomes with Exchange Act rule 18a–1.[276] The Balance Sheet Table indicates that Covered Entities have total liabilities of many billions of dollars.[277] A condition requiring $100 million in HQLA would not cover these liabilities and would not impose a net liquid assets test.

Finally, the Commission has modified the citations to UK laws in the capital

[268] *See* para. (c)(1)(iii)(A)(*4*) of the Order. As discussed above, a commenter objected to the capital conditions generally and provided specific comments with respect to the first three conditions, but not the fourth condition. *See* SIFMA 5/3/2021 Letter at 9–20. This commenter did support the fourth condition as part of its recommended incremental approach to implementing the capital conditions. *See* SIFMA 5/3/2021 Letter at 19–20.

[269] *See* SIFMA 5/3/2021 Letter at 19.

[270] SIFMA 5/3/2021 Letter at 10–11.

[271] *See* SIFMA 5/3/2021 Letter at 10–11, Appendix C.

[272] *See* SIFMA 5/3/2021 Letter at 10; UK Substituted Compliance Notice and Proposed Order, 86 FR at 18407.

[273] UK Substituted Compliance Notice and Proposed Order, 86 FR at 18407.

[274] *See* Better Markets Letter at 7; Americans for Financial Reform Education Fund Letter at 1–2.

[275] *See* SIFMA 5/3/2021 Letter at 19–20.

[276] *See* SIFMA 5/3/2021 Letter at 19–20.

[277] *See* SIFMA 5/3/2021 Letter at Appendix C.

section of the Order in response to comment and further analysis.[278] In response to comments, the capital section of the Order does not cite ''recitals'' because they are not part of a legally binding regulation.[279] A commenter recommended that citations to FCA IFPRU and BIPRU rules be deleted since it is likely that only PRA-designated investment firms will rely on the substituted compliance determination for capital.[280] The FCA similarly indicated that the only firms that will rely on a substituted compliance determination for capital are PRA-designated investment firms. PRA-designated firms are not subject to FCA IFPRU and BIPRU firm requirements.[281] Further, investment firms that are not PRA-designated (*i.e.,* that are MiFID investment firms prudentially regulated by the FCA in the UK) will be subject in the near term to a new capital regime that is not based on the Basel Capital Standard, and is not addressed by the FCA's comparability analysis for capital in the FCA Application.[282]

A commenter recommended that the citations to FCA PRIN and CASS be deleted.[283] The Commission agrees it is appropriate to delete references to FCA PRIN since the entities relying on substituted compliance for capital in the UK will be PRA-designated investment firms. These firms are subject to the PRA Fundamental Rules. Therefore the Commission is deleting the references to FCA PRIN in the Order and replacing them with references to PRA Fundamental Rules 2.3 and 2.4. These rules require that firms must at all times maintain adequate financial resources, and have effective risk strategies and risk management systems. Further, the Commission also agrees that it is appropriate to delete references to FCA CASS in the Order because they relate to customer protection requirements, and not capital requirements, and Covered Entities also are subject to the Commission's segregation requirements under Exchange Act rule 18a–4,[284] as well as the segregation provisions under the UK EMIR Margin RTS.[285] Substituted compliance is not available for segregation requirements under Exchange Act rule 18a–4.[286]

In addition, in response to a recommendation to delete references to the UK EMIR margin requirements, the Commission is retaining the references to the UK Margin RTS requirements as the UK Application states ''if liquidation did occur, UK regulations also protect counterparties and promote continued market liquidity through margin requirements.''[287] The Commission agrees with the commenter that the scope of the PRA Notifications Rule is overly broad and, in response, is narrowing the references to those citations included in the comparability analysis of Exchange Act rule 18a–8.[288] Further, the Commission agrees with the commenter that some of the citations do not relate to requirements imposed on Covered Entities, but generally relate to the powers of relevant authorities. In these cases, citations in the ordering language have been deleted or modified to reference requirements that a Covered Entity is subject to and must comply with.[289]

The Commission agrees with the comments that the specific provisions to the UK CRR cited in the proposed Order are not comprehensive.[290] In response, the Commission has modified the final ordering language to use more comprehensive citations to the UK CRR (including the specific UK CRR provisions cited in the proposed Order), as the capital analysis includes only discussion of entities that are fully subject to UK CRR and CRD IV.[291] In addition, this commenter recommended that the Commission modify the final ordering language to qualify the citations to the UK CRR with a reference to waivers and permissions.[292] In response, the specific provisions in the UK CRR referenced in the capital comparability analysis were analysed without reference to waivers or permissions, and the condition states that the Covered Entity must be subject to and comply with these specific capital requirements. Therefore, the more comprehensive references to the UK CRR in the final order are cited without reference to waivers or permissions. Finally, the references to the UK CRR and the final references in the capital ordering language contribute to the conclusion that UK law produces a comparable regulatory outcome to the capital requirements under the Exchange Act.

2. Margin

The Commission's preliminary view, based on the FCA Application and the Commission's review of applicable UK laws, was that relevant UK margin requirements would produce regulatory outcomes that are comparable to those associated with Exchange Act margin requirements without the need for additional conditions.[293] For example, in adopting final margin requirements for non-cleared security-based swaps, the Commission modified the rule to more closely align it with the margin rules of the Commodity Futures Trading Commission and the U.S. prudential regulators and, in doing so, with the recommendations made by the BCBS and the Board of the International Organization of Securities Commissions (''IOSCO'') with respect to margin requirements for non–centrally cleared derivatives.[294]

Exchange Act rule 18a–3 and the UK margin rules require firms to collect liquid collateral from a counterparty to cover variation and/or initial margin requirements.[295] Both sets of rules also require firms to deliver liquid collateral to a counterparty to cover variation margin requirements. Under both sets of rules, the fair market value of collateral used to meet a margin requirement must be reduced by a haircut.[296] Further, both

[278] SIFMA 5/3/2021 Letter at 10–11, Appendix A.

[279] *See* Better Markets Letter at 5–6.

[280] SIFMA 5/3/2021 Letter at Appendix A.

[281] *See* SIFMA 5/3/2021 Letter at Appendix A.

[282] FCA Application Annex V (Side Letter for Capital Requirements) at 367 (''For the purposes of this application, we address the currently applicable UK Capital Framework—*i.e.,* based on CRR (as amended by the currently effective elements of CRR II) and CRD IV.4.'').

[283] *See* SIFMA 5/3/2021 Letter Appendix A.

[284] 17 CFR 240.18a–4.

[285] The Commission also is retaining the references to the UK EMIR Margin RTS in the final order as part of the capital condition. These standards require a Covered Entity to segregate initial margin from the firm's assets by either placing it with a third-party holder or custodian or via other legally binding arrangements, making the initial margin remote in the case of the firm's default or insolvency. FCA Application Annex V (Side Letter for Capital Requirements) at 369.

[286] *See* Capital and Margin Adopting Release, 84 FR at 43950–51.

[287] FCA Application Annex V (Side Letter for Capital Requirements) at 378.

[288] 17 CFR 240.18a–8. Therefore, the references to the PRA Notifications Rule will be modified in the final order to read PRA Notifications Rule 2.1, 2.4 through 2.6, 2.8, 2.9.

[289] More specifically, in the final order, the Commission is deleting references to the Banking Act of 2009, Capital Requirements Regulations 2013, Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014, Part 8 of the Bank Recovery and Resolution (No 2) Order 2014, Bank of England Act 1998 (Macro-prudential Measures) (No 2) Order 2015, and Parts 4A and 12A of FSMA.

[290] *See* SIFMA 5/3/2021 Letter Appendix A.

[291] *See* FCA Application Annex V (Side Letter for Capital Requirements) at 366, n.400. More specifically, in the final order, the Commission is including references to the UK CRR to read: UK CRR, Part One (General Provisions) Article 6(1), Part Two (Own Funds), Part Three (Capital Requirements), Part Four (Large Exposures), Part Five (Exposures to Transferred Credit Risk), Part Six (Liquidity), and Part Seven (Leverage).

[292] *See* SIFMA 5/3/2021 Letter Appendix A.

[293] *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18386.

[294] *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18386, n.82.

[295] *See* 17 CFR 240.18a–3(c)(1)(ii) and FCA Application at 32–35.

[296] *See* 17 CFR 240.18a–3(c)(1)(ii) and FCA Application at 40–43.

sets rules permit the use of a model (including a third party model such as ISDA's SIMM™ model) to calculate initial margin.[297] The initial margin model under both sets of rules must meet certain minimum qualitative and quantitative requirements, including that the model must use a 99 percent, one-tailed confidence level with price changes equivalent to a 10-day movement in rates and prices.[298] Both sets of rules have common exceptions to the requirements to collect and/or post initial or variation margin, including exceptions for certain commercial end users, the Bank for International Settlements, and certain multilateral development banks.[299] Both sets of rules also permit a threshold below which initial margin is not required to be collected and incorporate a minimum transfer amount.[300]

In the UK Substituted Compliance Notice and Proposed Order, the Commission stated substituted compliance with respect to the margin requirements accordingly would be conditioned on Covered Entities being subject to those UK provisions that, the Commission has determined, in the aggregate, establish a framework that produces outcomes comparable to those associated with the requirements under the Exchange Act rule 18a–3.[301] A commenter supported the proposed Order to grant substituted compliance in connection with margin requirements for Covered Entities, subject to technical comments with respect to refining the UK laws cited in the UK Order.[302] In particular, this commenter recommended that the citations to the UK CRR, FCA IFPRU 2.2.18R, FCA SYSC 4.1.1R, and PRA Internal Capital Adequacy Assessment Rule 4.2 be deleted from the final order, and that the Commission narrow the scope of the reference to UK EMIR article 11 to article 11(3).[303]

The Commission disagrees with the commenter that the scope of the citation to UK EMIR article 11 should be narrowed. Other provisions of UK EMIR article 11 relate to margin requirements, including the provisions regarding intragroup transactions. Therefore, the Commission is not modifying this citation in the final order. Further, the Commission agrees with the commenter that it is appropriate to delete the citations to FCA IFPRU 2.2.18R and FCA SYSC 4.1.1R from the final order since it is likely that only PRA-designated investment firms will rely on the substituted compliance determination for margin. These firms are not subject to FCA IFPRU requirements, and are subject to general organizational requirements in the PRA rulebook that were already included in the proposed Order.[304] With respect to the remaining suggestions by the commenter to delete references to the UK CRR requirements and PRA Internal Capital Adequacy Assessment Rule 4.2, the Commission concludes that these requirements which were set out in the proposed Order, contribute to the conclusion that UK law produces a comparable regulatory outcome to the margin requirements under the Exchange Act.[305] For the foregoing reasons, the first margin condition requires the covered entity to be subject to and comply with certain identified UK margin requirements.[306]

The proposed Order did not contain any additional conditions for substituted compliance with respect to the margin requirements of Exchange Act section 15F(e) and Exchange Act rule 18a–3. The Commission, however, requested comment on whether there were any conditions that should be applied to substituted compliance for the margin requirements to promote comparable regulatory outcomes.[307] As discussed below, in response to comments received, the Order includes two additional margin conditions designed to produce comparable regulatory outcomes with respect to collecting variation and initial margin from counterparties.[308]

In particular, a commenter raised general concerns with the Commission's regulatory outcomes approach to substituted compliance, and suggested additional general principles that the Commission should consider in evaluating applications for substituted compliance.[309] This commenter believed regulatory arbitrage within and outside the United States was one of the key factors that led to and exacerbated the 2008 financial crisis, and stated that the Dodd-Frank Act was enacted in response, which includes the Commission's authority to promulgate capital, margin, and other rules for non-cleared security-based swaps ''to reduce the possibility and severity of another crisis related to excessive buildup of risk in the swaps markets.'' [310]

The Commission responds to the comments on the Commission's approach to substituted compliance in part II.C.1 above. However, as stated above, the commenter raises concerns about regulatory arbitrage and the potential impacts of differences in requirements that merit re-consideration of whether additional margin conditions are needed to produce comparable regulatory outcomes.[311] When proposing margin requirements for non-cleared security-based swaps, the Commission stated that the ''Dodd-Frank Act seeks to address the risk of uncollateralized credit risk exposure arising from OTC derivatives by, among other things, mandating margin requirements for non-cleared security-based swaps and swaps.'' [312] Further, the comparability criteria for margin requirements under Exchange Act rule 3a71–6 provides that prior to making a substituted compliance determination, the Commission intends to consider (in addition to any conditions imposed) whether the foreign financial regulatory system requires registrants to adequately cover their current and future exposure to OTC derivatives counterparties, and ensures registrants' safety and soundness, in a manner comparable to the applicable provisions arising under the Exchange Act and its rules and

[297] *See* 17 CFR 240.18a–3(d)(2)(i) and FCA Application at 21.

[298] *See* 17 CFR 240.18a–3(d)(2)(i) and FCA Application at 23–27. The Commission must approve the use of an initial margin model. 17 CFR 240.18a–3(d)(2)(i). UK EMIR article 11(15) directs European supervisory authorities to develop regulatory technical standards under which initial margin models have to be approved (initial and ongoing approval). UK requirements currently provide that, upon request, counterparties using an initial margin model shall provide the regulators with any documentation relating to the risk management procedures relating to such model at any time. UK EMIR Margin RTS article 2(6).

[299] *See* 17 CFR 240.18a–3(c)(1)(iii) and FCA Application at 52–60.

[300] *See* 17 CFR 240.18a–3(c)(1)(iii) and FCA Application at 52–60.

[301] *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18386.

[302] *See* SIFMA 5/3/2021 Letter at 10, Appendix A.

[303] *See* SIFMA 5/3/2021 Letter Appendix A.

[304] *See* PRA General Organisational Requirements Rule 2.1.

[305] The references to the UK CRR and PRA Internal Capital Adequacy Assessment Rule 4.2 were included in the comparability assessment for margin requirements, and in the Commission's view the holistic approach for comparing regulatory outcomes should seek to reflect the whole of a jurisdiction's relevant requirements, rather than select subsets of those requirements.

[306] *See* para. (c)(2)(i) of the Order. The first margin condition requires that Covered Entities must be subject to and comply with UK EMIR article 11; UK EMIR Margin RTS; UK CRR articles 103, 105(3); 105(10); 111(2), 224, 285, 286, 286(7), 290, 295, 296(2)(b), 297(1), 297(3), and 298(1); UK MiFID Org Reg article 23(1); PRA General Organisational Requirements Rule 2.1; and PRA Internal Capital Adequacy Assessment Rule 4.2.

[307] French Substituted Compliance Notice and Proposed Order, 85 FR at 85737.

[308] *See* paras. (c)(2)(ii) and (iii) of the Order.

[309] *See* Better Markets Letter at 3.

[310] *See* Better Markets Letter at 2.

[311] *See* Better Markets Letter at 2–3.

[312] *See* Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers; Proposed Rule, Exchange Act Release No. 68071 (Oct. 18, 2021), 77 FR 70214, 70258 (Nov. 23, 2012).

regulations.[313] In adopting this comparability criteria for margin requirements, the Commission stated that obtaining collateral is one of the ways OTC derivatives dealers manage their credit risk exposure to OTC derivatives counterparties.[314]

To address the risk of uncollateralized exposures, Exchange Act rule 18a–3 requires SBS Entities without a prudential regulator to collect variation margin from all counterparties, including affiliates, unless an exception applies.[315] Under the UK margin requirements, there are exceptions from the variation margin requirements for certain intragroup transactions (*i.e.,* transactions between affiliates).[316] In addition, Exchange Act rule 18a–3 requires firms to collect initial margin from all counterparties, unless an exception applies.[317] This initial margin requirement under Exchange Act rule 18a–3 requires the firm to collect initial margin from a financial counterparty such as a hedge fund without regard to whether the counterparty has material exposures to non-cleared security-based swaps and uncleared swaps. In contrast, UK margin requirements do not require Covered Entities to collect initial margin from financial counterparties, if their notional exposure to non–centrally cleared derivatives does not exceed a certain threshold on a group basis.[318]

In some cases these differences may result in a Covered Entity not being adequately collateralized to cover its current or future exposure to these counterparties with respect to its OTC derivatives transactions. In addition, differences in the counterparty exceptions could potentially incentivize market participants to engage in non-cleared security-based swap transactions outside of the United States.[319] Consequently, it is appropriate to impose additional margin conditions to produce comparable regulatory outcomes in terms of counterparty exceptions between Exchange Act rule 18a–3 and the UK requirements.

The first additional condition addresses differences in the counterparty exceptions with respect to variation margin. It requires a Covered Entity to collect variation margin, as defined in the UK EMIR Margin RTS, from a counterparty with respect to a transaction in non-cleared security-based swaps, unless the counterparty would qualify for an exception under Exchange Act rule 18a–3 from the requirement to deliver variation margin to the Covered Entity.[320] This condition defines variation margin by referencing UK EMIR Margin RTS to facilitate implementation of the condition by Covered Entities. Under this condition, for example, Covered Entities would be required to collect variation margin from their affiliates, but would be permitted to comply with all other UK margin requirements, including calculation, collateral, documentation, and timing of collection requirements. The first additional condition will close the gap between the counterparty exceptions of Exchange Act rule 18a–3 and the UK margin rules with respect to variation margin.

The second additional condition addresses differences in the counterparty exceptions with respect to initial margin. It requires a Covered Entity to collect initial margin, as defined in the UK EMIR Margin RTS, from a counterparty with respect to transactions in non-cleared security-based swaps, unless the counterparty would qualify for an exception under Exchange Act rule 18a–3 from the requirement to deliver initial margin to Covered Entity.[321] The condition defines initial margin by referencing UK EMIR Margin RTS to facilitate implementation of the condition by Covered Entities. Under this condition, for example, Covered Entities would be required to collect initial margin from their certain counterparties, but would be permitted to comply with all other UK margin requirements, including calculation, collateral, documentation, and timing of collection requirements. The second additional condition will close the gap between the counterparty exceptions of Exchange Act rule 18a–3 and the UK margin rules with respect to initial margin.

Finally, for the reasons discussed above in part III.B.2.k of this release, the third additional condition is that the Covered Entity applies substituted compliance with respect to Exchange Act rules 18a–5(a)(12) (a record making requirement).[322] This record making requirement is directly linked to the margin requirements of Exchange Act rule 18a–3. The proposed Order conditioned substituted compliance with respect to this record making requirement on the Covered Entity applying substituted compliance with respect to Exchange Act rule 18a–3.[323] This additional condition is designed to provide clarity as to the Covered Entity's obligations under this record making requirement when applying substituted compliance with respect to Exchange Act rule 18a–3 pursuant this Order.

VI. Substituted Compliance for Internal Supervision, Chief Compliance Officers and Additional Exchange Act Section 15F(j) Requirements

A. Proposed Approach

The FCA Application further requested substituted compliance in connection with requirements relating to:

- Internal supervision—Diligent supervision and conflict of interest provisions that generally require SBS Entities to establish, maintain, and enforce supervisory policies and procedures that reasonably are designed to prevent violations of applicable law, and implement certain systems and procedures related to conflicts of interest.
- Chief compliance officers—Chief compliance officer provisions that generally require SBS Entities to designate individuals with the responsibility and authority to establish, administer, and review compliance policies and procedures, to resolve conflicts of interest, and to prepare and certify annual compliance reports to the Commission.
- Additional Exchange Act section 15F(j) requirements—Certain additional

[313] *See* 17 CFR 240.3a71–6(d)(5)(i) and (ii).

[314] *See* Capital and Margin Adopting Release, 84 FR at 43949 (''Obtaining collateral is one of the ways OTC derivatives dealers manage their credit risk exposure to OTC derivatives counterparties. Prior to the financial crisis, in certain circumstances, counterparties were able to enter into OTC derivatives transactions without having to deliver collateral. When ''trigger events'' occurred during the financial crisis, those counterparties faced significant liquidity strains when they were required to deliver collateral.).

[315] *See* 17 CFR 240.18a–3(c)(ii)(A)(*1*) and (*2*).

[316] *See* FCA Application at 57.

[317] *See* 17 CFR 240.18a–3(c)(ii)(B).

[318] *See* FCA Application at 20. These thresholds are being phased-in with the last initial margin threshold set at EUR 8 billion.

[319] The Commission recognizes there are also cases where the UK margin rules are more restrictive than Exchange Act rule 18a–3. UK margin rules require Covered Entities to post initial margin to covered counterparties, while the Exchange Act rule 18a–3 would permit posting but not require it. In addition, UK margin rules also require a Covered Entity to collect (and post) initial margin to financial and non-financial counterparties if their notional exposure to non-centrally cleared derivatives exceeds a certain threshold on a group basis. In contrast, Exchange Act rule 18a–3 does not require (but permits) a nonbank security-based swap dealer to collect initial margin from counterparties that are financial market intermediaries. 17 CFR 240.18a–3(c)(1)(iii)(B). The comparability analysis, however, focuses on determining whether the UK margin rules are comparable to Exchange Act rule 18a–3.

[320] *See* para. (c)(2)(ii) of the Order.

[321] *See* para. (c)(2)(iii) of the Order.

[322] *See* para. (c)(2)(iv) of the Order.

[323] *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18396–98, 18416.

requirements related to information-gathering and antitrust prohibitions.[324]

Taken as a whole, those requirements generally help to advance SBS Entities' use of structures, processes, and responsible personnel reasonably designed to promote compliance with applicable law, identify and cure instances of noncompliance, and manage conflicts of interest.

In proposing to provide conditional substituted compliance in connection with this part of the FCA Application, the Commission preliminarily concluded that the relevant UK requirements in general would produce comparable regulatory outcomes by providing that UK SBS Entities have structures and processes that reasonably are designed to promote compliance with applicable law, to identify and cure instances of non-compliance, and to manage conflicts of interest.

Substituted compliance under the proposed Order was to be conditioned in part on SBS Entities being subject to and complying with specified UK provisions that in the aggregate help to produce regulatory outcomes that are comparable to those associated with those internal supervision, chief compliance officer and related requirements under the Exchange Act.[325]

Under the proposed Order, substituted compliance would be subject to certain additional conditions to help ensure the comparability of outcomes. First, substituted compliance in connection with Exchange Act internal supervision requirements (including related information gathering requirements under Exchange Act section 15F(j)(4)(A) and related conflict of interest systems and procedures requirements under Exchange Act section 15F(j)(5)) would be conditioned on the Covered Entity complying with applicable UK supervisory and compliance provisions *as if* those provisions also require the Covered Entity to comply with applicable requirements under the Exchange Act and the other applicable conditions of the Order. This condition reflects that, even with substituted compliance, Covered Entities still directly would be subject to a number of requirements under the Exchange Act and conditions to the final Order.[326] Under the proposed Order, substituted compliance for Exchange Act internal supervision requirements would not extend to internal supervision in connection with the internal risk management requirements, certain information reporting requirements or anti-trust requirements.[327]

For similar reasons, the proposed Order conditioned substituted compliance in connection with compliance report requirements on the Covered Entity at least annually providing the Commission with all compliance reports required pursuant to UK MiFID Org Reg article 22(2)(c). Those reports would be required to be in English and accompanied by a certification under penalty of law that the report is accurate and complete, and would have to address the SBS Entity's compliance with other applicable conditions to the substituted compliance order.[328]

The Commission preliminarily did not provide substituted compliance for Exchange Act antitrust provisions, based on the preliminary conclusion that allowing an alternative means of compliance would not lead to comparable regulatory outcomes.[329]

B. Commenter Views and Final Provisions

After considering commenters' recommendations regarding internal supervision, chief compliance officer and related requirements, the Commission is making positive substituted compliance determinations in connection with internal supervision (including related information gathering requirements under Exchange Act section 15F(j)(4)(A) and related conflict of interest systems and procedures requirements under Exchange Act section 15F(j)(5)) and chief compliance officer requirements.

One commenter expressed general support for the proposed approach toward substituted compliance for the risk control provisions.[330] Another commenter stated that UK requirements are not sufficiently comparable to Exchange Act requirements.[331] As discussed below, the final Order has been changed from the proposed Order in certain respects in response to comments.[332] The Commission continues to conclude that, taken as a whole, applicable requirements under UK law require that SBS Entities have structures and processes that reasonably are designed to promote compliance with applicable law, to identify and cure instances of non-compliance, and to manage conflicts of interest, and thus produce regulatory outcomes that are comparable to those associated with the above-described internal supervision and chief compliance officer requirements. Although there are differences between the approaches taken by the relevant internal supervision and chief compliance officer requirements under the Exchange Act and relevant UK requirements, the Commission continues to believe that

[324] *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18389. Section 15F(j)(4)(A) requires firms to have systems and procedures to obtain necessary information to perform functions required under section 15F. Section 15F(j)(6) prohibits firms from adopting any process or taking any action that results in any unreasonable restraint of trade, or to impose any material anticompetitive burden on trading or clearing.

[325] *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18389 n.109. Each of the comparable UK internal supervision and chief compliance officer requirements listed in the proposed Order applies to a uniquely defined set of UK-authorized firms. *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18390 and n.112. To assist UK firms in determining whether they are subject to these requirements, the Commission preliminarily determined that any Covered Entity that is an ''IFPRU investment firm,'' ''UK bank'' or ''UK designated investment firm,'' each as defined for purposes of UK law, would be subject to all of the required UK requirements related to internal supervision and chief compliance officer requirements and thus eligible to apply substituted compliance for internal supervision and chief compliance officer requirements. *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18390.

[326] *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18390. These residual Exchange Act requirements could, for example, relate to requirements for which substituted compliance is not available, requirements for which the Order does not make a positive substituted compliance determination, security-based swap business for which the Covered Entity is unable to satisfy the conditions of the Order, and/or requirements or security-based swap business for which the Covered Entity decides not to use substituted compliance. The condition was designed to allow a Covered Entity to use their existing internal supervision and compliance frameworks to comply with the relevant Exchange Act requirements and Order conditions, rather than having to establish separate special-purpose supervision and compliance frameworks.

[327] *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18389 and n.108.

[328] *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18390. The condition was designed to allow a Covered Entity to leverage the compliance reports that it must produce pursuant to UK requirements, by extending those reports to address compliance with the conditions to the proposed Order.

[329] *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18390.

[330] *See* SIFMA 5/3/2021 Letter at 20–21. The commenter also requested that the Commission not require a Covered Entity to be subject to and comply with some of the UK internal supervision and chief compliance officer requirements listed in the proposed Order. In addition, the commenter requested that the Commission amend the conditions to substituted compliance for chief compliance officer requirements. *See* SIFMA 5/3/2021 Letter at 20–21 and Appendix A part (d). The Commission addresses those requests in the relevant sections of this part VI below.

[331] *See* Better Markets Letter at 2. The commenter also stated that, if the Commission nevertheless makes a positive substituted compliance determination, it must at a minimum ensure that the conditions in the proposed Order ''are applied with full force and without exceptions or dilution.'' The Commission addresses that comment in the relevant sections of this part VI below.

[332] *See* para. (d) of the Order.

those differences on balance should not preclude substituted compliance for these requirements, as the relevant UK requirements taken as a whole help to produce comparable regulatory outcomes.

To help ensure the comparability of outcomes, substituted compliance for internal supervision and chief compliance officer requirements is subject to certain conditions. Substituted compliance in connection with those requirements is conditioned on the Covered Entity being subject to, and complying with, relevant UK requirements. In addition, consistent with the proposed Order, substituted compliance for internal supervision requirements (1) is conditioned on the Covered Entity complying with the relevant UK requirements as if they also require compliance with applicable Exchange Act requirements and other applicable conditions under the Order and (2) does not extend to certain specified internal supervision requirements.[333] Consistent with the proposed Order, substituted compliance in connection with chief compliance officer requirements is conditioned on the Covered Entity at least annually providing the Commission with an English-language copy of all compliance reports required pursuant to UK MiFID Org Reg article 22(2)(c). As described below, in response to comments the Commission is amending the certification of each report to better align with the certification in Exchange Act rule 15Fk–1(c)(2)(ii)(D),[334] requiring each report to address the Covered Entity's compliance with applicable Exchange Act requirements and other applicable conditions under the Order, amending the deadline by which such reports must be provided to the Commission and clarifying that all such reports together must cover the entire period that the Covered Entity's Exchange Act annual compliance report would be required to cover. A Covered Entity that is unable to comply with an applicable condition—and thus is not eligible to use substituted compliance for the Exchange Act internal supervision and/or chief compliance officer requirements related to that condition—nevertheless may use substituted compliance for another set of Exchange Act requirements addressed in the Order if it complies with the conditions to the relevant parts of the Order.

Under the Order, substituted compliance for internal supervision and chief compliance officer requirements is not subject to a condition that the Covered Entity apply substituted compliance for related recordkeeping requirements in Exchange Act rules 18a–5 and 18a–6. A Covered Entity that applies substituted compliance for internal supervision and/or chief compliance officer requirements, but does not apply substituted compliance for the related recordkeeping requirements in Exchange Act rules 18a–5 and 18a–6, will remain subject to the relevant provisions of Exchange Act rules 18a–5 and 18a–6. Those rules require the Covered Entity to make and preserve records of its compliance with Exchange Act internal supervision and chief compliance officer requirements and of its security-based swap activities required or governed by those requirements. A Covered Entity that applies substituted compliance for internal supervision and/or chief compliance officer requirements, but complies directly with related recordkeeping requirements in rules 18a–5 and 18a–6, therefore must make and preserve records of its compliance with the relevant conditions to the Order and of its security-based swap activities required or governed by those conditions and/or referenced in the relevant parts of rules 18a–5 and 18a–6.

The Commission details below its consideration of comments on the proposed Order.

1. Applicable UK Internal Supervision and Chief Compliance Officer Requirements

Exchange Act rule 15Fh–3(h) requires an SBS Entity to establish and maintain a system to supervise, and to diligently supervise, its business and the activities of its associated persons. This system must be reasonably designed to prevent violations of the provisions of applicable Federal securities laws relating to its business as an SBS Entity. The rule specifies detailed minimum requirements for this internal supervision system. Exchange Act sections 15F(j)(4)(A) and (j)(5) similarly require a registered SBS Entity to establish and enforce internal systems and procedures to obtain any necessary information to perform any regulated functions in its capacity as an SBS Entity and to implement conflict of interest systems and procedures, respectively. Exchange Act section 15F(k)[335] and Exchange Act rule 15Fk–1 require an SBS Entity to designate a chief compliance officer with specified duties, including requirements to report directly to the SBS Entity's board of directors or senior officer, review and ensure the SBS Entity's compliance with applicable Exchange Act requirements, resolve conflicts of interest that may arise, administer the policies and procedures required by the Exchange Act, and establish and follow procedures for addressing noncompliance. In addition, the chief compliance officer must submit to the Commission an annual report of the SBS Entity's assessment of the effectiveness of its policies and procedures, material changes to the policies and procedures, areas for improvement, potential changes to its compliance program, material noncompliance matters identified, and the resources for its compliance program. Exchange Act rule 15Fk–1 further provides that the compensation and removal of the chief compliance officer must require the approval of a majority of the SBS Entity's board of directors.

A commenter requested that the Commission not require a Covered Entity to be subject to and comply with certain of the UK requirements specified in the proposed Order.[336] By contrast, another commenter stated that, if the Commission makes a positive substituted compliance determination, it must at a minimum ensure that the conditions in the proposed Order ''are applied with full force and without exceptions or dilution.''[337] The Commission details below its consideration of each of these comments.

The commenter stated that the Commission should delete from the Order the provisions of FCA IFPRU, FCA BIPRU, and FCA SYSC 19A listed in paragraphs (d)(3)(iii) and (d)(3)(vi) of the proposed Order. These provisions apply only to IFPRU investment firms, and the commenter stated that it expects only ''banks and PRA-designated investment firms'' will register as SBS Entities.[338] For the reasons described in part III.B.2.e above, the Commission is retaining the references to these provisions.

[333] *See* para. (d)(1)(iii) of the Order. In particular, the Order does not extend to internal supervision requirements under Exchange Act rule 15Fh–3(h) related to compliance with internal risk management requirements in Exchange Act rule 15F(j)(2) (which are addressed by paragraph (b)(1) of the Order in connection with internal risk management), requirements to disclose or provide information to the Commission and any relevant U.S. prudential regulator pursuant to Exchange Act sections 15F(j)(3) and (j)(4)(B) (for which substituted compliance is not available), or the anti-trust provisions of Exchange Act section 15F(j)(6) (for which the Commission is not making a positive substituted compliance determination).

[334] 17 CFR 240.15Fk–1(c)(2)(ii)(D).

[335] 15 U.S.C. 78*o*–10(k).

[336] *See* SIFMA 5/3/2021 Letter at 20–21 and Appendix A part (d)(3).

[337] *See* Better Markets Letter at 2.

[338] *See* SIFMA 5/3/2021 Letter Appendix A part (d)(3).

Similarly, the commenter stated that the Commission should delete from the Order the provisions of FSMA and FCA COND listed in paragraph (d)(3)(vii) of the proposed Order that apply to firms regulated only by the FCA, rather than to firms dually regulated by both the FCA and the PRA.[339] The commenter again stated that it expects only dually regulated ''banks and PRA-designated investment firms'' will register as SBS Entities.[340] The proposed Order would not require a Covered Entity that is a dually regulated firm to be subject to and comply with these provisions. Rather, paragraph (d)(3)(vii) of the proposed Order would require the Covered Entity to be subject to and comply with either the provisions of FSMA and FCA COND that apply to solo-regulated firms or analogous provisions that apply to dually regulated firms. Accordingly, the Commission is retaining the references to these provisions.

The commenter also recommended that the Commission delete from the Order the following provisions because they do not correspond to and go beyond Exchange Act internal supervision and chief compliance officer requirements: [341]

- FCA CASS 6.2.1R and 7.12.1R, which implement MiFID articles 16(8) and (9), require a Covered Entity to make adequate arrangements to safeguard client assets and client money held by the Covered Entity and to prevent the use of client assets or client money for the Covered Entity's own account. FCA CASS 7.11.1R, which implements MiFID article 16(10), prohibits a Covered Entity from entering into, as part of its implementation of organizational arrangements, arrangements for a retail client to transfer full ownership of money to the Covered Entity as collateral for the client's obligations to the Covered Entity.
- PRA Internal Capital Adequacy Assessment Rules 4.1 through 4.4, 5.1, 6.1, 7.1, 7.2, 8.1 through 8.5, 9.1, 10.1, 10.2, and 11.1 through 11.3 and PRA Internal Liquidity Adequacy Assessment Rules 3.1 through 3.3, 4.1, 7.2, 8.1, 9.2, 11.1, 11.2, 11.4, 12.1, 12.3, and 12.4, which implement CRD articles 79 through 87, are described in part IV.B.1.
- FCA SYSC 4.1.1R(1), 4.1.2R, 7.1.4R, 7.1.17R, 7.1.18R, 7.1.18BR, 7.1.19R, 7.1.20R, 7.1.21R, 7.1.22R, and 19D.2.1R, PRA Remuneration Rule 6.2, and PRA Risk Control Rules 2.3, 2.7, and 3.1 through 3.5, which implement parts of CRD articles 74 and 76, are described in part IV.B.1.
- FCA SYSC 4.3A.1R, which implements parts of CRD article 88(1), requires a Covered Entity to ensure that the management body defines, oversees, and is accountable for the implementation of governance arrangements that ensure effective and prudent management of the Covered Entity, including segregation of duties and prevention of conflicts of interest.
- PRA Senior Management Functions Rule 8.2, which implements CRD article 88(1)(e), requires a Covered Entity to ensure that the same person does not serve as both the chair of the Covered Entity's governing body and the Covered Entity's chief executive officer.[342]
- FCA SYSC 4.3A.3R, which implements parts of CRD article 91(1), (2), (7), and (8), requires members of a Covered Entity's management body to have certain qualifications to be able to perform their duties, understand the Covered Entity's activities and main risks, effectively assess and challenge senior management decisions, and effectively oversee and monitor management decision-making.
- FCA SYSC 4.3A.4R, which implements parts of CRD article 91(9), requires a Covered Entity to devote adequate human and financial resources to the induction and training of members of the management body.
- FCA SYSC 9.1.1AR and PRA Record Keeping Rule 2.1, which implement MiFID article 16(6), require a Covered Entity to arrange to keep business records sufficient to assess its compliance with applicable UK legal requirements.
- FCA SYSC 10A.1.6R, 10A.1.8R, and 10A.1.11R, which implement MiFID article 16(7), require a Covered Entity to take all reasonable steps to make and keep records of telephone and electronic communications and to notify clients that telephone communications will be recorded.
- FCA SYSC 19D.3.1R, 19D.3.3R, 19D.3.7R through 19D.3.11R, 19D.3.15R, 19D.3.17R, and 19D.3.37R and PRA Remuneration Rules 3.1, 4.2, 5.1, 6.2, 8.2, and 15.2, which implement parts of CRD article 92, address implementation of a Covered Entity's remuneration policy in a manner that avoids conflicts of interest and that is consistent with sound and effective risk management, as well as internal supervision and review of this implementation for compliance with the policies and procedures adopted by the management body.
- PRA Fundamental Rule 5,[343] which contains provisions similar to MiFID articles 16(4) and (5), requires a Covered Entity to have effective risk strategies and risk management systems.
- UK CRR articles 286 through 288 and 293 [344] are described in part IV.B.1.
- UK EMIR Margin RTS article 2 [345] is described in part IV.B.1.
- UK MiFID Org Reg articles 23,[346] 27, 30 through 32, 35, 36, and 72 through 76 and Annex IV address a Covered Entity's policies and procedures governing risk management, remuneration, and documentation of compliance, the Covered Entity's supervision of and responsibility for outsourced functions and documentation of conflicts of interest relevant to the Covered Entity's compliance with conflict of interest requirements.

Taken as a whole, these UK requirements help to produce regulatory outcomes comparable to Exchange Act requirements to establish internal systems to supervise the Covered Entity's business and associated persons, obtain information necessary to perform regulated functions in its capacity as an SBS Entity and address conflicts of interest, as well as Exchange Act requirements to submit an annual compliance report to the Commission and to ensure that the chief compliance officer's removal and compensation is subject to approval by a majority of the board of directors. The comparability analysis requires consideration of Exchange Act requirements as a whole against analogous UK requirements as a whole, recognizing that U.S. and non-U.S. regimes may follow materially different approaches in terms of specificity and technical content. This ''as a whole'' approach—which the Commission is following in lieu of requiring requirement-by-requirement

[339] *See* SIFMA 5/3/2021 Letter Appendix A part (d)(3).

[340] *See* SIFMA 5/3/2021 Letter Appendix A part (d)(3).

[341] *See* SIFMA 5/3/2021 Letter Appendix A part (d)(3).

[342] To ensure that Covered Entities regulated only by the FCA and not the PRA must be subject to and comply with a similar requirement, the Commission is adding FCA SYSC 4.3A.2R to the list of UK requirements in paragraph (d)(3) of the Order.

[343] The commenter stated that these requirements are more appropriately addressed in connection with substituted compliance for internal risk management requirements. As discussed below, the Commission believes that these UK requirements are relevant to substituted compliance for Exchange Act internal supervision and chief compliance officer requirements.

[344] The commenter also stated that these requirements are more appropriately addressed in connection with substituted compliance for capital and margin requirements. *See* SIFMA 5/3/2021 Letter Appendix A part (d)(3). As discussed below, the Commission believes that these UK requirements are relevant to substituted compliance for Exchange Act internal supervision and chief compliance officer requirements.

[345] *See supra* note 344.

[346] *See supra* note 343.

similarity—further means that the conditions to substituted compliance should encompass all UK requirements that establish comparability with the applicable regulatory outcome, and helps to avoid ambiguity in the application of substituted compliance. It would be inconsistent with the holistic approach to excise relevant requirements and leave only the residual UK provisions that most closely resemble the analogous Exchange Act requirements.[347] Moreover, because Exchange Act internal supervision and chief compliance officer requirements serve the purpose of causing SBS Entities to have systems and follow practices to help ensure they conduct their businesses as required, it would be paradoxical to conclude that an SBS Entity that fails to implement requisite internal risk management, documentation, capital, and/or margin systems and practices nonetheless may be considered to be following internal supervision and chief compliance officer standards that are sufficient to meet the regulatory outcomes required under the Exchange Act. An internal risk management, documentation, capital, or margin-related failure necessarily constitutes a compliance failure. For these reasons, the Commission believes that these UK provisions appropriately constitute part of the substituted compliance conditions for internal supervision and chief compliance officer requirements and is retaining the references to these provisions. In reaching this conclusion, the Commission emphasizes the importance of ensuring that substituted compliance is grounded on the comparability of regulatory outcomes. Retaining conditions of the Order necessary to help produce regulatory outcomes comparable to Exchange Act internal risk management requirements also should address another commenter's concern that any substituted compliance determination not weaken the internal supervision and chief compliance officer conditions in the proposed Order.[348]

The Commission is making two changes to the proposed Order's list of UK requirements to which a Covered Entity must be subject and with which it must comply if it uses substituted compliance for internal supervision and/or chief compliance officer requirements. First, the UK Substituted Compliance Notice and Proposed Order requested comment on whether the Commission should revise the Order to require compliance with UK provisions that implement CRD articles 93 to 95 which relate to a Covered Entity's remuneration policies.[349] The proposed additions were intended to promote compliance goals similar to those of the other UK requirements listed in paragraph (d)(3) of the proposed Order.[350] No commenters addressed this issue, and the Commission has determined to add a requirement for the Covered Entity to be subject to and comply with certain provisions of either FCA SYSC 19A (in the case of a Covered Entity that is an IFPRU investment firm) or FCA SYSC 19D (in the case of a Covered Entity that is a UK bank or UK designated investment firm).[351] These provisions together implement CRD articles 94 and 95 and address additional aspects of a Covered Entity's internal systems for preventing and addressing conflicts of interest related to compensation. The Commission is not adding provisions that implement CRD article 93, as they relate to remuneration policies for institutions that benefit from exceptional government intervention. The Commission believes that the UK provisions implementing CRD articles 94 and 95 are necessary to better promote regulatory outcomes comparable to the relevant Exchange Act requirements on a holistic, outcomes-oriented basis. Second, the Commission is requiring a Covered Entity using substituted compliance for internal supervision and/or chief compliance officer requirements to be subject to and comply with FCA SYSC 4.3A.2R. This requirement implements parts of CRD article 88(1) and is nearly identical to PRA Senior Management Functions Rule 8.2, which appeared in the proposed Order.[352] Including FCA SYSC 4.3A.2R will ensure that Covered Entities regulated by only the FCA, rather than by the FCA and the PRA together, will be subject to a requirement similar to PRA Senior Management Functions Rule 8.2. In deciding to make a positive substituted compliance determination for UK internal supervision and chief compliance officer requirements, the Commission considers that the Order's condition requiring a Covered Entity to be subject to and comply with all of the UK requirements listed in paragraph (d)(3) of the Order help to produce regulatory outcomes comparable to Exchange Act internal supervision and chief compliance officer requirements. The Commission recognizes that some of the UK requirements related to internal supervision and chief compliance officers follow a more granular approach than the high-level approach of Exchange Act internal supervision and chief compliance officer requirements, but these UK requirements, taken as a whole, are crafted to promote a Covered Entity's compliance with applicable law and ability to identify and cure instances of noncompliance and manage conflicts of interest. Within the requisite outcomes-oriented approach for analyzing comparability, the Commission concludes that a Covered Entity's failure to comply with any of those UK internal supervision and chief compliance officer requirements would be inconsistent with a Covered Entity's obligations under Exchange Act internal supervision and chief compliance officer requirements and that compliance with the full set of UK requirements listed in paragraph (d)(3) of the Order would promote comparable regulatory outcomes.

2. Compliance Reports

A commenter requested that the Commission amend three aspects of the proposed Order's compliance report-related condition to a Covered Entity's use of substituted compliance for chief compliance officer requirements.[353] Another commenter stated that, if the Commission makes a positive substituted compliance determination, it must at a minimum ensure that the conditions in the proposed Order ''are applied with full force and without exceptions or dilution.'' [354] The Commission details below its consideration of each of these requests.

First, the proposed Order would require all compliance reports required by UK law to include a certification that, under penalty of law, the report is accurate and complete.[355] The commenter requested that the Commission revise this certification to conform more closely with the required certification of annual compliance reports pursuant to Exchange Act rule 15Fk–1.[356] Rule 15Fk–1 requires an

[347] The Commission further believes that those conditions to substituted compliance do not expand the scope of Exchange Act requirements because substituted compliance is an option available to non-U.S. person SBS Entities—not a mandate.

[348] *See* Better Markets Letter at 2.

[349] *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18409.

[350] *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18409.

[351] *See* para. (d)(3)(vi) of the Order.

[352] *See supra* note 342 and accompanying text.

[353] *See* SIFMA 5/3/2021 Letter at 20–21 and Appendix A part (d)(2)(ii).

[354] *See* Better Markets Letter at 2.

[355] *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 85692.

[356] *See* SIFMA 5/3/2021 Letter at 20 and Appendix A part (d)(2) (stating that paragraph (d)(2)(ii)(B) of the Order, consistent with Exchange Act rule 15Fk–1(c)(2)(ii)(D), should be amended so

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annual compliance report to include ''a certification by the chief compliance officer or senior officer that, to the best of his or her knowledge and reasonable belief and under penalty of law, the information contained in the compliance report is accurate and complete in all material respects.'' [357] The Commission concurs that the Order's required certification should align with that of Exchange Act rule 15Fk–1. It would seem incongruous and not within the intent of substituted compliance to apply a higher standard of certification to Covered Entities relying on substituted compliance than required under that rule. Therefore, the Commission is amending the Order to require that all required UK compliance reports include a certification signed by the chief compliance officer or senior officer of the Covered Entity that, to the best of the certifier's knowledge and reasonable belief and under penalty of law, the report is accurate and complete in all material respects.[358] In addition, the Order has been updated to clarify that each UK compliance report, and therefore also the chief compliance officer or senior officer certification, must address the Covered Entity's compliance with applicable Exchange Act requirements, consistent with the Order's conditions with respect to internal supervision.[359] The Commission believes that this clarification is necessary to promote comparable regulatory outcomes, particularly in light of the granular approach to substituted compliance, to ensure that the compliance report covers applicable Exchange Act requirements if the Covered Entity uses substituted compliance for chief compliance officer requirements, whether or not the Covered Entity relies on substituted compliance for internal supervision.

Second, because Covered Entities may prepare multiple UK compliance reports per year, the commenter requested that the Commission permit a Covered Entity ''to either (a) make an annual submission of these multiple reports with a supplement of information regarding compliance with conditions to substituted compliance or (b) create and submit a single, annual report regarding its SBS Entity business, including information regarding compliance with conditions to substituted compliance.'' [360] The Commission is persuaded that additional clarification regarding the timing of these UK compliance reports is warranted, but believes that submission of multiple outdated and/or subsequently superseded UK compliance reports at the end of each year likely would not promote regulatory outcomes comparable to Exchange Act compliance report requirements. Rather, in the case of a Covered Entity that prepares multiple UK compliance reports each year, the Commission believes that it is appropriate for the Commission to receive compliance reports shortly after their submission to the management body. Providing these reports to the Commission near the times that the Covered Entity submits them to the management body also will better align with the UK regulatory framework, which permits a Covered Entity to prepare and submit to the management body multiple compliance reports throughout the year, but does not contemplate a Covered Entity preparing multiple internal compliance reports throughout the year and submitting those reports to the management body only at the end of the year. The Commission thus is changing the Order to clarify that a Covered Entity must provide the Commission each UK compliance report prepared pursuant to UK MiFID Org Reg article 22(2)(c) no later than 15 days following the earlier of its submission to the Covered Entity's management body or the time the report is required to be submitted to the management body.[361] In line with UK MiFID Org Reg article 22(2)(c), a Covered Entity must provide at least one report annually to the Commission but if a Covered Entity makes more than one report pursuant to UK MiFID Org Reg article 22(2)(c), the Covered Entity must provide and certify each such report within the required 15-day deadline. The Commission views 15 days as providing a reasonable time to translate reports, if needed, and convey them to the Commission, and this change is consistent with the same commenter's suggested clarification of the French Substituted Compliance Notice and Proposed Order.[362] This deadline is intended to promote timely notice of compliance matters in a manner comparable to Exchange Act requirements, while also accounting for the annual deadline required under UK MiFID Org Reg article 22(2)(c) as well as the possibility that the Covered Entity may submit reports ahead of this annual deadline. In addition, reports required to be provided under UK MiFID Org Reg article 22(2)(c) must together cover the entire period that an Exchange Act rule 15Fk–1 annual report would have covered.[363] This requirement prevents a Covered Entity from notifying the Commission just prior to the due date of its annual Exchange Act compliance report that it will use substituted compliance for chief compliance officer requirements and then providing the Commission a UK compliance report that covers only a part of the year that would have been covered in the Exchange Act report.

The Commission recognizes that a Covered Entity preparing multiple UK compliance reports each year may find it difficult to submit to the Commission multiple UK compliance reports throughout the year, each with a chief compliance officer or senior officer certification and a section addressing the Covered Entity's compliance with U.S. requirements. However, on balance the Commission believes that these elements are necessary to achieve a regulatory outcome comparable to the Exchange Act, and is retaining the requirement for all reports to include them. The commenter's suggested alternative—to allow a Covered Entity to create a single annual report regarding its SBS business—amounts to a request to allow a Covered Entity to prepare a bespoke compliance report outside of the requirements of both the Exchange Act and the UK regulatory framework. The Commission believes this bespoke

that a Covered Entity's certification would include statements that the certification is ''to the best of the certifier's knowledge and reasonable belief'' and that the report is accurate and complete ''in all material respects'').

[357] Exchange Act rule 15Fk–1(c)(2)(ii)(D); *see also* Exchange Act rule 15Fk–1(e)(2) (defining ''senior officer'' as ''the chief executive officer or other equivalent officer'').

[358] *See* para. (d)(2)(ii)(B) of the Order.

[359] *See* para. (d)(4) of the Order. In practice, a Covered Entity may satisfy this condition by identifying relevant Order conditions and reporting on the implementation and effectiveness of its controls with regard to compliance with applicable Exchange Act requirements and relevant provisions of the Order.

[360] *See* SIFMA 5/3/2021 Letter at 21 and Appendix A part (d)(2). With regard to the French Substituted Compliance Notice and Proposed Order, SIFMA supported an additional timing standard that would provide for an annual submission 15 days after the submission to the French regulatory authority. The Commission addresses SIFMA's comment in connection with its consideration of French authorities' application for substituted compliance.

[361] *See* para. (d)(2)(ii)(D) of the Order.

[362] In its comment on the same provision in the French Substituted Compliance Notice and Proposed Order, the commenter asked the Commission to permit a Covered Entity to make an annual submission of the foreign compliance report within 15 days after submission of that report to the foreign regulatory authority. The commenter explained that, absent clarification, the Order would appear to require a Covered Entity to provide the Commission its foreign compliance report within 30 days following the deadline for the Covered Entity to file its annual financial report with the Commission, without regard to when the Covered Entity prepares its foreign compliance report. *See* SIFMA 5/3/2021 Letter at 19–20 and Appendix A part (d)(2), available at: *https://www.sec.gov/comments/s7-22-20/s72220.htm.*

[363] *See* para. (d)(2)(ii)(E) of the Order.

report would be inconsistent with its mandate to make a positive substituted compliance determination only when the Covered Entity complies with comparable foreign requirements, and is not amending the Order to provide this option. A Covered Entity that produces multiple UK compliance reports each year, but wishes to prepare a single annual compliance report addressing its compliance with Exchange Act requirements, is not required to use substituted compliance for chief compliance officer requirements, even if it chooses to use substituted compliance for other Exchange Act requirements. Such a Covered Entity instead could choose to comply directly with Exchange Act chief compliance officer requirements, including requirements related to the annual compliance report, rather than use substituted compliance for those requirements.

Third, the commenter requested that the proposed Order be modified to narrow the scope of the compliance reports provided to the Commission, stating that the Covered Entity should be permitted to provide the Commission its UK compliance reports only ''to the extent that they are related to a Covered Entity's business as an [SBS Entity].'' [364] The commenter stated that it would be ''disproportionate and unnecessary'' to require the Covered Entity to provide the Commission all of its UK compliance reports prepared pursuant to UK MiFID Org Reg article 22(2)(c).[365] The Commission disagrees, and believes that the Commission should be fully informed—consistent with the scope of UK MiFID Org Reg article 22(2)(c)—as to the ''implementation and effectiveness'' of the Covered Entity's ''overall control environment for investment services and activities,'' as well as associated risks, complaints handling and remedies. The alternative approach of apportioning compliance reports into two buckets, and providing the Commission reports in only one of the buckets, does not match the analytic approach of considering the Exchange Act and UK frameworks as a whole. Accordingly, the Commission is retaining the requirement that a Covered Entity provide all reports required pursuant to UK MiFID Org Reg article 22(2)(c) to the Commission.

3. Antitrust Requirements

The Commission did not receive any comments on the absence of a positive substituted compliance determination for antitrust requirements in Exchange Act section 15F(j)(6) (and related internal supervision requirements of Exchange Act rule 15Fh–3(h)(2)(iii)(I)) in the proposed Order. The Commission continues to believe that allowing an alternative means of compliance would not lead to outcomes comparable to the Exchange Act, and is not making a positive substituted compliance determination for those requirements.[366]

VII. Substituted Compliance for Counterparty Protection Requirements

A. Proposed Approach

The FCA Application in part requested substituted compliance in connection with counterparty protection requirements relating to:

- Disclosure of material risks and characteristics and material incentives or conflicts of interest—Requirements that an SBS Entity disclose to certain security-based swap counterparties certain information about the material risks and characteristics of the security-based swap, as well as material incentives or conflicts of interest that the SBS Entity may have in connection with the security-based swap.
- ''Know your counterparty''—Requirements that an SBS Entity establish, maintain, and enforce written policies and procedures to obtain and retain certain information regarding a security-based swap counterparty that is necessary for conducting business with that counterparty.
- Suitability—Requirements for a security-based swap dealer to undertake reasonable diligence to understand the potential risks and rewards of any recommendation of a security-based swap or trading strategy involving a security-based swap that it makes to certain counterparties and to have a reasonable basis to believe that the recommendation is suitable for the counterparty.
- Fair and balanced communications—Requirements that an SBS Entity communicate with security-based swap counterparties in a fair and balanced manner based on principles of fair dealing and good faith.
- Daily mark disclosure—Requirements that an SBS Entity provide daily mark information to certain security-based swap counterparties.
- Clearing rights disclosure—Requirements that an SBS Entity provide certain counterparties with information regarding clearing rights under the Exchange Act.

Taken as a whole, these counterparty protection requirements help to ''bring professional standards of conduct to, and increase transparency in, the security-based swap market and to require registered [entities] to treat parties to these transactions fairly.'' [367]

The proposed Order provided for substituted compliance in connection with disclosure of material risks and characteristics, disclosure of material incentives or conflicts of interest, ''know your counterparty,'' suitability, fair and balanced communications, and daily mark disclosure requirements.[368] In proposing to provide conditional substituted compliance for these requirements, the Commission preliminarily concluded that the relevant UK requirements in general would produce regulatory outcomes that are comparable to requirements under the Exchange Act, by subjecting Covered Entities to obligations that promote standards of professional conduct, transparency, and the fair treatment of parties.

As proposed, substituted compliance for these requirements would be subject to certain conditions to help ensure the comparability of outcomes. First, under the proposed Order, substituted compliance for disclosure of material risks and characteristics, disclosure of material incentives or conflicts of interest, ''know your counterparty,'' suitability, and fair and balanced communications requirements would be conditioned on Covered Entities being subject to, and complying with, relevant UK requirements.[369] Second, the

[364] *See* SIFMA 5/3/2021 Letter at 21 and Appendix A part (d)(2).

[365] *See* SIFMA 5/3/2021 Letter at 21.

[366] Non-U.S. SBS Entities should assess the applicability of the Exchange Act's antitrust prohibitions to their security-based swap businesses.

[367] *See* Business Conduct Adopting Release, 81 FR at 30065. These transaction-level requirements apply only to a non-U.S. SBS Entity's transactions with U.S. counterparties (apart from certain transactions conducted through a foreign branch of the U.S. counterparty), or to transactions arranged, negotiated, or executed in the United States. *See* Exchange Act rule 3a71–3(c) (exception from business conduct requirements for a security-based swap dealer's ''foreign business''); *see also* Exchange Act rule 3a71–3(a)(3), (8), and (9) (definitions of ''transaction conducted through a foreign branch,'' ''U.S. business'' and ''foreign business'').

[368] *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18414–15.

[369] *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18392 n.134. Each of the comparable UK requirements listed in the proposed Order applies to a uniquely defined set of UK-authorized firms. *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18392 n.137. To assist UK firms in determining whether they are subject to these requirements, the Commission preliminarily determined that any Covered Entity would be subject to the required UK requirements related to disclosure of material risks and characteristics, disclosure of material incentives or conflicts of interest, suitability, and fair and balanced communications and thus eligible to apply substituted compliance in these areas. The Commission also preliminarily determined that any

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proposed Order would additionally condition substituted compliance for suitability requirements on the counterparty being a per se ''professional client'' as defined in FCA COBS (rather an elective professional client or a retail client [370]) and not a ''special entity'' as defined in Exchange Act section 15F(h)(2)(C) and Exchange Act rule 15Fh–2(d).[371] Finally, in the proposed Order the Commission preliminarily viewed UK daily portfolio reconciliation requirements as comparable to Exchange Act daily mark disclosure requirements.[372] These daily portfolio reconciliation requirements apply to portfolios of a financial counterparty or a non-financial counterparty subject to the clearing obligation in UK EMIR in which the counterparties have 500 or more OTC derivatives contracts outstanding with each other.[373] The Commission preliminarily viewed UK portfolio reconciliation requirements for other types of portfolios, which may be reconciled less frequently than each business day, as not comparable to Exchange Act daily mark requirements.[374] Accordingly, the proposed Order would condition substituted compliance for daily mark requirements on the Covered Entity being required to reconcile, and in fact reconciling, the portfolio containing the relevant security-based swap on each business day pursuant to relevant UK requirements.[375]

The proposed Order would not provide substituted compliance in connection with Exchange Act requirements for SBS Entities to disclose a counterparty's clearing rights under Exchange Act section 3C(g)(5).[376] The FCA Application argued that certain UK provisions related to a counterparty's clearing rights in the UK are comparable to requirements to disclose the counterparty's Exchange Act-based clearing rights. Because these UK provisions do not require disclosure of these clearing rights, the Commission preliminarily viewed the UK clearing provisions as not comparable to Exchange Act clearing rights disclosure requirements.

B. Commenter Views and Final Provisions

Having considered commenters' recommendations regarding the counterparty protection requirements, the Commission is making positive substituted compliance determinations in connection with disclosure of material risks and characteristics, disclosure of material incentives or conflicts of interest, ''know your counterparty,'' suitability, fair and balanced communications, and daily mark disclosure requirements. With respect to Exchange Act clearing rights disclosure requirements, however, consistent with the proposed Order the Commission is not providing substituted compliance. The Order is largely consistent with the proposed Order except for removing one UK requirement listed in two sections of the Order and correcting a typographical error.[377]

One commenter expressed general support for the proposed approach toward substituted compliance for the counterparty protection provisions.[378] Another commenter stated that UK requirements are not sufficiently comparable to Exchange Act requirements.[379] The Commission continues to believe that, taken as a whole, applicable requirements under UK law subject Covered Entities to obligations that promote standards of professional conduct, transparency, and the fair treatment of parties, and thus produce regulatory outcomes that are comparable to the outcomes associated with the relevant counterparty protection requirements under the Exchange Act. The Commission recognizes that there are differences between the approaches taken by disclosure of material risks and characteristics, disclosure of material incentives or conflicts of interest, ''know your counterparty,'' suitability, fair and balanced communications, and daily mark disclosure requirements under the Exchange Act, on the one hand, and relevant UK requirements, on the other hand. The Commission continues to view those differences as not so material as to be inconsistent with substituted compliance within the requisite outcomes-oriented context.

To help ensure the comparability of outcomes, substituted compliance for counterparty protection requirements is subject to certain conditions. Substituted compliance for disclosure of material risks and characteristics, disclosure of material incentives or conflicts of interest, ''know your counterparty,'' suitability, and fair and balanced communications requirements is conditioned on the Covered Entity being subject to, and complying with, relevant UK requirements.[380] Substituted compliance for daily mark disclosure requirements is conditioned on the Covered Entity being required to reconcile, and in fact reconciling, the portfolio containing the relevant security-based swap on each business day pursuant to relevant UK requirements.[381] Substituted compliance for suitability requirements additionally is conditioned on the counterparty being a per se ''professional client'' mentioned in FCA COBS 3.5.2R (*i.e.,* not an elective professional client or a retail client) and not a ''special entity'' as defined in Exchange Act section 15F(h)(2)(C) and Exchange Act rule 15Fh–2(d).[382] A Covered Entity that is unable to comply with a condition—and thus is not eligible to use substituted compliance for the particular set of Exchange Act counterparty protection requirements related to that condition—nevertheless

Covered Entity that is an ''IFPRU investment firm,'' ''UK bank'' or ''UK designated investment firm,'' each as defined for purposes of UK law, would be subject to all of the required UK requirements related to ''know your counterparty'' requirements and thus eligible to apply substituted compliance for ''know your counterparty'' requirements. Finally, the Commission preliminarily determined that any Covered Entity that is a ''financial counterparty'' would be subject to all of the required UK requirements related to daily mark disclosure and thus eligible to apply substituted compliance for daily mark disclosure requirements. *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18392–93.

[370] FCA COBS 3.5 describes which clients are ''professional clients.'' FCA COBS 3.5.2R describes the types of clients considered to be professional clients unless the client elects non-professional treatment; these clients are per se professional clients. FCA COBS 3.5.3R describes the types of clients who may be treated as professional clients on request; these clients are elective professional clients. *See* FCA COBS 3.5. Retail clients are those that are not professional clients (nor eligible counterparties, in contexts other than suitability assessments in which treatment as an eligible counterparty is permitted). *See* FCA COBS 3.4.1R.

[371] 15 U.S.C. 78*o*–10(h)(2)(C); 17 CFR 240.15Fh–2(d). *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18393–94.

[372] *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18393.

[373] *See* UK EMIR RTS article 13(3)(a)(i); UK EMIR article 10.

[374] *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18393.

[375] *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18393.

[376] 15 U.S.C. 78c–3(g)(5).

[377] *See* paras. (e)(1)(i), (e)(5)(ii) and (e)(4)(i)(A) of the Order.

[378] *See* SIFMA 5/3/2021 Letter at 21. The commenter also requested that the Commission not require a Covered Entity to be subject to and comply with some of the UK counterparty protection requirements listed in the proposed Order. *See* SIFMA 5/3/2021 Letter at 21 and Appendix A part (e). The Commission addresses those requests in the relevant sections of this part VII below.

[379] *See* Better Markets Letter at 2. The commenter also stated that, if the Commission nevertheless makes a positive substituted compliance determination, it must at a minimum ensure that the conditions in the proposed Order ''are applied with full force and without exceptions or dilution.'' The Commission addresses that comment in the relevant sections of this part VII below.

[380] *See* paras. (e)(1) through (5) of the Order.

[381] *See* para. (e)(6) of the Order.

[382] *See* para. (e)(4)(ii) of the Order.

may use substituted compliance for another set of Exchange Act requirements addressed in the Order if it complies with the conditions to the relevant parts of the Order.

Under the Order, substituted compliance for counterparty protection requirements (relating to disclosure of information regarding material risks and characteristics, disclosure of information regarding material incentives or conflicts of interest, ''know your counterparty,'' suitability, fair and balanced communications, and daily mark disclosure) is not subject to a condition that the Covered Entity apply substituted compliance for related recordkeeping requirements in Exchange Act rules 18a–5 and 18a–6. A Covered Entity that applies substituted compliance for one or more counterparty protection requirements, but does not apply substituted compliance for the related recordkeeping requirements in Exchange Act rules 18a–5 and 18a–6, will remain subject to the relevant provisions of Exchange Act rules 18a–5 and 18a–6. Those rules require the Covered Entity to make and preserve records of its compliance with Exchange Act counterparty protection requirements and of its security-based swap activities required or governed by those requirements. A Covered Entity that applies substituted compliance for a counterparty protection requirement, but complies directly with related recordkeeping requirements in rules 18a–5 and 18a–6, therefore must make and preserve records of its compliance with the relevant conditions to the Order and of its security-based swap activities required or governed by those conditions and/or referenced in the relevant parts of rules 18a–5 and 18a–6.

The Commission details below its consideration of comments on the proposed Order.

1. Disclosure of Information Regarding Material Risks and Characteristics

A commenter requested that the Commission not require a Covered Entity to be subject to and comply with some of these specified requirements.[383] By contrast, another commenter stated that, if the Commission makes a positive substituted compliance determination, it must at a minimum ensure that the conditions in the proposed Order ''are applied with full force and without exceptions or dilution.'' [384] The Commission details below its consideration of each of these requests.

First, the commenter stated that FCA COBS 2.2A.2R(1)(d), 6.1ZA.11R, 6.1ZA.12R, and 6.1ZA.14UK and UK MiFID Org Reg article 50 relate to disclosure of costs and charges and thus go beyond the scope of Exchange Act material risks and characteristics disclosure requirements. Exchange Act rule 15Fh–3(b)(1) requires a Covered Entity, before entering into a security-based swap, to disclose to certain counterparties material information about the security-based swap in a manner reasonably designed to allow the counterparty to assess the material risks and characteristics of the security-based swap, which may include the material economic terms of the security-based swap and the rights and obligations of the parties during the term of the security-based swap. The material economic terms of a security-based swap and the rights and obligations of the parties include the costs and charges associated with the security-based swap. Accordingly, the Commission is retaining the references to these provisions.

Second, the commenter stated that FCA COBS 2.2A.2R(1)(c) relates to insurance-based investments and thus goes beyond the scope of Exchange Act material risks and characteristics disclosure requirements. FCA COBS 2.2A.2R(1)(c) would require a Covered Entity to provide its client in good time appropriate information about the distribution of ''insurance-based investment products.'' The Commission is not making a determination whether an ''insurance-based investment product,'' as defined for purposes of this provision, could also be a security-based swap. However, even without this provision, FCA COBS 2.2A.2R(b) would require the Covered Entity to provide its client in good time appropriate information about any relevant ''financial instruments,'' which are a defined set of instruments to which this and other MiFID-based provisions apply. The general condition in paragraph (a)(3) of the Order would require any Covered Entity using substituted compliance for Exchange Act material risks and characteristics disclosure requirements to ensure that its relevant security-based swap activities (in this case, disclosure to counterparties before entering into a security-based swap) constitute ''MiFID or equivalent third country business,'' which is defined to include the same set of instruments in the definition of ''financial instruments.'' As a result, the disclosures of a Covered Entity applying substituted compliance for Exchange Act material risks and characteristics disclosure requirements would always be in relation to a security-based swap that is a ''financial instrument.'' Accordingly, the Commission believes it is appropriate to delete the reference to FCA COBS 2.2A.2R(1)(c) in the Order.

Third, the commenter stated that FCA COBS 6.1ZA.9UK and UK MiFID Org Reg article 49 relate to information about the safeguarding of client assets and thus go beyond the scope of Exchange Act material risks and characteristics disclosure requirements. These provisions would require a Covered Entity to inform its client about the risks of the Covered Entity placing client assets, which would include the relevant security-based swap and funds related to it, to be held by a third party, the risks of the Covered Entity holding client assets in an omnibus account, the risks of holding client assets that are not segregated from the assets of the Covered Entity or a third party holding the client's assets and the risks of the Covered Entity entering into securities financing transactions using client assets. A Covered Entity also would have to inform the client when the relevant security-based swap is held in an account subject to the laws of a non-UK jurisdiction and indicate that client rights relating to the security-based swap may differ from those under UK law. A Covered Entity also would have to inform the client about any security interest, lien, or right of set-off that the Covered Entity or a depository may have over client assets. In comparison, Exchange Act rule 15Fh–3(b)(1) requires a Covered Entity, before entering into a security-based swap, to disclose to certain counterparties material information about the security-based swap in a manner reasonably designed to allow the counterparty to assess the material risks and characteristics of the security-based swap, which may include market, credit, liquidity, foreign currency, legal, operational, and any other applicable risks of the security-based swap. Legal and operational risks of a security-based swap include the types of risks to client assets that FCA COBS 6.1ZA.9UK and UK MiFID Org Reg article 49 would require the Covered Entity to disclose. Accordingly, the Commission is retaining the references to these provisions.

Finally, the commenter stated that FCA COBS 6.2B.33R and 9A.3.6R relate to disclosure about whether a firm is providing independent advice or will undertake a periodic suitability assessment and thus go beyond the scope of Exchange Act material risks and characteristics disclosure

[383] *See* SIFMA 5/3/2021 Letter at 21 and Appendix A part (e)(1).

[384] *See* Better Markets Letter at 2.

requirements.[385] As described above, Exchange Act rule 15Fh–3(b)(1) requires a Covered Entity, before entering into a security-based swap, to disclose to certain counterparties material information about the security-based swap in a manner reasonably designed to allow the counterparty to assess the material risks and characteristics of the security-based swap, which may include the material economic terms of the security-based swap and the rights and obligations of the parties during the term of the security-based swap. The Commission believes that a counterparty would consider the independence of the Covered Entity's advice and the presence or absence of a periodic suitability assessment in the counterparty's assessment of these risks and characteristics. The holistic approach taken by the Commission in considering whether regulatory requirements are comparable further warrants the inclusion of these provisions in the Order. Accordingly, the Commission is retaining the references to these provisions.

2. Disclosure of Information Regarding Material Incentives or Conflicts of Interest

A commenter requested that the Commission not require a Covered Entity to be subject to and comply with FCA COBS 2.3A.5R, 2.3A.6R, 2.3A.7E, or 2.3A.11R through 2.3A.14R, stating that these provisions relate to third-party payments and thus go beyond the scope of Exchange Act material incentives or conflicts of interest disclosure requirements.[386] By contrast, another commenter stated that, if the Commission makes a positive substituted compliance determination, it must at a minimum ensure that the conditions in the proposed Order ''are applied with full force and without exceptions or dilution.'' [387] These provisions would require a Covered Entity to refrain from paying to, or accepting from, third parties certain fees, commissions or non-monetary benefits in connection with providing an investment service (inducements) and, in circumstances in which the general prohibition on inducements does not apply, to disclose to the client the existence, nature, and amount of the inducement prior to providing the service and in a manner that is comprehensive, accurate, and understandable. In comparison, Exchange Act rule 15Fh–3(b)(2) requires a Covered Entity, before entering into a security-based swap, to disclose to certain counterparties material information about the security-based swap in a manner reasonably designed to allow the counterparty to assess the material incentives or conflicts of interest that the Covered Entity may have in connection with the security-based swap, including any compensation or other incentives from any source other than the counterparty. Disclosure of this compensation or other incentives would include disclosure of the existence, nature, and amount of an inducement that FCA COBS 2.3A.5R, 2.3A.6R, 2.3A.7E, and 2.3A.11R through 2.3A.14R would require the Covered Entity to disclose. Accordingly, the Commission is retaining the references to these provisions.

3. ''Know Your Counterparty''

A commenter requested that the Commission not require a Covered Entity to be subject to and comply with some of these specified requirements.[388] By contrast, another commenter stated that, if the Commission makes a positive substituted compliance determination, it must at a minimum ensure that the conditions in the proposed Order ''are applied with full force and without exceptions or dilution.'' [389] The Commission details below its consideration of each of these requests.

First, the commenter stated that UK MiFID Org Reg articles 21, 22, 25, and 26 and applicable parts of Annex I relate to organizational requirements, compliance, responsibility of senior management, complaints handling, and associated recordkeeping and thus go beyond the scope of Exchange Act ''know your counterparty'' requirements. In addition to these provisions cited by the commenter, the proposed Order would require (with no objection from the commenter) a Covered Entity using substituted compliance for Exchange Act ''know your counterparty'' requirements to be subject to and comply with FCA SYSC 6.1.1R, which implements MiFID article 16(2) in the UK and would require a Covered Entity to establish, implement, and maintain adequate policies and procedures sufficient to ensure the Covered Entity's compliance with its obligations under UK financial services laws. This requirement relates to the requirement in Exchange Act rules 15Fh–3(e)(1) and (2) for the Covered Entity to establish, maintain, and enforce written policies and procedures to obtain and retain a record of the essential facts about the counterparty that are necessary for complying with applicable laws, regulations, and rules and for implementing the Covered Entity's credit and operational risk management policies. UK MiFID Org Reg articles 21, 22, 25, and 26 and applicable parts of Annex I are regulations that implement MiFID article 16(2). They provide additional detail about the Covered Entity's required policies and procedures under the UK framework, and as such are relevant to the policies and procedures required under Exchange Act rule 15Fh–3(e). Accordingly, the Commission is retaining the references to these provisions.

Second, the commenter stated that FCA SYSC 4.1.1R(1) relates to general organizational requirements and thus goes beyond the scope of Exchange Act ''know your counterparty'' requirements. FCA SYSC 4.1.1R(1) would require the Covered Entity to have robust governance arrangements, including effective processes to identify, manage, monitor, and report the risks it is or might be exposed to. This requirement relates to the requirement in Exchange Act rule 15Fh–3(e)(2) for the Covered Entity to establish, maintain, and enforce written policies and procedures to obtain and retain a record of the essential facts about the counterparty that are necessary for implementing the Covered Entity's credit and operational risk management policies. Accordingly, the Commission is retaining the reference to this provision.

Third, the commenter recommended deleting FCA IFPRU 2.2.7R(2) and 2.2.32R because they do not apply to banks or PRA-designated investment firms and the commenter expects only banks and PRA-designated investment firms to apply substituted compliance pursuant to the Order. These FCA IFPRU provisions apply to smaller investment firms not regulated by the PRA and are nearly identical to provisions that apply to banks and PRA-designated investment firms. The proposed Order would not require a Covered Entity that is a bank or PRA-designated investment firm to be subject to and comply with these provisions. Rather, the proposed Order would require each Covered Entity to be subject to and comply with either these IFPRU provisions (if it is a smaller investment firm) or analogous PRA requirements (if it is a bank or PRA-designated investment firm). Moreover, the FCA Application requested substituted compliance for all MiFID

[385] *See* SIFMA 5/3/2021 Letter Appendix A part (e)(1).

[386] *See* SIFMA 5/3/2021 Letter at 21 and Appendix A part (e)(1).

[387] *See* Better Markets Letter at 2.

[388] *See* SIFMA 5/3/2021 Letter at 21 and Appendix A part (e)(3).

[389] *See* Better Markets Letter at 2.

investment firms and third country investment firms, and was not limited to banks and PRA-designated investment firms. Accordingly, the Commission is retaining the references to these provisions.

Fourth, the commenter stated that PRA General Organisational Requirement 2.1 relates to high-level governance requirements and thus goes beyond the scope of Exchange Act ''know your counterparty'' requirements. The provision is identical in all material respects to FCA SYSC 4.1.1R(1) and serves as the PRA's version of that requirement for PRA-regulated Covered Entities. Accordingly, the Commission is retaining the reference to this provision.

Finally, the commenter stated that PRA Internal Capital Adequacy Assessment Rule 10.1 relates to assessment of the capital needed to cover risks and thus goes beyond the scope of Exchange Act ''know your counterparty'' requirements. This provision would require a Covered Entity to implement policies and processes to evaluate and manage the exposure to operational risk. These policies and processes are related to the requirement in Exchange Act rule 15Fh–3(e)(2) for the Covered Entity to establish, maintain, and enforce written policies and procedures to obtain and retain a record of the essential facts about the counterparty that are necessary for implementing the Covered Entity's credit and operational risk management policies. Accordingly, the Commission is retaining the reference to this provision.

4. Suitability

A commenter requested that the Commission amend these conditions.[390] By contrast, another commenter stated that, if the Commission makes a positive substituted compliance determination, it must at a minimum ensure that the conditions in the proposed Order ''are applied with full force and without exceptions or dilution.'' [391] The Commission details below its consideration of each of these requests.

First, the commenter requested that the Commission not require a Covered Entity to be subject to and comply with some of the UK suitability requirements specified in the proposed Order.[392] The commenter stated that FCA COBS 4.2.1R is more appropriately addressed in the section of the order relating to fair and balanced communications and that MiFID Org Reg article 21(1)(b) is more appropriately addressed in the section of the order relating to internal supervision. The commenter further stated that FCA SYSC 5.1.5AAR and 5.1.5ABR and UK MiFID Org Reg article 21(1)(d) go beyond the scope of Exchange Act suitability requirements.

Exchange Act rule 15Fh–3(f) requires an SBS Entity, when making certain security-based swap recommendations to a counterparty, to undertake reasonable diligence to understand the potential risks and rewards associated with the recommendation (the reasonable basis suitability standard) and to have a reasonable basis to believe that the recommendation is suitable for the counterparty (the counterparty-specific suitability standard).[393] FCA SYSC 5.1.5AAR and 5.1.5ABR, which implement MiFID article 25(1), would require a Covered Entity to ensure that individuals making personal recommendations to clients in relation to a relevant security-based swap have the necessary knowledge and competence so as to ensure that the Covered Entity is able to meet its obligations under FCA rules that implement MIFID articles 24 and 25 and the related provisions of the UK MiFID Org Reg. FCA COBS 9A.2.1R and 9A.2.16R, which implement MiFID article 25(2), would require the Covered Entity to obtain information about a client necessary to ensure that it makes only recommendations that are suitable for the client, and thus are relevant to the Exchange Act counterparty-specific suitability standard. FCA SYSC 5.1.5AAR and 5.1.5ABR thus would require the Covered Entity to ensure that recommendations to clients are made with the knowledge and competence necessary to fulfill the Covered Entity's obligation under FCA COBS 9A.2.1R and 9A.2.16R to make only suitable recommendations. This knowledge and competence requirement in FCA SYSC 5.1.5AAR and 5.1.5ABR is directly related to the Exchange Act reasonable basis suitability standard.

Moreover, FCA COBS 4.2.1R, which implements MiFID article 24(3), is particularly relevant to the Exchange Act reasonable basis standard. FCA COBS 4.2.1R, together with FCA SYSC 5.1.5AAR and 5.1.5ABR, would require the Covered Entity to ensure that individuals making recommendations have the knowledge and competence to communicate about the relevant security-based swap in a way that is fair, clear, and not misleading. The Commission believes that in order to meet the FCA requirement to communicate in a fair, clear, and not misleading manner, the Covered Entity's due diligence would reflect that individuals engaged in such communication understand the potential risks and rewards of the recommendation in a manner that is comparable to the requirement in Exchange Act rule 15Fh–3(f)(1)(i). MiFID Org Reg articles 21(1)(b) and (d), in turn, would require the Covered Entity to ensure that its personnel have the skills, knowledge, and expertise, and be aware of the procedures, necessary to properly discharge their responsibilities, which include their suitability obligations. These requirements again relate to the Exchange Act reasonable basis standard because they would require the Covered Entity to ensure that personnel making recommendations are equipped with the requisite training and information to be able to communicate about the relevant security-based swap in a way that complies with its communication and suitability obligations in FCA COBS and FCA SYSC.

For these reasons, the Commission is retaining in the Order the references to these UK requirements that the commenter asked to delete, and thus is requiring a Covered Entity to be subject to and comply with these UK requirements if the Covered Entity wishes to make use of substituted compliance for Exchange Act suitability requirements. Separately, as stated by the commenter, the proposed Order erroneously referred to FCA COBS 9A.1.16R instead of FCA COBS 9A.2.16R, and the Commission is amending the Order to correct this error.[394]

Second, the commenter requested that the Commission change the condition to substituted compliance for Exchange Act suitability requirements that would require the Covered Entity's counterparty to be a ''professional client'' mentioned in FCA COBS 3.5.2R. Professional clients mentioned in FCA COBS 3.5.2R are per se professional clients, a category of clients that generally includes those with more experience, knowledge, expertise, and resources and that excludes elective professional clients and retail clients. The commenter requested that the Commission replace FCA COBS 3.5.2R with FCA COBS 3.5.1R, a provision that refers to both per se and elective professional clients. Elective professional clients generally have less experience, knowledge, expertise, and/or resources than per se professional

[390] *See* SIFMA 5/3/2021 Letter at 21 and Appendix A part (e)(4).

[391] *See* Better Markets Letter at 2.

[392] *See* SIFMA 5/3/2021 Letter at 21 and Appendix A part (e)(4).

[393] *See* Exchange Act rule 15Fh–3(f)(1).

[394] *See* para. (e)(4)(i)(A) of the Order.

clients.[395] Because UK suitability requirements permit a Covered Entity, when conducting a suitability analysis for elective professional clients, to make certain assumptions,[396] while the Exchange Act permits a similar mechanism only for institutional counterparties, the Commission believes that UK suitability requirements are comparable only in respect of per se professional clients. Accordingly, the Commission is retaining the condition requiring the Covered Entity's counterparty to be a per se professional client and is not expanding that condition to permit Covered Entities to apply substituted compliance for Exchange Act suitability requirements when its counterparty is an elective professional client.

5. Fair and Balanced Communications

A commenter requested that the Commission not require a Covered Entity to be subject to and comply with some of these specified requirements.[397] By contrast, another commenter stated that, if the Commission makes a positive substituted compliance determination, it must at a minimum ensure that the conditions in the proposed Order ''are applied with full force and without exceptions or dilution.'' [398] The Commission details below its consideration of each of these requests.

First, the commenter asked the Commission not to require a Covered Entity to be subject to and comply with FCA COBS 2.2A.2R(1)(d), 6.1ZA.11R, 6.1ZA.12R, and 6.1ZA.13R because they relate to disclosure of costs and charges and thus go beyond the scope of Exchange Act fair and balanced communications requirements.[399] Exchange Act rule 15Fh–3(g)(1) requires a Covered Entity's communications to provide a sound basis for evaluating the facts with regard to any particular security-based swap or trading strategy involving a security-based swap. The Commission believes that information about costs and charges required to be disclosed under these UK requirements is comparable to one type of information that would help to provide a sound basis for evaluating the facts as required under 15Fh–3(g)(1). Accordingly, the Commission is retaining the references to these provisions.

Second, the commenter asked the Commission not to require a Covered Entity to be subject to and comply with FCA COBS 2.2A.2R(1)(c) because it relates to insurance-based investments and thus goes beyond the scope of Exchange Act fair and balanced communications requirements.[400] FCA COBS 2.2A.2R(1)(c) would require a Covered Entity to provide its client in good time appropriate information about the distribution of ''insurance-based investment products.'' The Commission is not making a determination whether an ''insurance-based investment product,'' as defined for purposes of this UK provision, could also be a security-based swap. However, even without this provision, FCA COBS 2.2A.2R(1)(b) would require the Covered Entity to provide its client in good time appropriate information about any relevant ''financial instruments,'' which are a defined set of instruments to which this and other MiFID-based provisions apply. The general condition in paragraph (a)(3) of the Order would require any Covered Entity using substituted compliance for Exchange Act fair and balanced communications requirements to ensure that its relevant security-based swap activities (in this case, communications with counterparties) constitute ''MiFID or equivalent third country business,'' which is defined to include the same set of instruments in the definition of ''financial instruments.'' As a result, the communications of a Covered Entity applying substituted compliance for Exchange Act fair and balanced communications requirements would always be in relation to a security-based swap that is a ''financial instrument.'' Accordingly, the Commission believes it is appropriate to delete the reference to FCA COBS 2.2A.2R(1)(c) in the Order.

Third, the commenter asked the Commission not to require a Covered Entity to be subject to and comply with FCA COBS 2.2A.3R because it relates to the format of disclosure and thus goes beyond the scope of Exchange Act fair and balanced communications requirements.[401] Exchange Act rule 15Fh–3(g)(1) requires a Covered Entity's communications to provide a sound basis for evaluating the facts with regard to any particular security-based swap or trading strategy involving a security-based swap. FCA COBS 2.2A.3R would require the Covered Entity to provide the information required by FCA COBS 2.2A.2R in a comprehensive form in such a manner that the client is reasonably able to understand the nature and risks of the investment service and of the specific type of financial instrument that is being offered and, consequently, to take investment decisions on an informed basis. This requirement to provide information in a manner that the client is reasonably able to take informed investment decisions is well within the scope of the Exchange Act requirement to provide counterparties a sound basis for evaluating the relevant facts of a transaction or strategy. Accordingly, the Commission is retaining the reference to this provision.

Fourth, the commenter asked the Commission not to require a Covered Entity to be subject to and comply with FCA COBS 6.1ZA.8UK because it relates to portfolio management services and thus goes beyond the scope of Exchange Act fair and balanced communications requirements. FCA COBS 6.1ZA.8UK would require a Covered Entity, when providing or proposing to provide portfolio management services, to provide certain information to its client to enable the client to assess the Covered Entity's performance. The Commission is not making a determination whether particular examples of ''portfolio management,'' as the term is used in this provision, also constitute dealing in a security-based swap for purposes of the Exchange Act. However, to the extent that FCA COBS 6.1ZA.8UK applies to a Covered Entity's communication, it is an element of the UK's fair and balanced communications framework that compares to Exchange Act requirements to provide a sound basis for evaluating the facts with regard to a security-based swap or trading strategy involving a security-based swap. If the Covered Entity is applying substituted compliance in relation to such a communication, the Commission believes that it is appropriate to require the Covered Entity to comply with this requirement. Accordingly, the Commission is retaining the reference to this provision.

Fifth, the commenter asked the Commission not to require a Covered Entity to be subject to and comply with UK MAR Investment Recommendations Regulation articles 3 and 4 and UK MAR articles 12(1)(c), 15, and 20(1) because they relate to investment recommendations and market manipulation and thus go beyond the scope of Exchange Act fair and balanced communications requirements. Exchange Act rule 15Fh–3(g) requires in relevant part that an SBS Entity's communications with counterparties provide a sound basis for evaluating the facts with regard to a particular security-based swap or trading strategy involving a security-based swap; not imply that

[395] *See, e.g.,* FCA COBS 3.5.3R.

[396] *See, e.g.,* UK MiFID Org Reg article 54(3).

[397] *See* SIFMA 5/3/2021 Letter at 21 and Appendix A part (e)(5).

[398] *See* Better Markets Letter at 2.

[399] *See* SIFMA 5/3/2021 Letter at 21 and Appendix A part (e)(5).

[400] *See* SIFMA 5/3/2021 Letter at 21 and Appendix A part (e)(5).

[401] *See* SIFMA 5/3/2021 Letter at 21 and Appendix A part (e)(5).

past performance will recur; not make exaggerated or unwarranted claims, opinions, or forecasts; and balance statements about potential opportunities or advantages of a security-based swap with an equally detailed statement of the corresponding risks. UK MAR article 20(1) would require the Covered Entity to present recommendations in a manner that ensures the information is objectively presented and to disclose interests and conflicts of interest concerning the financial instruments to which the information relates. UK MAR Investment Recommendations Regulation article 3 would require a Covered Entity to communicate only recommendations that present facts in a way that they are clearly distinguished from interpretations, estimates, opinions, and other types of non-factual information; label clearly and prominently projections, forecasts, and price targets; indicate the relevant material assumptions and substantially material sources of information; and include only reliable information or a clear indication when there is doubt about reliability. UK MAR Investment Recommendations Regulation article 4 would require the Covered Entity to provide in its recommendation additional information about the factual basis of its recommendation. UK MAR articles 12(1)(c) and 15 would require the Covered Entity to refrain from disseminating information that gives or is likely to give false or misleading signals as to the supply of, demand for, or price of, a financial instrument or secures or is likely to secure the price of one or several financial instruments at an abnormal or artificial level, if the Covered Entity knows or ought to know that the information is false or misleading. These requirements form part of the UK's framework for fair and balanced communications, and the Commission believes that together they relate to Exchange Act rule 15Fh–3(g)'s requirements regarding presentation of factual information described above. Accordingly, the Commission is retaining the references to these provisions.

6. Daily Mark Disclosure

A commenter requested that the Commission not require a Covered Entity to be subject to and comply with UK EMIR article 11(2), stating that it is not related to portfolio reconciliation.[402] By contrast, another commenter stated that, if the Commission makes a positive substituted compliance determination, it must at a minimum ensure that the conditions in the proposed Order ''are applied with full force and without exceptions or dilution.'' [403] UK EMIR article 11(2) would require the Covered Entity to mark-to-market or mark-to-model its non–centrally cleared contracts. Other UK portfolio reconciliation requirements contemplate that counterparties will use this valuation as an input to the reconciliation process. For example, a portfolio reconciliation must include at least the valuation attributed to each contract in accordance with UK EMIR article 11(2).[404] As UK EMIR article 11(2) sets the standards under which a Covered Entity must calculate this key input in the portfolio reconciliation process, the Commission has determined that this provision is related to portfolio reconciliation and accordingly is retaining the Order's reference to it.[405]

7. Clearing Rights Disclosure

Because UK clearing provisions do not require disclosure of a counterparty's clearing rights under Exchange Act section 3C(g)(5), the Commission views those provisions as not comparable to Exchange Act clearing rights disclosure requirements. Commenters did not address this conclusion and, consistent with the proposed Order, the Commission is not providing substituted compliance.

VIII. Substituted Compliance for Recordkeeping, Reporting and Notification Requirements

A. Proposed Approach

The FCA Application in part requested substituted compliance for requirements applicable to SBS Entities under the Exchange Act relating to:

- *Record Making*—Exchange Act rule 18a–5 requires prescribed records to be made and kept current.[406]
- *Record Preservation*—Exchange Act rule 18a–6 requires preservation of records.[407]
- *Reporting*—Exchange Act rule 18a–7 requires certain reports.[408]
- *Notification*—Exchange Act rule 18a–8 requires notification to the Commission when certain financial or operational problems occur.[409]
- *Securities Count*—Exchange Act rule 18a–9 requires non-prudentially regulated security-based swap dealers to perform a quarterly securities count.[410]
- *Daily Trading Records.* Exchange Act section 15F(g) requires SBS Entities to maintain daily trading records.[411]

Taken as a whole, the recordkeeping, reporting, notification, and securities count requirements that apply to SBS Entities are designed to promote the prudent operation of the firm's security-based swap activities, assist the Commission in conducting compliance examinations of those activities, and alert the Commission to potential financial or operational problems that could impact the firm and its customers.[412]

In proposing to provide conditional substituted compliance in connection with this part of the FCA Application, the Commission preliminarily concluded that the relevant UK requirements, subject to conditions and limitations, would produce regulatory outcomes that are comparable to the outcomes associated with the vast majority of the recordkeeping, reporting, notification, and securities count requirements under the Exchange Act applicable to SBS Entities pursuant to

[402] *See* SIFMA 5/3/2021 Letter at 21 and Appendix A part (e)(6).

[403] *See* Better Markets Letter at 2.

[404] *See* UK EMIR article 13(2).

[405] *See* para. (e)(6) of the Order.

[406] *See* 17 CFR 240.18a–5. The FCA Application discusses UK requirements that address firms' record creation obligations related to matters such as financial condition, operations, transactions, counterparties, and their property, personnel, and business conduct. *See* FCA Application Appendix B category 2 at 101–28, 136–39.

[407] *See* 17 CFR 240.18a–6. The FCA Application discusses UK requirements that address firms' record preservation obligations related to records that firms are required to create, as well as additional records such as records of communications. *See* FCA Application Appendix B category 2 at 140–71.

[408] *See* 17 CFR 240.18a–7. The FCA Application discusses UK requirements that address firms' obligations to make certain reports. *See* FCA Application Appendix B category 2 at 172–80, 185–89.

[409] *See* 17 CFR 240.18a–8. The FCA Application discusses UK requirements that address firms' obligations to make certain notifications. *See* FCA Application Appendix B category 2 at 181–85.

[410] *See* 17 CFR 240.18a–9. The FCA Application discusses UK requirements that address firms' obligations to perform securities counts. *See* FCA Application Appendix B category 2 at 129–36.

[411] *See* 15 U.S.C. 78*o*–10(g). The FCA Application discusses UK requirements that address firms' record preservation obligations related to records that firms are required to create, as well as additional records such as records of communications. *See* FCA Application Appendix B category 2 at 140–71.

[412] Rule 3a71–6 sets forth additional analytic considerations in connection with substituted compliance for the Commission's recordkeeping, reporting, notification, and securities count requirements. In particular, Exchange Act rule 3a71–6(d)(6) provides that the Commission intends to consider (in addition to any conditions imposed) ''whether the foreign financial regulatory system's required records and reports, the timeframes for recording or reporting information, the accounting standards governing the records and reports, and the required format of the records and reports'' are comparable to applicable provisions under the Exchange Act, and whether the foreign provisions ''would permit the Commission to examine and inspect regulated firms' compliance with the applicable securities laws.''

Exchange Act rules 18a–5, 18a–6, 18a–7, 18a–8, and 18a–9 and Exchange Act section 15F(g) (collectively, the ''Exchange Act Recordkeeping and Reporting Requirements'').[413]

Finally, the proposed structure of the substituted compliance determinations with respect to Exchange Act rules 18a–5, 18a–6, 18a–7, 18a–8, and 18a–9, as well as Exchange Act Section 15F(g) would have permitted a covered entity to apply substituted compliance with respect to certain of these rules (*e.g.,* Exchange Act rules 18a–5 and 18a–6) and comply with the Exchange Act requirements of the remaining rules and statute (*i.e.,* Exchange Act rules 18a–7, 18a–8, and 18a–9, as well as Exchange Act Section 15F(g)).[414] Moreover, the proposed structure of the substituted compliance determinations with respect to the recordkeeping rules would have provided Covered Entities with greater flexibility to select distinct requirements within the broader rules for which they want to apply substituted compliance.

Because the Exchange Act Recordkeeping and Reporting Requirements were entity-level requirements, the Covered Entity needed to apply substituted compliance at the entity level for each of the substituted compliance determinations with respect to these requirements with one limited exception. Under the exception, a Covered Entity could apply substituted compliance at the transaction level with respect to requirements in Exchange Act rules 18a–5 and 18a–6 linked to counterparty protection rules (*i.e.,* Exchange Act rules 15Fh–3(b), (c), (e), (f), and (g)).

B. Commenter Views and Final Provisions

1. General Considerations

The Commission structured its preliminary substituted compliance determinations in the proposed Order with respect to Exchange Act rules 18a–5, 18a–6, 18a–7, and 18a–8 to provide Covered Entities with greater flexibility to select which distinct requirements within the broader rules for which they want to apply substituted compliance.[415] This flexibility was intended to permit Covered Entities to leverage existing recordkeeping and reporting systems that are designed to comply with the broker-dealer recordkeeping and reporting requirements on which the recordkeeping and reporting requirements applicable to SBS Entities are based. For example, it may be more efficient for a Covered Entity to comply with certain Exchange Act requirements within a given recordkeeping or reporting rule (rather than apply substituted compliance) because it can utilize systems that its affiliated broker-dealer has implemented to comply with them.

As applied to Exchange Act rules 18a–5 and 18a–6, this approach of providing greater flexibility resulted in preliminary substituted compliance determinations with respect to the different categories of records these rules require SBS Entities to make, keep current, and/or preserve. The objectives of these rules—taken as a whole—is to assist the Commission in monitoring and examining for compliance with Exchange Act requirements applicable to SBS Entities as well as to promote the prudent operation of these firms.[416] The Commission preliminarily found that the comparable UK recordkeeping rules achieve these outcomes with respect to compliance with the substantive UK requirements for which preliminary positive substituted compliance determinations were made (*e.g.,* capital and margin requirements). At the same time, the recordkeeping rules address different categories of records through distinct requirements within the rules. Each requirement with respect to a specific category of records (*e.g.,* paragraph (a)(2) of Exchange Act rule 18a–5 addressing ledgers (or other records) reflecting all assets and liabilities, income and expense, and capital accounts) can be viewed in isolation as a distinct recordkeeping rule. Therefore, the Commission preliminarily found it appropriate to make substituted compliance determinations at this level of Exchange Act rules 18a–5 and 18a–6.

A commenter generally supported the Commission's proposed granular approach to making substituted compliance determinations.[417] The Order implements this granular approach substantially as proposed.

The Commission's preliminary substituted compliance determinations for the Exchange Act Recordkeeping and Reporting Requirements were subject to the condition that the Covered Entity is subject to and complies with the relevant UK laws.[418] Further, the Commission proposed limitations and additional conditions for certain of the proposed preliminary substituted compliance determinations. The limitations and conditions are discussed below as well any comments on them and the Commission's response to those comments.

First, the Commission did not make a preliminary positive substituted compliance determination with respect to a discrete provision of the Exchange Act Recordkeeping and Reporting Requirements if it was fully or partially linked to a substantive Exchange Act requirement for which substituted compliance was not available or for which a preliminary positive substituted compliance determination was not being made.[419] In this regard, the Commission linked a requirement in Exchange Act rule 18a–5 to Exchange Act rule 10b–10.[420] A commenter pointed out that Covered Entities will not be subject to Exchange Act rule 10b–10.[421] The Commission agrees with the commenter that there are no provisions in the Exchange Act Recordkeeping and Reporting Requirements that are linked to Exchange Act rule 10b–10. Consequently, the Order does not contain this exclusion.

In addition, Exchange Act rule 18a–6(c), in part, requires firms to preserve Forms SBSE, SBSE–A, SBSE–C, SBSE–W, all amendments to these forms, and all other licenses or other documentation showing the firm's registration with any securities regulatory authority or the U.S. Commodity Futures Trading Commission. Because these requirements are linked to the Commission's and other U.S. regulators' registration rules, for which substituted compliance is not granted, the Order excludes the requirement to preserve these records from the Commission's positive substituted compliance determination with respect to Exchange Act rule 18a–6(c).[422]

Aside from these modifications, the Order does not extend substituted compliance to discrete Exchange Act Recordkeeping and Reporting Requirements that are linked to substantive Exchange Act requirements for which there is no substituted compliance, as proposed. In particular, a positive substituted compliance determination is not being made, in full or in part, for recordkeeping, reporting, or notification requirements linked to

[413] *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18394–404, 18415–20.

[414] *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18395–96.

[415] *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18394–404, 18415–20.

[416] *See, e.g.,* Exchange Act Release No. 71958 (Apr. 17, 2014), 79 FR 25194, 25199–200 (May 2, 2014).

[417] *See* SIFMA 5/3/2021 Letter at 21–23.

[418] *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18394–404, 18415–20.

[419] *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18395 (discussing this limitation).

[420] 17 CFR 240.10b–10.

[421] *See* SIFMA 5/3/2021 Letter at 22–23.

[422] *See* para. (f)(2)(i)(L) of the Order.

the following Exchange Act rules for which substituted compliance is not available or a positive substituted compliance determination is not being made: (1) Exchange Act rule 15Fh–4;[423] (2) Exchange Act rule 15Fh–5;[424] (3) Exchange Act rule 15Fh–6;[425] (4) Exchange Act rule 18a–2;[426] (5) Exchange Act rule 18a–4; and (6) Regulation SBSR.[427]

Second, the Commission did not make a positive substituted compliance determination with respect to the inspection requirement of Exchange Act section 15F(f) and the records production requirement of Exchange Act rule 18a–6(g).[428] The Commission did not receive comment on this approach and the Order does not extend substituted compliance to these requirements.

Third, the Commission conditioned substituted compliance with discrete provisions of the Exchange Act Recordkeeping and Reporting Requirements that were fully or partially linked to a substantive Exchange Act requirement for which substituted compliance was available on the Covered Entity applying substituted compliance with respect to the linked Exchange Act requirement.[429] In particular, substituted compliance for a provision of the Exchange Act Recordkeeping and Reporting Requirements that is linked to the following Exchange Act rules was conditioned on the SBS Entity applying substituted compliance to the linked substantive Exchange Act rule: (1) Exchange Act rule 15Fh–3, except paragraphs (a) and (d) of the rule for which substituted compliance is not available; (2) Exchange Act rule 15Fi–2; (3) Exchange Act rule 15Fi–3; (4) Exchange Act rule 15Fi–4; (5) Exchange Act rule 15Fi–5; (6) Exchange Act rule 15Fk–1; (7) Exchange Act rule 18a–1 (''Rule 18a–1 Condition''); (8) Exchange Act rule 18a–3; (8) Exchange Act rule 18a–5; and (9) Exchange Act rule 18a–7. The Commission did not receive comment on this approach and is adopting it as proposed.

The only difference is that the positive substituted compliance determination for Exchange Act rule 18a–6(b)(1)(viii) is now conditioned on the Covered Entity applying substituted compliance for the requirements of Exchange Act rule 18a–7(a)(1), (b), and (c) through (h), and Exchange Act rule 18a–7(j) as applied to these requirements, rather than on the entirety of Exchange Act rule 18a–7, to reflect that substituted compliance with respect to Exchange Act rule 18a–7 is granted on a paragraph-by-paragraph basis and not all paragraphs of Exchange Act rule 18a–7 are pertinent to Exchange Act rule 18a–6(b)(1)(viii).

Moreover, for the reasons discussed above in part III.B.2.k. of this release, substituted compliance with respect to paragraphs (a)(1), (b), and (c) through (h) of Exchange Act rule 18a–7 is subject to the additional condition that the Covered Entity applies substituted compliance with respect to Exchange Act rule 18a–6(b)(1)(viii) (a record preservation requirement).[430] This record preservation requirement is directly linked to the financial and operational reporting requirements of paragraphs (a)(1), (b), and (c) through (h) of Exchange Act rule 18a–7. The proposed Order conditioned substituted compliance with respect to this record preservation requirement on the Covered Entity applying substituted compliance with respect to Exchange Act rule 18a–7(a)(1).[431] This additional condition is designed to provide clarity as to the Covered Entity's obligations under this record preservation requirement when applying substituted compliance with respect to paragraphs (a)(1), (b), and (c) through (h) of Exchange Act rule 18a–7 pursuant this Order.

Fourth, the Commission conditioned substituted compliance with discrete provisions of the Exchange Act Recordkeeping and Reporting Requirements that would be important for monitoring or examining compliance with the capital rule for nonbank security-based swap dealers on the Covered Entity applying substituted compliance with respect to the capital rule (*i.e.,* the Rule 18a–1 Condition).[432] The Commission included the Rule 18a–1 Condition as part of the substituted compliance determination for the daily trading records requirement of Exchange Act section 15F(g). A commenter asked that the condition be modified so that it applies only if the Covered Entity is not prudentially regulated (and therefore subject to rule 18a–1).[433] Instead, the Commission is deleting this condition from the substituted compliance determination because these requirements are not important to monitoring or examining for compliance with Exchange Act rule 18a–1. Therefore, all Covered Entities—whether or not subject to rule 18a–1—can apply substituted compliance with respect to Exchange Act section 15F(g). The Order otherwise includes the Rule 18a–1 Condition for discrete provisions of the Exchange Act Recordkeeping and Reporting Requirements that would be important for monitoring or examining compliance with the capital rule for nonbank security-based swap dealers, as proposed.

Fifth, the proposed Order included a condition that Covered Entities must promptly furnish to a representative of the Commission upon request an English translation of any record, report, or notification of the Covered Entity that is required to be made, preserved, filed, or subject to examination pursuant to Exchange Act section 15F of this Order.[434] The Commission did not receive a comment on this approach and the Order includes this condition.

Sixth, the Commission conditioned substituted compliance with Exchange Act rule 18a–7 on Covered Entities filing periodic unaudited financial and operational information with the Commission or its designee in the manner and format required by Commission rule or order. Commenters made new suggestions about the scope and requirements of such a Commission order or rule in addition to reiterating comments previously made in response to the same condition in the German Substituted Compliance Order.[435] First, if SBS Entities are required to prepare FOCUS Report Part II, and a positive substituted compliance determination is made with respect to the Commission's capital requirements, a commenter proposed that the Commission permit a Covered Entity to submit capital computations in a manner consistent with its home country capital standards and related reporting rules.[436] Second, some commenters asked that Covered Entities be permitted to file their unaudited financial information less frequently (*e.g.,* quarterly) and provide a later submission deadline to match the frequency of reporting and reporting deadlines required by the Covered

[423] 17 CFR 240.15Fh–4.

[424] 17 CFR 240.15Fh–5.

[425] 17 CFR 240.15Fh–6.

[426] 17 CFR 240.18a–2.

[427] 17 CFR 242.900 *et seq.*

[428] *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18403–404 (discussing this condition).

[429] *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18395 (discussing this condition).

[430] *See* para. (f)(3)(i)(D) of the Order.

[431] *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18399, 18417.

[432] *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18395 (discussing this condition).

[433] *See* SIFMA 5/3/2021 Letter at 23.

[434] *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18395 (discussing this condition).

[435] *See* SIFMA 5/3/2021 Letter Appendix B.

[436] *See* SIFMA 5/3/2021 Letter Appendix B.

Entity's home country regulator,[437] while other commenters urged that Covered Entities be subject to monthly instead of quarterly reporting of their financial condition.[438] Third, commenters supported a potential approach identified by the Commission under which Covered Entities would be permitted to satisfy their Exchange Act rule 18a–7 obligations for a two-year period by filing the FOCUS Report Part IIC with only a limited number of the required line items completed.[439] Fourth, the Commission received comment recommending that the FOCUS Report be modified to omit certain line items either permanently or during a two-year transition.[440] The Commission will consider these comments as it works towards completing a Commission order or rule pursuant to the provision in this Order that substituted compliance with respect to Exchange Act rule 18a–7's FOCUS Report filing requirements is conditioned on Covered Entities filing unaudited financial and operational information in the manner and format specified by Commission order or rule.

Seventh, the Commission proposed to make a positive substituted compliance determination with respect to Exchange Act rule 18a–6(b)(2)(v) but not with respect to Exchange Act rule 18a–6(b)(1)(viii)(L), even though both provisions require firms to preserve detail relating to information for possession or control requirements under Exchange Act rule 18a–4 and reported on Part II of Form X–17A–5. These provisions are fully linked with Exchange Act rule 18a–4 for which a positive substituted compliance is not available, so a positive substituted compliance determination should not be made for these linked record retention requirements. Accordingly, the Order does not make a positive substituted compliance determination with respect to Exchange Act rule 18a–6(b)(2)(v).

The Commission also received comment suggesting certain modifications to the ordering language. Specifically, a commenter suggested revising paragraph (f)(4)(ii)(A)(*1*) of the proposed Order, which requires a Covered Entity to send a copy of any notice required to be sent by UK laws cited in paragraph (f)(4) simultaneously to the Commission. The commenter recommended revising this provision to require the notices that a Covered Entity would be required to send to the Commission be limited to those notices required by UK law cited in paragraph (f)(4)(i)(C) only instead of paragraph (f)(4). Furthermore, the commenter recommended conditioning the requirement to provide these notices to the Commission to be limited to those notifications that are related to: (1) A breach of the UK laws cited in the relevant portions of paragraphs (f)(1) or (2) of the Order, which, in the case of a Covered Entity that is prudentially regulated, also relates to the Covered Entity's business as a security-based swap dealer or major security-based swap participant; or (2) a deficiency relating to capital requirements.[441] The commenter reasoned that the provisions of UK law requiring notification referenced in paragraph (f)(4) require notification of a far wider array of matters than those described in Exchange Act rule 18a–8.

The Commission disagrees. Exchange Act rule 18a–8 requires security-based swap dealers and major security-based swap participants for which there is no prudential regulator to notify the Commission of a failure to meet minimum net capital. Exchange Act rule 18a–8 also specifies several events that trigger a requirement that a security-based swap dealer or major security-based swap participant for which there is no prudential regulator must send notice within twenty-four hours to the Commission. These notices are designed to provide the Commission with ''early warning'' that the SBS entity may experience financial difficulty. Furthermore, Exchange Act rule 18a–8 requires bank security-based swap dealers to give notice to the Commission when it files an adjustment of its reported capital category with its prudential regulator. Additional notification requirements arise with respect to the failure to maintain and keep current required books and records, the discovery of material weaknesses, and failure to make a required deposit into the special reserve account for the exclusive benefit of security-bases swap customers.[442] While the specific UK requirements cited with respect to Exchange Act rule 18a–8 are different from the specific requirements set forth in Exchange Act rule 18a–8, the Commission believes the UK notice requirements cited in paragraph (f)(4) of the Order provide for comparable regulatory outcomes by requiring notification of events or conditions which may impact an SBS Entity's capital or signal the potential for financial difficulty, indicate the failure to maintain and keep current books and records, or the potential for the failure to comply with other requirements related to the protection of customer assets. The recommended revisions would reduce the scope of notifications the Commission would receive. Consequently, the Commission is not making the recommended revisions with respect to paragraph (f)(4)(ii)(A)(*1*).

The commenter also recommended revising paragraphs (f)(2)(i)(H)(*1*), (f)(3)(i)(A), and (f)(3)(ii)(A) to include the qualifier ''as applicable'' with respect to citations to UK CRR Reporting ITS annexes. The commenter stated that not all firms submit all of the UK CRR Reporting ITS annexes.[443] Accordingly, the Commission is modifying these paragraphs to include the qualifier ''as applicable.''[444]

Finally, with respect to recordkeeping rules that are linked with Exchange Act rule 15Fh–3, references to Exchange Act rule 15Fh–3 are revised to clarify that substituted compliance is available with respect to Exchange Act rule 15Fh–3 except paragraphs (a) and (d) of the rule, instead of the entirety of Exchange Act rule 15Fh–3. Accordingly, the Commission is revising the conditions in paragraphs (f)(1)(i)(M)(*2*) and (f)(2)(i)(K)(*2*) of the Order to state that the Covered Entity must apply substituted compliance with respect to the portion of the recordkeeping rule that relates to ''one or more provisions of Exchange Act rule 15Fh–3 for which substituted compliance is available under this Order'' (instead of just ''Exchange Act rule 15Fh–3'').

2. Citations to UK Law

The Commission also received comment recommending changes to the proposed Order to refine the scope of UK law provisions that would operate as conditions to substituted compliance.[445] The Commission reviewed each of the UK law citations that the commenter recommended adding or removing from the Order for relevance to the comparable Exchange Act requirement while also keeping in mind that each UK law citation was included in the FCA Application intentionally. The Commission's conclusion and reasoning with respect to the commenter's recommendations is discussed in further detail below. In addition to refining the scope of UK law citations in response to comment, the

[437] *See* SIFMA 5/3/2021 Letter Appendix B.

[438] *See* Americans for Financial Reform Education Fund Letter at 1.

[439] *See* SIFMA 5/3/2021 Letter Appendix B.

[440] *See* SIFMA 5/3/2021 Letter Appendix B.

[441] *See* SIFMA 5/3/2021 Letter Appendix A.

[442] *See* 17 CFR 240.18a–8.

[443] *See* SIFMA 5/3/2021 Letter Appendix A.

[444] *Compare* paras. (f)(2)(i)(H)(*1*), (f)(3)(i)(A), and (f)(3)(ii)(A) of the UK Substituted Compliance Notice and Proposed Order, *with* paras. (f)(2)(i)(H)(*1*), (f)(3)(i)(A), and (f)(3)(ii)(A) of the Order.

[445] *See* SIFMA 5/3/2021 Letter Appendix A.

Order reflects changes to the UK law citations after refining the UK law provisions in the proposed Order to better reflect the UK law provisions cited in the FCA Application, as well as the EU law provisions cited in the French Substituted Compliance Order.[446]

a. Global

The commenter recommended deleting references to UK MiFID Org Reg, COBS 8A, and UK MiFIR article 25(1), reasoning that these provisions could raise issues due to the discrepancy between Exchange Act requirements, which apply on an entity-level basis, and these UK requirements, which are territorially limited. As explained in part III.B.2. above, conducting business outside the UK does not preclude a firm from relying on substituted compliance for the business it conducts within the UK. Accordingly, other than the specific articles of UK MiFID Org Reg, FCA COBS, and UK MiFIR discussed below, the Commission is not removing references to these UK requirements from the Order's list of UK requirements comparable to the Commission's recordkeeping, reporting, notification, and securities count requirements.

The commenter recommended deleting references to FCA IFPRU, reasoning that FCA IFPRU does not apply to banks and PRA-designated investment firms, and all Covered Entities are expected to be banks or PRA-designated investment firms. On further examination, the Commission believes that the IFPRU provisions are not necessary to find comparability with respect to the Commission's recordkeeping, reporting, notification, and securities count requirements and is therefore removing references to this UK requirement.[447]

The commenter recommended deleting references to FCA COBS 9A.2.1R, which relates to suitability requirements, reasoning that the provision does not correspond to, and goes beyond, the Commission's recordkeeping, reporting, notification, and securities count requirements. The Commission agrees with the commenter's reasoning, except with respect to Exchange Act rules 18a–5(a)(17) and (b)(13), which relate to suitability records, and is therefore removing references to this UK requirement from the Order's list of UK requirements comparable to the Commission's recordkeeping, reporting, notification, and securities count requirements, except for Exchange Act rules 18a–5(a)(17) and (b)(13).[448]

The commenter recommended deleting references to UK MiFID Org Reg article 76 and FCA SYSC 10A.1.6R and 10A.1.8R, which relate to the recording of telephone and electronic communications, reasoning that they do not correspond to, and go beyond, the requirements of the Commission's recordkeeping, reporting, notification, and securities count rules. The Commission agrees with the commenter's reasoning, except with respect to Exchange Act rules 18a–6(b)(1)(iv) and (b)(2)(ii), which relate to communications including telephonic communications. Therefore, the Commission is removing references to these UK requirements from the Order's list of UK requirements comparable to the Commission's recordkeeping, reporting, notification, and securities count requirements, except for Exchange Act rules 18a–6(b)(1)(iv) and (b)(2)(ii).[449]

The commenter recommended deleting references to FCA FCG, reasoning that this sourcebook only contains nonbinding guidance. The Commission agrees with the commenter's reasoning and is therefore removing references to this UK requirement from the Order's list of UK requirements comparable to the Commission's recordkeeping, reporting, notification, and securities count requirements.[450]

The commenter recommended deleting references to FCA FIT, reasoning that FCA FIT only contains nonbinding guidance. The Commission agrees with the commenter's reasoning and is therefore removing references to this UK requirement from the Order's list of UK requirements comparable to the Commission's recordkeeping, reporting, notification, and securities count requirements.[451]

The commenter recommended deleting references to the EBA Guidelines on Outsourcing, reasoning that they only contain nonbinding guidance. The Commission agrees with the commenter's reasoning and is therefore removing references to this UK requirement from the Order's list of UK requirements comparable to the Commission's recordkeeping, reporting, notification, and securities count requirements.[452]

In addition, the Commission is deleting references to FCA provisions ending in ''G'', because they only contain nonbinding guidance.[453] Therefore, these UK requirements are removed from the Order's list of UK requirements comparable to the Commission's recordkeeping, reporting, notification, and securities count requirements.[454]

b. Exchange Act Rules 18a–5 and 18a–6

The commenter recommended deleting references to UK MiFIR article 25(1), which sets a duration of five years for firms to keep relevant data relating to orders and transactions in financial instruments, reasoning that this does

[446] There are a number of subparagraphs of the recordkeeping, reporting, notification, and securities count paragraph of the Order that reflect changes for consistency with the FCA Application and French Substituted Compliance Order. *Compare* paras. (f)(1)(i)(B)(*1*), (f)(1)(i)(C)(*1*), (f)(1)(i)(D)(*1*), (f)(1)(i)(F)(*1*), (f)(1)(i)(G)(*1*), (f)(1)(i)(H)(*1*), (f)(1)(i)(I)(*1*), (f)(1)(i)(J)(*1*), (f)(1)(i)(K), (f)(1)(i)(L)(*1*), (f)(2)(i)(A), (f)(2)(i)(B), (f)(2)(i)(C)(*1*), (f)(2)(i)(D), (f)(2)(i)(E)(*1*), (f)(2)(i)(F)(*1*), (f)(2)(i)(G)(*1*), (f)(2)(i)(H)(*1*), (f)(2)(i)(I)(*1*), (f)(2)(i)(J)(*1*), (f)(2)(i)(K)(*1*), (f)(2)(i)(L), (f)(2)(i)(M), (f)(2)(i)(N)(*1*), (f)(2)(i)(O)(*1*), (f)(2)(i)(P)(*1*), (f)(2)(i)(Q), (f)(2)(i)(R), (f)(3)(ii)(A), (f)(3)(iii), (f)(3)(iv)(A), (f)(4)(i)(A)(*1*), (f)(4)(i)(B), (f)(4)(i)(C)(*1*), and (f)(4)(i)(D)(*1*) of the UK Substituted Compliance Notice and Proposed Order, *with* paras. (f)(1)(i)(B)(*1*), (f)(1)(i)(C)(*1*), (f)(1)(i)(D)(*1*), (f)(1)(i)(F)(*1*), (f)(1)(i)(G)(*1*), (f)(1)(i)(H)(*1*), (f)(1)(i)(I)(*1*), (f)(1)(i)(J)(*1*), (f)(1)(i)(K), (f)(1)(i)(L)(*1*), (f)(2)(i)(A), (f)(2)(i)(B), (f)(2)(i)(C)(*1*), (f)(2)(i)(D), (f)(2)(i)(E)(*1*), (f)(2)(i)(F)(*1*), (f)(2)(i)(G)(*1*), (f)(2)(i)(H)(*1*), (f)(2)(i)(I)(*1*), (f)(2)(i)(J)(*1*), (f)(2)(i)(K)(*1*), (f)(2)(i)(L)(*1*), (f)(2)(i)(M), (f)(2)(i)(N)(*1*), (f)(2)(i)(O)(*1*), (f)(2)(i)(P)(*1*), (f)(2)(i)(Q), (f)(2)(i)(R), (f)(3)(ii)(A), (f)(3)(iii), (f)(3)(iv)(A), (f)(4)(i)(A)(*1*), (f)(4)(i)(B), (f)(4)(i)(C)(*1*), (f)(4)(i)(D)(*1*), and (f)(6) of the Order.

[447] *Compare* paras. (f)(1)(i)(B)(*1*), (f)(1)(i)(J)(*1*), (f)(1)(i)(L)(*1*), (f)(2)(i)(A), (f)(2)(i)(B), (f)(2)(i)(C)(*1*), (f)(2)(i)(D), (f)(2)(i)(I)(*1*), (f)(2)(i)(J)(*1*), (f)(4)(i)(A)(*1*), (f)(4)(i)(B), (f)(4)(i)(C)(*1*), and (f)(4)(i)(D)(*1*) of the UK Substituted Compliance Notice and Proposed Order, *with* paras. (f)(1)(i)(B)(*1*), (f)(1)(i)(J)(*1*), (f)(1)(i)(L)(*1*), (f)(2)(i)(A), (f)(2)(i)(B), (f)(2)(i)(C)(*1*), (f)(2)(i)(D), (f)(2)(i)(I)(*1*), (f)(2)(i)(J)(*1*), (f)(4)(i)(A)(*1*), (f)(4)(i)(B), and (f)(4)(i)(C)(*1*) of the Order.

[448] *Compare* paras. (f)(1)(i)(D)(*1*), (f)(1)(i)(G)(*1*), (f)(1)(i)(I)(*1*), (f)(2)(i)(A), (f)(2)(i)(B), and (f)(2)(i)(D) of the UK Substituted Compliance Notice and Proposed Order, *with* paras. (f)(1)(i)(D)(*1*), (f)(1)(i)(G)(*1*), (f)(1)(i)(I)(*1*), (f)(2)(i)(A), (f)(2)(i)(B), and (f)(2)(i)(D) of the Order.

[449] *Compare* paras. (f)(1)(i)(A)(*1*), (f)(1)(i)(D)(*1*), (f)(1)(i)(F)(*1*), (f)(1)(i)(G)(*1*), (f)(1)(i)(I)(*1*), (f)(1)(i)(M), (f)(2)(i)(A), (f)(2)(i)(B), and (f)(2)(i)(O)(i) of the UK Substituted Compliance Notice and Proposed Order, *with* paras. (f)(1)(i)(A)(*1*), (f)(1)(i)(D)(*1*), (f)(1)(i)(F)(*1*), (f)(1)(i)(G)(*1*), (f)(1)(i)(I)(*1*), (f)(1)(i)(M), (f)(2)(i)(A), (f)(2)(i)(B), and (f)(2)(i)(O)(i) of the Order.

[450] *Compare* paras. (f)(1)(i)(B)(*1*), (f)(1)(i)(J)(*1*), (f)(1)(i)(L)(*1*), (f)(2)(i)(A), (f)(2)(i)(B), and (f)(2)(i)(D) of the UK Substituted Compliance Notice and Proposed Order, *with* paras. (f)(1)(i)(B)(*1*), (f)(1)(i)(J)(*1*), (f)(1)(i)(L)(*1*), (f)(2)(i)(A), (f)(2)(i)(B), and (f)(2)(i)(D) of the Order.

[451] *Compare* paras. (f)(1)(i)(K) and (f)(2)(i)(M) of the UK Substituted Compliance Notice and Proposed Order, *with* paras. (f)(1)(i)(K) and (f)(2)(i)(M) of the Order.

[452] *Compare* para. (f)(2)(i)(R) of the UK Substituted Compliance Notice and Proposed Order, *with* para. (f)(2)(i)(R) of the Order.

[453] *See* FCA Reader's Guide: An Introduction to the Handbook (Jan. 2019), available at: *https://www.fca.org.uk/publication/handbook/readers-guide_0.pdf.*

[454] *Compare* para. (f)(2)(i)(R) of the UK Substituted Compliance Notice and Proposed Order, *with* para. (f)(2)(i)(R) of the Order.

not correspond to, and goes beyond, the requirements of Exchange Act rules 18a–5 and 18a–6. With respect to Exchange Act rule 18a–6, the five year record retention period is directly relevant to the record preservation requirement in Exchange Act rule 18a–6. With respect to Exchange Act rule 18a–5, while this UK requirement contains a record retention element, it also contains a record creation requirement that is relevant to Exchange Act rule 18a–5. Accordingly, the Commission is not removing references to this UK requirement from the Order's list of UK requirements comparable to Exchange Act rules 18a–5 and 18a–6.

The commenter recommended deleting references to PRA Internal Capital Adequacy Assessment Rules, which relate to a firm's distribution of financial resources, own funds and internal capital, and related risk management processes, reasoning that they do not correspond to, and go beyond, the requirements of Exchange Act rules 18a–5 and 18a–6. While the rules require firms to implement ''strategies, processes and systems'', the FCA Application states that in practice, one or more of these provisions ''will require the maintenance of full records of the Investment Firm's assets, liabilities, income and expense and capital accounts to be maintained'' which is relevant to Exchange Act rules 18a–5 and 18a–6.[455] Accordingly, the Commission is not removing references to these UK requirements from the Order's list of UK requirements comparable to Exchange Act rules 18a–5 and 18a–6, except with respect to Exchange Act rules 18a–6(b)(1)(iv) and (b)(2)(ii) for which the Commission agrees with the commenter's reasoning.[456]

The commenter recommended deleting references to certain parts of FCA CASS, which relate to a firm's holding of safe custody assets and client money, reasoning that this does not correspond to, and goes beyond, the requirements of Exchange Act rules 18a–5 and 18a–6. However, the FCA Application states that, among other things, these provisions require firms to ''maintain detailed, up-to-date and accurate accounts and records distinguishing client money and assets from those of the Investment Firm,'' which is relevant to Exchange Act rules 18a–5 and 18a–6.[457] Accordingly, the Commission is not removing references to these UK requirements from the Order's list of UK requirements comparable to Exchange Act rules 18a–5 and 18a–6, except with respect to Exchange Act rule 18a–5(a)(12) and Exchange Act rules 18a–6(b)(1)(iv) and (b)(2)(ii) for which the Commission agrees with the commenter's reasoning.[458]

The commenter recommended deleting references to UK EMIR article 11, which relates to the timely confirmation of transactions, and UK EMIR article 39, which relates to a firm's requirement to segregate the positions they clear for a client with a UK central counterparty from their own positions, reasoning that they do not correspond to, and go beyond, the requirements of Exchange Act rules 18a–5 and 18a–6. While these UK requirements contain segregation and confirmation requirements, they also contain record creation requirements that are relevant to Exchange Act rule 18a–5. Accordingly, the Commission is not removing references to these UK requirements from the Order's list of UK requirements comparable to Exchange Act rule 18a–5, except with respect to Exchange Act rule 18a–5(a)(12) for which the Commission agrees with the commenter's reasoning.[459] However, the Commission agrees with the commenter's reasoning with respect to Exchange Act rule 18a–6 and is removing references to these UK requirements from the Order's list of UK requirements comparable to Exchange Act rule 18a–6.[460]

The commenter recommended deleting references to UK CRR articles 103, 105(3), and 105(10), which relate to the firm's management of trading book exposures, reasoning that they do not correspond to, and go beyond, the requirements of Exchange Act rules 18a–5 and 18a–6. However, the FCA Application states that these requirements in practice require firms to have ''a record of their long and short positions to enable these to be monitored'' which is relevant to Exchange Act rules 18a–5 and 18a–6.[461] Accordingly, the Commission is not removing references to these UK requirements from the Order's list of UK requirements comparable to Exchange Act rules 18a–5 and 18a–6.

The commenter recommended deleting references to UK CRR article 104(1)(j) from the Order, reasoning that the provision does not exist. The Commission agrees with the commenter's reasoning, and is therefore removing references to this citation from the Order's list of UK requirements comparable to Exchange Act rules 18a–5 and 18a–6.[462]

The commenter recommended deleting certain references to FCA COBS, which relate to client agreements for services and client reporting, reasoning that they do not correspond to, and go beyond, the requirements of Exchange Act rules 18a–5 and 18a–6. With respect to Exchange Act rule 18a–5, these provisions (other than FCA COBS 9A.2.1R which is discussed above) generally also contains record creation requirements that are relevant to Exchange Act rule 18a–5 and Exchange Act rules 18a–6(b)(1)(ix) and (d)(4) and (d)(5) (which implicate record creation). Accordingly, the Commission is not removing references to most of these UK requirements from the Order's list of UK requirements comparable to Exchange Act rule 18a–5 and Exchange Act rule 18a–6(b)(1)(ix), except for FCA COBS 8A.1.9R and 16A.2.1R with respect to Exchange Act rule 18a–5(a)(4), (a)(8), and (b)(3) for which the Commission agrees with the commenter's reasoning.[463] With respect to the remainder of Exchange Act rule 18a–6, the Commission is removing references to these UK requirements because FCA COBS is relevant to record creation but not record preservation.[464]

The commenter recommended deleting references to MLR 2017 Regulations 28 through 30, which relate to anti-money laundering customer due diligence measures, reasoning that they do not correspond to, and go beyond, the requirements of Exchange Act rules 18a–5 and 18a–6. These UK provisions contain record creation requirements regarding customers, but not record preservation requirements. Accordingly, the Commission is not removing

[455] *See* FCA Application at 109.

[456] *Compare* para. (f)(2)(i)(D) of the UK Substituted Compliance Notice and Proposed Order, with para. (f)(2)(i)(D) of the Order.

[457] *See* FCA Application at 110.

[458] *Compare* paras. (f)(1)(i)(L)(*1*) and (f)(2)(i)(D) of the UK Substituted Compliance Notice and Proposed Order, with paras. (f)(1)(i)(L)(*1*) and (f)(2)(i)(D) of the Order.

[459] *Compare* para. (f)(1)(i)(L)(*1*) of the UK Substituted Compliance Notice and Proposed Order, with para. (f)(1)(i)(L)(*1*) of the Order.

[460] *Compare* paras. (f)(2)(i)(A), (f)(2)(i)(B), (f)(2)(i)(C)(*1*), (f)(2)(i)(D), (f)(2)(i)(G)(*1*), (f)(2)(i)(I)(*1*), and (f)(2)(i)(O)(*1*) of the UK Substituted Compliance Notice and Proposed Order, *with* paras. (f)(2)(i)(A), (f)(2)(i)(B), (f)(2)(i)(C)(*1*), (f)(2)(i)(D), (f)(2)(i)(G)(*1*), (f)(2)(i)(I)(*1*), and (f)(2)(i)(O)(*1*) of the Order.

[461] *See* FCA Application at 111.

[462] *Compare* paras. (f)(2)(i)(E)(*1*) and (f)(2)(i)(H)(*1*) of the UK Substituted Compliance Notice and Proposed Order, *with* paras. (f)(2)(i)(E)(*1*) and (f)(2)(i)(H)(*i*) of the Order.

[463] *Compare* paras. (f)(1)(i)(D)(*1*) and (f)(1)(i)(I)(*1*) of the UK Substituted Compliance Notice and Proposed Order, *with* paras. (f)(1)(i)(D)(*1*) and (f)(1)(i)(I)(*1*) of the Order.

[464] *Compare* paras. (f)(2)(i)(A), (f)(2)(i)(B), (f)(2)(i)(D), (f)(2)(i)(F)(*1*), (f)(2)(i)(G)(*1*), and (f)(2)(i)(Q) of the UK Substituted Compliance Notice and Proposed Order, *with* paras. (f)(2)(i)(A), (f)(2)(i)(B), (f)(2)(i)(D), (f)(2)(i)(F)(*1*), (f)(2)(i)(G)(*1*), and (f)(2)(i)(Q) of the Order.

references to these UK requirements from the Order's list of UK requirements comparable to Exchange Act rule 18a–5 and Exchange Act rules 18a–6(b)(1)(xii) and (b)(2)(vii) (which implicate record creation), except with respect to Exchange Act rule 18a–5(a)(4), (a)(6), (a)(15), (b)(3), (b)(6), and (b)(11) for which the Commission agrees with the commenter's reasoning.[465] However, the Commission is removing references to these UK requirements from the Order's list of UK requirements comparable to the remainder of Exchange Act rule 18a–6.[466]

The commenter recommended deleting references to FCA COND at paragraphs 2C, 2D, 3B, 3C, 5D, and 5F, which set out certain minimum requirements for obtaining and maintaining PRA authorization, reasoning that they do not correspond to, and go beyond, the requirements of Exchange Act rules 18a–5 and 18a–6. However, the FCA Application states that these requirements effectively require firms to have ''systems and controls for maintaining records'' which is relevant to Exchange Act rules 18a–5 and 18a–6.[467] Accordingly, the Commission is not removing references to this UK requirement from the Order's list of UK requirements comparable to Exchange Act rules 18a–5 and 18a–6, except with respect to Exchange Act rule 18a–5(a)(6), (a)(8), (a)(15), (b)(6), and (b)(11) and Exchange Act rules 18a–6(b)(1)(iv) and (b)(2)(ii) for which the Commission agrees with the commenter's reasoning.[468]

The commenter recommended deleting references to PRA Fundamental Rules 2 and 6 and FCA PRIN 2.1.1R(2) and (3), which set out certain high-level principles for businesses, reasoning that they do not correspond to, and go beyond, the requirements of Exchange Act rules 18a–5 and 18a–6. However, the FCA Application states that, ''In practice, this will require UK firms to maintain adequate records and record-keeping systems.'' [469] Accordingly, the Commission is not removing references to these UK requirements from the Order's list of UK requirements comparable to Exchange Act rules 18a–5 and 18a–6, except with respect to Exchange Act rule 18a–5(a)(6), (a)(8), (a)(15), (b)(6), and (b)(11) and Exchange Act rules 18a–6(b)(1)(iv) and (b)(2)(ii) for which the Commission agrees with the commenter's reasoning.[470]

The commenter recommended deleting references to FSMA section 63(2A), which relates to the annual fit and proper reassessment requirement, and FSMA section 63F(5), which relates to the validity of a certificate issued to a firm's ''certification staff,'' and FSMA section 63(2A), which relates to the annual fit and proper reassessment requirement, reasoning that they do not correspond to, and go beyond, the requirements of Exchange Act rules 18a–5 and 18a–6. However, the FCA Application cites these provisions to support the statement that these certifications must be conducted annually,[471] and frequency of these certifications is relevant to Exchange Act rules 18a–5 and 18a–6. Accordingly, the Commission is not removing references to this UK requirement from the Order's list of UK requirements comparable to Exchange Act rules 18a–5 and 18a–6.

The commenter recommended deleting references to the PRA Certification Rules, the general PRA regime for certified employees, reasoning that they do not correspond to, and go beyond, the requirements of Exchange Act rules 18a–5 and 18a–6. The Commission agrees with the commenter's reasoning with respect to most of the PRA Certification Rules, but PRA Certification Rule 2.1 requires employees performing certification functions to have a valid certificate issued by the firm, which is relevant to Exchange Act rule 18a–5. Accordingly, the Commission is replacing references to the PRA Certification Rules with PRA Certification Rule 2.1 in the Order's list of UK requirements comparable to Exchange Act rules 18a–5 and 18a–6.[472]

The commenter recommended adding to paragraph (f)(1) of the Order regarding Exchange Act rule 18a–5 references to PRA Recordkeeping Rule 2.1 and FCA SYSC 9.1.1AR, which require firms to ''arrange for orderly records to be kept of its business and internal organization'', and to ''arrange for records to be kept of all services, activities, and transactions undertaken by it,'' respectively. The Commission agrees these UK requirements are relevant and is therefore adding them to the Order's list of UK requirements comparable to Exchange Act rule 18a–5.[473]

The commenter recommended deleting from paragraphs (f)(1) and (f)(2) of the Order references to UK MiFID Org Reg article 59, which set out the requirement to confirm execution of an order to the client, reasoning that it does not correspond to, and goes beyond, the requirements of Exchange Act rules 18a–5 and 18a–6. UK MiFID Org Reg article 59 identifies specific data elements that are relevant to the records required to be created under Exchange Act rule 18a–5, so the Commission is not removing references to this requirement from the Order's list of UK requirements comparable to Exchange Act rule 18a–5. However, the Commission agrees with the commenter's reasoning with respect to Exchange Act rule 18a–6 because UK MiFID Org Reg article 59 relates to record creation but not record preservation and is therefore removing references to this requirement from the Order's list of UK requirements comparable to Exchange Act rule 18a–6.[474]

The commenter recommended deleting from paragraphs (f)(1)(i)(K) and (f)(2)(i)(M) of the Order references to PRA General Organisational Requirements Rules 5.1 and 5.2, regarding management body requirements, reasoning that they do not correspond to, and go beyond, the requirements of Exchange Act rules 18a–5(a)(10) and (b)(8) (employment application record creation) and 18a–6(d)(1) (employment application record preservation). However, the FCA Application states that a ''CRR Firm's management body must define, oversee and be accountable for the implementation of the governance arrangements including, among other matters, ensuring the prevention of conflicts of interest'' (with respect to PRA General Organisational Requirement 5.1) and ''[e]ach member of the management body of a CRR Firm must be of sufficiently good repute and possess sufficient knowledge, skills and experience to perform their duties''

[465] *Compare* paras. (f)(1)(i)(D)(*1*) and (f)(1)(i)(G)(*1*) of the UK Substituted Compliance Notice and Proposed Order, *with* paras. (f)(1)(i)(D)(*1*) and (f)(1)(i)(G)(*1*) of the Order.

[466] *Compare* paras. (f)(2)(i)(A), (f)(2)(i)(B), and (f)(2)(i)(D) of the UK Substituted Compliance Notice and Proposed Order, *with* paras. (f)(2)(i)(A), (f)(2)(i)(B), and (f)(2)(i)(D) of the Order.

[467] *See* FCA Application at 126–27.

[468] *Compare* paras. (f)(1)(i)(G)(*1*), (f)(1)(i)(I)(*1*), and (f)(2)(i)(D) of the UK Substituted Compliance Notice and Proposed Order, *with* paras. (f)(1)(i)(G)(*1*), (f)(1)(i)(I)(*1*), and (f)(2)(i)(D) of the Order.

[469] *See* FCA Application at 127.

[470] *Compare* paras. (f)(1)(i)(G)(*1*), (f)(1)(i)(I)(*1*), and (f)(2)(i)(D) of the UK Substituted Compliance Notice and Proposed Order, *with* paras. (f)(1)(i)(G)(*1*), (f)(1)(i)(I)(*1*), and (f)(2)(i)(D) of the Order.

[471] *See* FCA Application at 203.

[472] *Compare* paras. (f)(1)(i)(K) and (f)(2)(i)(M) of the UK Substituted Compliance Notice and Proposed Order, *with* paras. (f)(1)(i)(K) and (f)(2)(i)(M) of the Order.

[473] *Compare* paras. (f)(1)(i)(A)(*1*), (f)(1)(i)(B)(*1*), (f)(1)(i)(C)(*1*), and (f)(1)(i)(F)(*1*) of the UK Substituted Compliance Notice and Proposed Order, *with* paras. (f)(1)(i)(A)(*1*), (f)(1)(i)(B)(*1*), (f)(1)(i)(C)(*1*), and (f)(1)(i)(F)(*1*) of the Order.

[474] *Compare* paras. (f)(2)(i)(A), (f)(2)(i)(B), (f)(2)(i)(D), and (f)(2)(i)(G)(*1*) of the UK Substituted Compliance Notice and Proposed Order, *with* paras. (f)(2)(i)(A), (f)(2)(i)(B), (f)(2)(i)(D), and (f)(2)(i)(G)(*1*) of the Order.

(with respect to PRA General Organisational Requirement 5.2),[475] both of which are relevant to employment application record creation but not employment application record preservation. Accordingly, the Commission is not removing references to these UK requirements from the Order's list of UK requirements comparable to Exchange Act rules 18a–5(a)(10) and (b)(8), but is removing references to these requirements from the Order's list of UK requirements comparable to Exchange Act rule 18a–6(d)(1).

The commenter recommended deleting from paragraphs (f)(1)(i)(K) and (f)(2)(i)(M) of the Order references to FCA SYSC 4.3A.1R and 4.3A.3R (management body), FCA SYSC 10.1.7R (managing conflicts), and FCA SYSC 27 (certification regime), reasoning that they do not correspond to, and go beyond, the requirements of Exchange Act rules 18a–5(a)(10) and (b)(8) (employment application record creation) and 18a–6(d)(1) (employment application record preservation). These provisions identify characteristics and standards applicable to a firm's employees, or require a conflicts of interest record to be maintained, which are relevant to employment application record creation but not employment application record preservation. Accordingly, the Commission is not removing references to these UK requirements from the Order's list of UK requirements comparable to Exchange Act rules 18a–5(a)(10) and (b)(8), but is removing references to these requirements from the Order's list of UK requirements comparable to Exchange Act rule 18a–6(d)(1).

The commenter recommended replacing in paragraph (f)(1)(i)(K) of the Order references to UK MiFID Org Reg article 21(1)(a) with references to UK MiFID Org Reg article 21(1)(d) due to an incorrect reference in the FCA Application with respect to Exchange Act rules 18a–5(a)(10) and (b)(8). The Commission agrees with the commenter's reasoning and is therefore replacing references to UK MiFID Org Reg article 21(1)(a) with references to UK MiFID Org Reg article 21(1)(d) in the Order's list of UK requirements comparable to Exchange Act rules 18a–5(a)(10) and (b)(8).[476]

The commenter recommended replacing in paragraphs (f)(1)(i)(N)(*1*) and (f)(1)(i)(O)(*1*) of the Order references to UK EMIR RTS article 15(1) with UK EMIR RTS article 15(1)(a) with respect to Exchange Act rules 18a–5(a)(18) and (b)(14) because the remainder of article 15(1) does not include a record creation requirement. The Commission agrees with the commenter's reasoning and is therefore replacing references to UK EMIR RTS article 15(1) with UK EMIR RTS article 15(1)(a) in the Order's list of UK requirements comparable to Exchange Act rules 18a–5(a)(18) and (b)(14).

The commenter recommended deleting from paragraph (f)(2)(E)(*1*) of the Order references to UK CRR and UK CRR Reporting ITS, which relate to supervisory reports to be made, reasoning that they do not correspond to, and go beyond, the requirements of Exchange Act rule 18a–6(b)(1)(v). Although these UK laws relate to reporting requirements, the information contained in these reports is relevant to the records required by Exchange Act rule 18a–6(b)(1)(v). In addition, the FCA Application specifically cites these requirements as comparable to Exchange Act rule 18a–6(b)(1)(v).[477] Accordingly, the Commission is not removing references to this UK requirement from the Order's list of UK requirements comparable to Exchange Act rule 18a–6(b)(1)(v).

The commenter recommended deleting from paragraph (f)(2)(i)(I)(*1*) of the Order references to UK CRR articles 286 and 293(1)(d), which relate to the use of internal models for credit risk, reasoning that they do not correspond to, and go beyond, the requirements of Exchange Act rule 18a–6(b)(1)(ix). The ''policies, processes and systems'' (with respect to UK CRR article 286) and ''adequate resources [ ] devoted to credit and counterparty risk control'' (with respect to UK CRR article 293(1)(d)) in practice require firms to maintain records relevant to Exchange Act rule 18a–6(b)(1)(ix). Accordingly, the Commission is not removing references to these UK requirements from the Order's list of UK requirements comparable to Exchange Act rule 18a–6(b)(1)(ix).

The commenter recommended deleting from paragraph (f)(2)(i)(I)(*1*) of the Order references to PRA Risk Control Rule 2.3, which sets a requirement that the management body approves and periodically reviews the strategies and policies for taking up, managing, monitoring, and mitigating risks, reasoning that it does not correspond to, and goes beyond, the requirements of Exchange Act rule 18a–6(b)(1)(ix). The Commission disagrees because in practice, this UK rule requires records to manage the firm's risks. Accordingly, the Commission is not removing references to this UK requirement from the Order's list of UK requirements comparable to Exchange Act rule 18a–6(b)(1)(ix).

The commenter recommended deleting from paragraph (f)(2)(i)(I)(*1*) of the Order references to UK EMIR RTS, reasoning that referencing an entire UK law without referencing a specific provision is does not correspond to, and goes beyond, the requirements of Exchange Act rule 18a–6(b)(1)(ix). This provision is cited by the FCA Application as directly relevant because it requires firms to ''implement formalised processes'' for ''identifying and resolving disputes,''[478] which is relevant to Exchange Act rule 18a–6(b)(1)(ix). Accordingly, the Commission is not removing references to this UK requirement from the Order's list of UK requirements comparable to Exchange Act rule 18a–6(b)(1)(ix).

The commenter recommended deleting from paragraph (f)(2)(i)(M) of the Order references to FSMA sections 60A(2) and 63F(2), SMR Applications and Notifications Rules, PRA Certification Rules, PRA General Organisational Requirements Rules, and FCA SUP, reasoning that they do not correspond to, and go beyond, the requirements of Exchange Act rule 18a–6(d)(1). The Commission agrees with the commenter's reasoning because these provisions relate to record creation rather than record preservation, and is removing references to these UK requirements from the Order's list of UK requirements comparable to Exchange Act rule 18a–6(d)(1).

The commenter recommended deleting from paragraph (f)(2)(i)(O) of the Order references to FCA SYSC 6.1.1R and 10.1.6R, which relate to risk management control systems and risk control records, reasoning that they do not correspond to, and go beyond, the requirements of Exchange Act rule 18a–6(d)(3). However, the FCA Application cites these provisions as requiring ''the maintenance of a range of compliance policies and procedures'',[479] which is relevant to Exchange Act rule 18a–6(d)(3). Accordingly, the Commission is not removing references to these UK requirements from the Order's list of UK requirements comparable to Exchange Act rule 18a–6(d)(3).

The commenter recommended deleting from paragraph (f)(2)(i)(P)(*1*) of the Order references to FCA SYSC 4.1.1R(1), which is a general requirement concerning a firm's

[475] *See* FCA Application at 127.

[476] *Compare* para. (f)(1)(i)(K) of the UK Substituted Compliance Notice and Proposed Order, *with* para. (f)(1)(i)(K) of the Order.

[477] *See* FCA Application at 146–47.

[478] *See* FCA Application at 153–54.

[479] *See* FCA Application at 159–60.

governance, reasoning that it does not correspond to, and goes beyond, the requirements of Exchange Act rules 18a–6(d)(4) and (d)(5). However, the FCA Application cites this provision as requiring ''the maintenance of a range of risk management records'',[480] which is relevant to Exchange Act rules 18a–6(d)(4) and (d)(5). Accordingly, the Commission is not removing references to these UK requirements from the Order's list of UK requirements comparable to Exchange Act rules 18a–6(d)(4) and (d)(5).

The commenter recommended deleting from paragraph (f)(2)(i)(Q) of the Order references to FCA SYSC 4.1.1R(1), which is a general requirement concerning a firm's governance, reasoning that it does not correspond to, and goes beyond, the requirements of Exchange Act rule 18a–6(e). However, the FCA Application cites this provision as requiring ''sound security mechanisms in place to guarantee the security and authentication of the means of transfer of information, minimize the risk of data corruption and unauthorized access and to prevent information leakage maintaining the confidentiality of the data at all times'',[481] which is relevant to Exchange Act rule 18a–6(e). Accordingly, the Commission is not removing references to these UK requirements from the Order's list of UK requirements comparable to Exchange Act rule 18a–6(e).

c. Exchange Act Rule 18a–7

The commenter recommended deleting references to FSMA sections 137A, 137G, and 137T from paragraph (f)(3)(i)(A) reasoning that these provisions relate to the FCA's and PRA's powers to make rules and do not impose requirements on firms. Additionally, the commenter recommended deleting reference to CRD article 104(1)(j) reasoning that this provision does not form part of UK law. The Commission agrees with the commenter's reasoning and is removing references to these UK requirements from the list of UK requirements comparable to Exchange Act rules 18a–7(a)(1) and (a)(2).[482]

The commenter recommended deleting references to UK CRR rules that are set out in Part 8 of UK CRR relating to public disclosure in paragraph (f)(3)(ii)(A), reasoning that they do not correspond to, and go beyond, the requirements of Exchange Act rule 18a–7(a)(3) and Exchange Act rule 18a–7(j). However, the FCA application cites CRR articles 431, 433, 452, 454, and 455 as requiring, among other things, firms to make ''Pillar III' disclosures which include information on the use of capital models and matters such as credit risk, the exposure values by class of exposures subject to evaluation using models, and internal controls on the development and use of models.[483] This information is relevant to rule 18a–7(a)(3) and 18a–7(j). Accordingly, the Commission is removing references to UK CRR rules that are set out in Part 8 of UK CRR except for UK CRR articles 431, 433, 452, 454, and 455 in the Order's list of UK requirements comparable to Exchange Act rule 18a–7(a)(3) and 18a–7(j).[484]

The commenter recommended deleting references to FSMA sections 137A, 137G, and 137T in paragraph (f)(3)(ii)(A). As discussed above, the commenter has stated that these sections relate to the FCA's and the PRA's powers to make rules, and do not impose requirements on firms. The Commission agrees with this reasoning and is therefore removing references to these to these UK requirements from the Order's list of requirements comparable to Exchange Act rules 18a–7(a)(3) and 18a–7(j).[485]

The commenter recommended deleting from paragraph (f)(3)(iv)(A) references to the following FCA CASS sections: 6.2.2R, 6.6.2R, 6.6.3.R, 6.6.33G, 6.6.34R, 7.12.2R, 7.15.2R, 7.15.3R, 7.15.20R, and 7.15.21R. Additionally, the commenter recommended deleting references to FCA SUP sections 3.10.4R through 3.10.7R and the following UK CRR articles: 26(2), 132(5), 154, 191, 321, 325bi, 350, 353, 368, and 418. The commenter reasoned that these provisions do not correspond to, and go beyond, the requirements of Exchange Act rules 18a–7(c), (d), (e), (f), (g), and (h), and Exchange Act rule 18a–7(j). However, the FCA Application states that, pursuant to FCA CASS 6.2.2R, 6.62R, 6.63R, 6.6.33G, 6.6.34R 7.12.2R, 7.15.2R, 7.15.3R, 7.15.20R, and 7.15.21R, investment firms must ensure the segregation of client money and assets from those of the firm, maintain detailed records distinguishing client money and assets from those of the firm, and must conduct regular reconciliations between their accounts and records and those accounts and records of any third-parties with whom client money or assets may be held. Additionally, the FCA Application states that the that information about client money required under FCA CASS 7.12.2R, 7.15.2R, 7.15.3R, 7.15.20R, and 7.15.21R is comparable to the information required under Exchange Act rules 18a–7(c)(1)(i)(B) and 17a–7(c)(3) and (4).[486] Moreover, the FCA Application states that certain firms must have their financial statements audited pursuant to Companies Act section 475, and that under FCA SUP 3.8.5R and 3.10.4R through 3.10.7R an independent auditor must submit a client money and assets report to the FCA, within the prescribed time period and format, providing reasonable assurance that, among other things, the investment firm has maintained adequate systems to enable it to comply with the FCA CASS Rules. The FCA Application goes on to state that CRR article 26(2) relates to the inclusion of a firm's interim or year-end profits in Common Equity Tier 1 capital and the associated requirement that such profits be verified by persons independent of the firm, and that CRR articles 132(5) and 154 set forth requirements for a firm to engage an external auditor to confirm the accuracy of information regarding the firm's calculations with respect to average risk weights for certain exposures which is comparable to the requirements under Exchange Act rules 18a–7(c)(1)(i)(C) and 18a–7(d) through (g). Furthermore the FCA Application states that, for firms using internal models to calculate credit risk, operational risk, market risk exposures, or market risk capital requirement, CRR articles 191, 321, 325bi, and 368 require various levels of internal or external audit and/or review of the models, systems, and/or operations. The FCA application states where investment firms rely on a depository or management company of a collective investment undertaking, CRR articles 418, 350, and 353 require the investment firm to calculate and report own funds requirements for the market value of haircuts, and position risk with respect to positions in specified instruments.[487] As a result, the FCA Application states that the UK report review requirements provide for comparable regulatory outcomes to the SEC report review requirements, as both regulatory regimes require firms to submit reports by independent auditors on the firm's financial and operational information in order to ensure the accuracy of information and protect

[480] *See* FCA Application at 160–61.

[481] *See* FCA Application at 165.

[482] *Compare* para. (f)(3)(i)(A) of the UK Substituted Compliance Notice and Proposed Order, *with* para. (f)(3)(i)(A) of the Order.

[483] *See* FCA Application at 178–79.

[484] *Compare* para. (f)(3)(ii)(A) of the UK Substituted Compliance Notice and Proposed Order, *with* para. (f)(3)(ii)(A) of the Order.

[485] *Compare* para. (f)(3)(ii)(A) of the UK Substituted Compliance Notice and Proposed Order, *with* para. (f)(3)(ii)(A) of the Order.

[486] *See* FCA Application at 175–76.

[487] *See* FCA Application at 177 and 186–89.

market participants. The Commission believes these provisions are relevant to Exchange Act rules 18a–7(c), (d), (e), (f), (g), and (h). Accordingly, the Commission is not deleting references to these UK requirements from the Order's list of UK requirements comparable to Exchange Act rules 18a–7(c), (d), (e), (f), (g), and (h) and Exchange Act rule 18a–7(j).

The commenter recommended deleting from paragraph (f)(3)(iv)(A) reference to Capital Requirements 2013 Regulation 2(4), reasoning that this provision does not impose requirements directly on firms. The Commission agrees with the commenter's reasoning and, accordingly, is removing reference to this requirement from the Order's list of UK requirements comparable to Exchange Act rules 18a–7(c), (d), (e), (f), (g), and (h) and Exchange Act rule 18a–7(j). However, the FCA Application cites regulation 2(4) of the Capital Requirements (Country-by-Country Reporting) Regulations 2013 as relevant and which the Commission understands imposes reporting obligations directly on firms. As a result, the Commission is including reference to this requirement in the Order's list of UK requirements comparable to Exchange Act rule 18a–7(c), (d), (e), (f), (g), and (h) and Exchange Act rule 18a–7(j).[488]

d. Exchange Act Rule 18a–8

The commenter recommended deleting from paragraphs (f)(4)(i)(A)(*1*), (f)(4)(i)(B), (f)(4)(i)(C)(*1*), and (f)(4)(i)(D)(*1*) references to FCA SUP 15.3.12G and 15.3.14G, reasoning that these provisions are guidance. The Commission agrees. Accordingly, the removing reference to these requirements from the Order's list of UK requirements comparable to Exchange Act rule 18a–8(a)(1)((i), (a)(1)(ii), (b)(1), (b)(2), (b)(4), (c), (d), (e), and (h).[489]

The commenter recommended deleting from paragraphs (f)(4)(i)(A)(*1*), (f)(4)(i)(B), (f)(4)(i)(C)(*1*), and (f)(4)(i)(D)(*1*) references to: FCA SUP 15.3.15R, 15.3.17R, 15.3.21R; PRA Notifications Rules 2.6, 2.8, and 2.9; FCA CASS 6.657R, 7.15.33R, and Schedule 2; FCA SYSC 18.6.1R and 18.6.4G; and PRA General Organisational Requirements 2A.2, 2A.1(2), and 2A.3 to 2A.6. The commenter reasoned that these provisions do not correspond to, and go beyond, the requirements of Exchange Act rule 18a–8(a)(1)((i), (a)(1)(ii), (b)(1), (b)(2), (b)(4), (c), (d), (e), and (h). However, the FCA Application states that these provisions provide for a comparable regulatory outcome to the SEC notice requirements as these provisions require a CRR firm to notify the FCA immediately if the firm becomes aware of, or has information that reasonably suggests, that specified matters have occurred, may have occurred, or may occur in the foreseeable future. Additionally, specific notification obligations apply for breaches of requirements related to client money and assets, and with respect to civil, criminal, or disciplinary proceedings, fraud, errors, or other regularities, and insolvency, bankruptcy, and winding up. Furthermore, CRR firms must have procedures in place for employees to report a breach of, among other things, any rule, as well as appropriate arrangements for individuals, including employees, to disclose reportable concerns internally.[490] In practice, these provisions establish reporting mechanisms that will result in regulators being notified of events relevant to the disclosures required under rule 18a–8. Accordingly, the Commission is not deleting references to this UK requirement from the Order's list of UK requirements comparable to Exchange Act rule 18a–8(a)(1)((i), (a)(1)(ii), (b)(1), (b)(2), (b)(4), (c), (d), (e), and (h).

e. Exchange Act Rule 18a–9

The commenter recommends deleting from paragraph (f)(5)(*1*) references to FCA CASS 6.2.1R, 6.2.2R, 6.3.4A–1R, 6.3.6AR, 6.6.2R, 6.6.3R, 6.6.33G, 6.6.34R, 6.6.47G, 6.6.5G, 6.6.8R, 7.12.1R, 7.12.2R, 7.13.12R, 7.13.32R(3), 7.13.33R(3), 7.15.2R, 7.15.5R, 7.15.9R, 7.15.3R, 7.15.8R, 7.15.20R, 7.15.21G, 10.1.2G, 10.1.3R, 10.1.7, and 10.1.9E. The commenter also recommended deleting references to UK MiFID Org Reg articles 74 and 75, and to UK EMIR RTS article 12. The commenter reasoned that these provisions do not correspond to, and go beyond, the requirements of Exchange act rule 18a–9. With respect to FCA CASS 7.12R, 7.12.2R, 7.13.12R, 7.13.32R(3), 7.13.33R(3), 7.15.2R, 7.15.5R, 7.15.9R, 7.15.3R, 7.15.8R, 7.15.20R, and 7.15.21G the Commission agrees. These provisions relate to treatment of client money, and not the holding of client financial instruments. Accordingly, the Commission is removing references to these requirements from the Order's list of UK requirements comparable to Exchange Act rule 18a–9. Additionally, the Commission is removing references to FCA CASS 6.6.33G, 6.6.47G, and 6.6.5G as these provisions are non-binding guidance.[491]

With respect to the remaining provisions, the Commission disagrees. The FCA Applications states that, pursuant to FCA CASS 6.2.1R, firms holding financial instruments belonging to clients must make adequate arrangements to safeguard the ownership rights of clients and to prevent the use of a client's financial instruments on own account except with express consent of the client. To that end, the FCA Application states that the remaining provisions require investment firms to, among other things, maintain records enabling the firm to distinguish client assets from the firm's assets, including maintaining a client-specific safe custody asset record, and conduct on a regular basis reconciliations between internal accounts and records and those of any third-parties by whom client assets are held. Additionally, firms must ensure that client financial instruments deposited with third-party are identifiable separately from those of the firm and the third-party, and must minimize risk of loss of client assets. Moreover, the remaining provisions also require that checks and reconciliations must be carried out by a person who is independent of the production or maintenance of the records to be checked and/or reconciled, and must record any liens or rights of set-off against so that ownership is clear. Firms are also required, pursuant to the remaining provisions, to keep any internal records and accounts of client assets separate from any records the firm obtains from any third parties, and must also create specified records regarding each record check and reconciliation. Firms are required under the cited provision to keep detailed records in relation to every client order and decision to deal, and must also, with respect to verifying open transactions, comply with certain confirmation and portfolio reconciliation requirements for uncleared OTC derivatives contracts. Finally, firms must maintain a client asset resolution pack that can be used to achieve a timely return of client assets in a resolution scenario, as well as internal and external client asset reconciliations that must be available or retrievable within prescribed time

[488] *Compare* para. (f)(3)(iv)(A) of the UK Substituted Compliance Notice and Proposed Order, *with* para. (f)(3)(iv)(A) of the Order.

[489] *Compare* paras. (f)(4)(i)(A)(*1*), (f)(4)(i)(B), (f)(4)(i)(C)(*1*), and (f)(4)(i)(D)(*1*) of the UK Substituted Compliance Notice and Proposed Order, *with* paras. (f)(4)(i)(A)(*1*), (f)(4)(i)(B), (f)(4)(i)(C)(*1*), and (f)(4)(i)(D)(*1*) of the Order.

[490] *See* FCA Application at 181–85.

[491] *Compare* para. (f)(5)(*1*) of the UK Substituted Compliance Notice and Proposed Order, *with* para. (f)(5)(*1*) of the Order.

periods.[492] Based on these provisions, the FCA Application states that the UK periodic securities count requirements provide for a comparable regulatory outcome to the Commission's periodic securities count requirements.[493] The Commission believes these provisions are relevant to the requirements of rule 18a–9. Accordingly, the Commission is not removing references to these UK requirements from the Order's list of UK requirements comparable to Exchange Act rule 18a–9.

f. Exchange Act Section 15F(g)

The commenter recommended deleting from paragraph (f)(6) references to FCA COND at paragraphs 2C, 2D, 3B, 3C, 5D, and 5F, stating that these provisions set our certain minimum requirements for obtaining and maintaining PRA authorization. The commenter also recommended removing references in paragraph (f)(6) to PRA Fundamental Rules 2 and 6, and FCA PRIN 2.1.1R(2) and (3), stating that these provisions set out certain high-level principals for business. The commenter reasoned that these provisions do not correspond to, and go beyond, the requirements of Exchange Act section 15F(g). The Commission agrees with respect to references to FCA COND at paragraphs 2C, 2D, 3B, 3C, 5D, and 5F. Accordingly, the Commission is removing references to FCA COND at paragraphs 2C, 2D, 3B, 3C, 5D, and 5F from the Order's list of requirements comparable to Exchange Act section 15F(g).[494] However, the FCA Application states that pursuant to PRA Fundamental Rules 2 and 6, and FCA PRIN 2.1.1R(2) and (3) a UK firm must conduct its business with due skill, care, and diligence, and take reasonable care to organize and control its affairs responsibly and effectively. In practice, the FCA Application states that this will require UK firms to maintain adequate records and recordkeeping systems.[495] The Commission believes that these provisions are relevant to the requirements of Exchange Act section 15F(g). Accordingly, the Commission is not removing reference to these UK requirements from the Order's list of requirements comparable to Exchange Act section 15F(g).

[492] *See* FCA Application at 129–36.

[493] *See* FCA Application at 129.

[494] *Compare* para. (f)(6) of the UK Substituted Compliance Notice and Proposed Order, *with* para. (f)(6) of the Order.

[495] *See* FCA Application at 102.

IX. Supervisory and Enforcement Considerations

A. Preliminary Analysis

Exchange Act rule 3a71–6(a)(2)(i) provides that the Commission's assessments regarding the comparability of foreign requirements in part should take into account ''the effectiveness of the supervisory program administered, and the enforcement authority exercised'' by the foreign financial regulatory authority. This provision is intended to help ensure that substituted compliance is not predicated on rules that appear high-quality on paper if market participants in practice are allowed to fall short of their obligations, while also recognizing that differences among supervisory and enforcement regimes should not be assumed to reflect flaws in one regime or another.[496] The FCA Application accordingly included information regarding the supervisory and enforcement framework applicable to derivatives markets and market participants in the UK.

In proposing to grant substituted compliance in connection with the UK, the Commission preliminarily concluded that the relevant supervisory and enforcement considerations were consistent with substituted compliance. That preliminary conclusion took into account information regarding the FCA's and the PRA's roles and practices in supervising banks and investment firms located in the UK, as well as their enforcement-related authority and practices.[497]

B. Conclusions

Commenters did not address the Commission's preliminary conclusions regarding supervisory and enforcement considerations, and the Commission continues to conclude that the relevant supervisory and enforcement considerations in the UK are consistent with substituted compliance. In particular, based on the available information regarding the FCA's and the PRA's authority and practices to oversee market participants' compliance with applicable requirements and to take action in the event of violations, the Commission remains of the view that, consistent with rule 3a71–6, comparability determinations reflect UK requirements as they apply in practice.

To be clear, the supervisory and enforcement considerations addressed by rule 3a71–6 do not mandate that the Commission make judgments regarding the comparative merits of U.S. and foreign supervisory and enforcement frameworks, or to require specific findings regarding the supervisory and enforcement effectiveness of a foreign regime. The rule 3a71–6 considerations regarding supervisory and enforcement effectiveness instead address whether comparability analyses related to substituted compliance reflect requirements that market participants must follow, and for which market participants are subject to enforcement consequences in the event of violations. Those considerations are satisfied here.

[496] *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18404.

[497] *See* UK Substituted Compliance Notice and Proposed Order, 86 FR at 18404–06.

X. Conclusion

It is hereby determined and ordered, pursuant to rule 3a71–6 under the Exchange Act, that a Covered Entity (as defined in paragraph (g)(1) of this Order) may satisfy the requirements under the Exchange Act that are addressed in paragraphs (b) through (f) of this Order so long as the Covered Entity is subject to and complies with relevant requirements of the United Kingdom and with the conditions of this Order, as amended or superseded from time to time.

(a) General Conditions.

This Order is subject to the following general conditions, in addition to the conditions specified in paragraphs (b) through (f):

(1) *Activities as UK* ''*regulated activities.*'' For each condition in paragraphs (b) through (f) of this Order that requires the application of, and the Covered Entity's compliance with, provisions of FCA SYSC 4, 5, 6, 7, 9, and/or 10, PRA General Organisational Requirements, PRA Recordkeeping Rules, PRA Remuneration Rules, PRA Risk Control Rules, and/or MLR 2017, the Covered Entity's relevant security-based swap activities constitute ''regulated activities'' as defined for purposes of the relevant UK provisions, are carried on by the Covered Entity from an establishment in the United Kingdom, and fall within the scope of the Covered Entity's authorization from the FCA and/or the PRA to conduct regulated activities in the United Kingdom.

(2) *Activities as UK MiFID* ''*investment services or activities.*'' For each condition in paragraphs (b) through (f) of this Order that requires the application of, and the Covered Entity's compliance with, provisions of FCA PROD 3 and/or UK MiFID Org Reg, the Covered Entity's relevant security-based swap activities (a) constitute ''investment services or activities,'' as defined in the FCA Handbook Glossary;

(b) are carried on by the Covered Entity from an establishment in the United Kingdom or from any other place that would cause FCA PROD 3 and/or UK MiFID Org Reg, as applicable, to apply to those activities, and (c) fall within the scope of the Covered Entity's authorization from the FCA and/or PRA to conduct regulated activities in the United Kingdom.

(3) *Activities as UK ''MiFID or equivalent third country business.''* For each condition in paragraphs (b) through (f) of this Order that requires the application of, and the Covered Entity's compliance with, provisions of FCA COBS 2, 4, 6, 8A, 9A, 14, and/or 16A, the Covered Entity's relevant security-based swap activities (a) constitute ''MiFID or equivalent third country business,'' as defined in the FCA Handbook Glossary; (b) are carried on by the Covered Entity from an establishment in the United Kingdom or from any other place that would cause FCA COBS 2, 4, 6, 8A, 9A, 14, and/or 16A, as applicable, to apply to those activities; and (c) fall within the scope of the Covered Entity's authorization from the FCA and/or PRA to conduct regulated activities in the United Kingdom.

(4) *Activities as UK ''designated investment business.''* For each condition in paragraphs (b) through (f) of this Order that requires the application of, and the Covered Entity's compliance with, provisions of FCA COBS 11, the Covered Entity's relevant security-based swap activities (a) constitute ''MiFID business'' that is also ''designated investment business,'' each as defined in the FCA Handbook Glossary; (b) are carried on by the Covered Entity from an establishment in the United Kingdom or from any other place that would cause FCA COBS 11, as applicable, to apply to those activities; and (c) fall within the scope of the Covered Entity's authorization from the FCA and/or PRA to conduct regulated activities in the United Kingdom.

(5) *Activities as UK ''MiFID business.''* For each condition in paragraphs (b) through (f) of this Order that requires the application of, and the Covered Entity's compliance with, provisions of FCA CASS 6 and/or 7, the Covered Entity is not an ICVC as defined in the FCA Handbook Glossary and the Covered Entity's relevant security-based swap activities constitute ''regulated activities'' as defined for purposes of the relevant UK provisions and ''MiFID business'' as defined in the FCA Handbook Glossary; are carried on by the Covered Entity from an establishment in the United Kingdom; and fall within the scope of the Covered Entity's authorization from the FCA and/or the PRA to conduct regulated activities in the United Kingdom.

(6) *Activities covered by FCA SYSC 10A.* For each condition in paragraphs (b) through (f) of this Order that requires the application of, and the Covered Entity's compliance with, provisions of FCA SYSC 10A, the Covered Entity's relevant security-based swap activities constitute activities described in FCA SYSC 10A.1.1(2)(a), (b), and/or (c); are carried on by the Covered Entity from an establishment in the United Kingdom and fall within the scope of the Covered Entity's authorization from the FCA and/or the PRA to conduct regulated activities in the United Kingdom.

(7) *Counterparties as UK MiFID ''clients.''* For each condition in paragraphs (b) through (f) of this Order that requires the application of, and the Covered Entity's compliance with, provisions of FCA CASS 6 and/or 7, FCA COBS 2, 4, 6, 8A, 9A, 11, 14, and/or 16A, FCA PROD 3, FCA SYSC 10.1.8, FCA SYSC 10A, and/or UK MiFID Org Reg, the relevant counterparty (or potential counterparty) to the Covered Entity is a ''client'' (or potential ''client''), as defined in COBS 3.2.1R.

(8) *Security-based swaps as UK MiFID ''financial instruments.''* For each condition in paragraphs (b) through (f) of this Order that requires the application of, and the Covered Entity's compliance with, provisions of FCA CASS 6 and/or 7, FCA COBS 2, 4, 6, 8A, 9A, 11, 14, and/or 16A, FCA PROD 3, FCA SYSC 10A, UK MAR, UK MAR Investment Recommendations Regulation, and/or UK MiFID Org Reg, the relevant security-based swap is a ''financial instrument,'' as defined in Part 1 of Schedule 2 of the UK Regulated Activities Order.

(9) *Covered Entity as UK CRD/CRR ''institution.''* For each condition in paragraph (b) through (f) of this Order that requires the application of, and the Covered Entity's compliance with, provisions of UK CRR, the Covered Entity is an ''institution,'' as defined in UK CRR article 4(1)(3).

(10) *Covered Entity as UK ''common platform firm'' or ''third country firm.''* For each condition in paragraph (b) through (f) of this Order that requires the application of, and the Covered Entity's compliance with, provisions of FCA SYSC 4, 5, 6, 7, 9, and/or 10, the Covered Entity is either a ''common platform firm'' (other than a ''UCITS investment firm'') or a ''third country firm,'' each as defined in the FCA Handbook Glossary.

(11) *Covered Entity as UK ''IFPRU investment firm.''* For each condition in paragraph (b) through (f) of this Order that requires the application of, and the Covered Entity's compliance with, provisions of FCA SYSC 19A, FCA IFPRU, and/or FCA BIPRU, the Covered Entity is an ''IFPRU investment firm,'' as defined in the FCA Handbook Glossary.

(12) *Covered Entity as ''UK bank'' or ''UK designated investment firm.''* For each condition in paragraph (b) through (f) of this Order that requires the application of, and the Covered Entity's compliance with, provisions of FCA SYSC 19D, PRA Internal Capital Adequacy Assessment Rules, PRA Internal Liquidity Adequacy Assessment Rules, PRA General Organisational Requirements, PRA Remuneration Rules, and/or PRA Risk Control Rules, the Covered Entity is a ''UK bank'' or ''UK designated investment firm,'' each as defined in the FCA Handbook Glossary (in the case of a provision of FCA SYSC 19D) or as defined in the PRA Rulebook Glossary (in the case of a provision of a PRA rule).

(13) *Covered Entity's counterparties as UK EMIR ''counterparties.''* For each condition in paragraphs (b) through (f) of this Order that requires the application of, and the Covered Entity's compliance with, provisions of UK EMIR, UK EMIR RTS, UK EMIR Margin RTS, and/or other UK requirements adopted pursuant to those provisions, if the relevant provision applies only to the Covered Entity's activities with specified types of counterparties, and if the counterparty to the Covered Entity is not any of the specified types of counterparty, the Covered Entity complies with the applicable condition of this Order:

(i) As if the counterparty were the specified type of counterparty; in this regard, if the Covered Entity reasonably determines that the counterparty would be a financial counterparty if it were established in the UK and authorized by an appropriate UK authority, it must treat the counterparty as if the counterparty were a financial counterparty; and

(ii) Without regard to the application of UK EMIR article 13.

(14) *Security-based swap status under UK EMIR.* For each condition in paragraphs (b) through (f) of this Order that requires the application of, and the Covered Entity's compliance with, provisions of UK EMIR, UK EMIR RTS, UK EMIR Margin RTS, and/or other UK requirements adopted pursuant to those provisions, if the relevant provision applies to the Covered Entity's OTC derivatives or OTC derivative contracts

that have not been cleared by a central counterparty, then either:

(i) The relevant security-based swap is an ''OTC derivative'' or ''OTC derivative contract,'' as defined in UK EMIR article 2(7), that has not been cleared by a central counterparty and otherwise is subject to the provisions of UK EMIR article 11, UK EMIR RTS articles 11 through 15, and UK EMIR Margin RTS article 2; or

(ii) The relevant security-based swap has been cleared by a central counterparty that is authorized, recognized, or taken to be recognized by a relevant UK authority to provide clearing services to clearing members or trading venues established in the UK.

(15) *Memorandum of Understanding with the FCA and the Bank of England (including in its capacity as the PRA).* The Commission has a supervisory and enforcement memorandum of understanding and/or other arrangement with the FCA and the Bank of England (including in its capacity as the PRA) addressing cooperation with respect to this Order at the time the Covered Entity complies with the relevant requirements under the Exchange Act via compliance with one or more provisions of this Order.

(16) *Notice to Commission.* A Covered Entity relying on this Order must provide notice of its intent to rely on this Order by notifying the Commission in writing. Such notice must be sent to the Commission in the manner specified on the Commission's website. The notice must include the contact information of an individual who can provide further information about the matter that is the subject of the notice. The notice must also identify each specific substituted compliance determination within paragraphs (b) through (f) of the Order for which the Covered Entity intends to apply substituted compliance. A Covered Entity must promptly provide an amended notice if it modifies its reliance on the substituted compliance determinations in this Order.

(17) *Notification Requirements Related to Changes in Capital.* A Covered Entity that is prudentially regulated relying on this Order must apply substituted compliance with respect to the requirements of Exchange Act rule 18a–8(c) and the requirements of Exchange Act rule 18a–8(h) as applied to Exchange Act rule 18a–8(c).

(b) Substituted Compliance in Connection With Risk Control Requirements

This Order extends to the following provisions related to risk control:

(1) *Internal risk management.* The requirements of Exchange Act section 15F(j)(2) and related aspects of Exchange Act rule 15Fh–3(h)(2)(iii)(I), provided that the Covered Entity is subject to and complies with the requirements of:

(i) FCA CASS 6.2.1R, 7.11.1R, and 7.12.1R;

(ii) FCA COBS 11.7A.3R;

(iii) Either {FCA IFPRU 2.2.7R(2), 2.2.17R through 2.2.28R, 2.2.30R, and 2.2.32R through 2.2.35R and FCA BIPRU 12.3.4R, 12.3.5R, 12.3.7R, 12.3.8R, 12.3.22AR, 12.3.22BR, 12.3.27R, 12.4.–2R, 12.4.–1R, 12.4.5AR, 12.4.10R, and 12.4.11R} or {PRA Internal Capital Adequacy Assessment Rules 4.1 through 4.4, 5.1, 6.1, 7.1, 7.2, 8.1 through 8.5, 9.1, 10.1, 10.2, and 11.1 through 11.3 and PRA Internal Liquidity Adequacy Assessment Rules 3.1, 3.2, 3.3, 4.1, 7.2, 8.1, 9.2, 11.1, 11.2, 11.4, 12.1, 12.3, and 12.4};

(iv) FCA PRIN 2.1.1R(3);

(v) FCA SYSC 4.1.1R(1), 4.1.2R, 4.3A.1R, 4.3A.2R, 4.3A.3R, 4.3A.4R, 7.1.4R, 7.1.17R, 7.1.18R, 7.1.18BR, 7.1.19R, 7.1.20R, 7.1.21R, 7.1.22R, 9.1.1AR, 10.1.3R, 10.1.7R, 10.1.8R, 10A.1.6R, 10A.1.8R, and 10A.1.11R and, if the Covered Entity is a UK bank or UK designated investment firm, also PRA General Organisational Requirements Rules 2.1, 2.2, and 5.1 through 5.3; PRA Record Keeping Rule 2.1; PRA Risk Control Rules 2.3, 2.7, and 3.1 through 3.5, and PRA Senior Management Functions Rule 8.2;

(vi) Either {FCA SYSC 19A.2.1R, 19A.3.1R(1), 19A.3.3R, 19A.3.7R through 19A.3.11R, 19A.3.13R, 19A.3.14R, 19A.3.16R, 19A.3.18R, 19A.3.22R, 19A.3.25R, 19A.3.27R, 19A.3.29R, 19A.3.30R, 19A.3.32R, 19A.3.35R, 19A.3.35AR, 19A.3.36R, 19A.3.38R, 19A.3.40R, 19A.3.40AR, 19A.3.44R through 19A.3.44DR, 19A.3.45R, 19A.3.47R, 19A.3.49R, 19A.3.51R, 19A.3.51AR, and 19A.3.52E} or {FCA SYSC 19D.2.1R, 19D.3.1R, 19D.3.3R, 19D.3.7R through 19D.3.12R, 19D.3.15R, 19D.3.17R, 19D.3.19R, 19D.3.23R, 19D.3.25R, 19D.3.27R, 19D.3.29R, 19D.3.31R, 19D.3.32R, 19D.3.34R, 19D.3.35R through 19D.3.39R, 19D.3.42R through 19D.3.45R, 19D.3.48R through 19D.3.52R, 19D.3.54R, 19D.3.56R, 19D.3.59R, 19D.3.61R, 19D.3.62R, 19D.3.63E, and 19D.3.64R and PRA Remuneration Rules 3.1, 4.2, 5.1, 5.3, 6.2, 6.3, 6.4, 7.2 through 7.4, 8.1, 8.2, 9.1, 11.1, 11.6, 12.1, 13.1, 14.1, and 15.2 through 15.23};

(vii) Either {FSMA schedule 6 part 2D and FCA COND 2.4.1A} or {FSMA schedule 6 parts 3C and 5D, FCA COND 2.4.1C, and PRA Fundamental Rules 3 through 6};

(viii) UK CRR articles 286 through 288 and 293;

(ix) UK EMIR Margin RTS article 2; and

(x) UK MiFID Org Reg articles 21 through 37 and 72 through 76 and Annex IV.

(2) *Trade acknowledgement and verification.* The requirements of Exchange Act rule 15Fi–2, provided that the Covered Entity is subject to and complies with the requirements of UK EMIR article 11(1)(a) and UK EMIR RTS article 12.

(3) *Portfolio reconciliation and dispute reporting.* The requirements of Exchange Act rule 15Fi–3, provided that:

(i) The Covered Entity is subject to and complies with the requirements of UK EMIR article 11(1)(b) and UK EMIR RTS articles 13 and 15; and

(ii) The Covered Entity provides the Commission with reports regarding disputes between counterparties on the same basis as it provides those reports to the FCA pursuant to UK EMIR RTS article 15(2).

(4) *Portfolio compression.* The requirements of Exchange Act rule 15Fi–4, provided that the Covered Entity is subject to and complies with the requirements of UK EMIR RTS article 14.

(5) *Trading relationship documentation.* The requirements of Exchange Act rule 15Fi–5, other than paragraph (b)(5) to that rule when the counterparty is a U.S. person, provided that the Covered Entity is subject to and complies with the requirements of UK EMIR article 11(1)(a), UK EMIR RTS article 12 and UK EMIR Margin RTS article 2.

(c) Substituted Compliance in Connection With Capital and Margin

(1) *Capital.* The requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1, and 18a–1a through d, provided that:

(i) The Covered Entity is subject to and complies with: UK CRR, Part One (General Provisions) Article 6(1), Part Two (Own Funds), Part Three (Capital Requirements), Part Four (Large Exposures), Part Five (Exposures to Transferred Credit Risk), Part Six (Liquidity), and Part Seven (Leverage); UK MiFID Org Reg article 23; UK EMIR Margin RTS, articles 2, 3(b), 7, and 19(1)(d) and (e), (3), and (8); PRA General Organisational Requirements Rule 2.1; PRA Fundamental Rules 2.4 and 2.5; PRA Risk Control Rules 2.3 and 3.1(1); PRA Capital Buffers Rules; PRA Internal Capital Adequacy Assessment

Rules; PRA Internal Liquidity Adequacy Assessment Rules; PRA Liquidity Coverage Requirement—UK Designated Investment Firms Rules; PRA Notifications Rules 2.1, 2.4 through 2.6, 2.8, 2.9; and Part 9 of the Bank Recovery and Resolution (No 2) Order 2014;

(ii) The Covered Entity applies substituted compliance for the requirements of Exchange Act rules 18a–5(a)(9), 18a–6(b)(1)(x), and 18a–8(a)(1)(i), (a)(1)(ii), (b)(1), (b)(2), and (b)(4) pursuant to this Order; and

(iii)(A) The Covered Entity:

(*1*) Maintains liquid assets as defined in paragraph (c)(1)(iii)(B) that have an aggregate market value that exceeds the amount of the Covered Entity's total liabilities by at least $100 million before applying the deduction specified in paragraph (c)(1)(iii)(C) and by at least $20 million after applying the deduction specified in paragraph (c)(1)(iii)(C);

(*2*) Makes and preserves for three years a quarterly record that:

(*a*) Identifies and values the liquid assets maintained pursuant to paragraph (c)(1)(iii)(A)(*1*);

(*b*) Compares the amount of the aggregate value the liquid assets maintained pursuant to paragraph (c)(1)(iii)(A)(*1*) to the amount of the Covered Entity's total liabilities and shows the amount of the difference between the two amounts (''the excess liquid assets amount''); and

(*c*) Shows the amount of the deduction specified in paragraph (c)(1)(iii)(C) and the amount that deduction reduces the excess liquid assets amount;

(*3*) The Covered Entity notifies the Commission in writing within 24 hours in the manner specified on the Commission's website if the Covered Entity fails to meet the requirements of paragraph (c)(iii)(A)(*1*) and includes in the notice the contact information of an individual who can provide further information about the failure to meet the requirements; and

(*4*) Includes its most recent statement of financial condition filed with its local supervisor (whether audited or unaudited) with its initial written notice to the Commission of its intent to rely on substituted compliance under condition (a)(16) above.

(B) For the purposes of paragraph (c)(1)(iii)(A)(*1*), liquid assets are:

(*1*) Cash and cash equivalents;

(*2*) Collateralized agreements;

(*3*) Customer and other trading related receivables;

(*4*) Trading and financial assets; and

(*5*) Initial margin posted by the Covered Entity to a counterparty or a third-party custodian, provided:

(*a*) The initial margin requirement is funded by a fully executed written loan agreement with an affiliate of the Covered Entity;

(*b*) The loan agreement provides that the lender waives re-payment of the loan until the initial margin is returned to the Covered Entity; and

(*c*) The liability of the Covered Entity to the lender can be fully satisfied by delivering the collateral serving as initial margin to the lender.

(C) The deduction required by paragraph (c)(1)(iii)(A) is the amount of the Covered Entity's risk-weighted assets calculated for the purposes of the capital requirements identified in paragraph (c)(1)(i) divided by 12.5.

(2) *Margin.* The requirements of Exchange Act section 15F(e) and Exchange Act rule 18a–3, provided that:

(i) The Covered Entity is subject to and complies with the requirements of UK EMIR article 11; UK EMIR Margin RTS; UK CRR articles 103, 105(3); 105(10); 111(2), 224, 285, 286, 286(7), 290, 295, 296(2)(b), 297(1), 297(3), and 298(1); UK MiFID Org Reg article 23(1); PRA General Organisational Requirements Rule 2.1; and PRA Internal Capital Adequacy Assessment Rule 4.2;

(ii) The Covered Entity collects variation margin, as defined in the UK EMIR Margin RTS, from a counterparty with respect to transactions in non-cleared security-based swaps, unless the counterparty would qualify for an exception from the collateral collection requirements under paragraph (c)(1)(iii) or (c)(2)(iii) of Exchange Act 18a–3;

(iii) The Covered Entity collects initial margin, as defined in the UK EMIR Margin RTS, from a counterparty with respect to transactions in non-cleared security-based swaps, unless the counterparty would qualify for an exception from the collateral collection requirements under paragraph (c)(1)(iii) of Exchange Act rule 18a–3; and

(iv) The Covered Entity applies substituted compliance for the requirements of Exchange Act rule 18a–5(a)(12) pursuant to this Order.

(d) Substituted Compliance in Connection With Internal Supervision and Compliance Requirements and Certain Exchange Act Section 15F(J) Requirements

This Order extends to the following provisions related to internal supervision and compliance and Exchange Act section 15F(j) requirements:

(1) *Internal supervision.* The requirements of Exchange Act rule 15Fh–3(h) and Exchange Act sections 15F(j)(4)(A) and (j)(5), provided that:

(i) The Covered Entity is subject to and complies with the requirements identified in paragraph (d)(3) of this Order;

(ii) The Covered Entity complies with paragraph (d)(4) of this Order; and

(iii) This paragraph (d) does not extend to the requirements of paragraph (h)(2)(iii)(I) to rule 15Fh–3 to the extent those requirements pertain to compliance with Exchange Act sections 15F(j)(2), (j)(3), (j)(4)(B), and (j)(6), or to the general and supporting provisions of paragraph (h) to rule 15Fh–3 in connection with those Exchange Act sections.

(2) *Chief compliance officers.* The requirements of Exchange Act section 15F(k) and Exchange Act rule 15Fk–1, provided that:

(i) The Covered Entity is subject to and complies with the requirements identified in paragraph (d)(3) of this Order;

(ii) All reports required pursuant to UK MiFID Org Reg article 22(2)(c) must also:

(A) Be provided to the Commission at least annually and in the English language;

(B) Include a certification signed by the chief compliance officer or senior officer (as defined in Exchange Act rule 15Fk–1(e)(2)) of the Covered Entity that, to the best of the certifier's knowledge and reasonable belief and under penalty of law, the report is accurate and complete in all material respects;

(C) Address the Covered Entity's compliance with:

(*1*) Applicable requirements under the Exchange Act; and

(*2*) The other applicable conditions of this Order in connection with requirements for which the Covered Entity is relying on this Order;

(D) Be provided to the Commission no later than 15 days following the earlier of:

(*1*) The submission of the report to the Covered Entity's management body; or

(*2*) The time the report is required to be submitted to the management body; and

(E) Together cover the entire period that the Covered Entity's annual compliance report referenced in Exchange Act section 15F(k)(3) and Exchange Act rule 15Fk–1(c) would be required to cover.

(3) *Applicable supervisory and compliance requirements.* Paragraphs (d)(1) and (d)(2) are conditioned on the Covered Entity being subject to and complying with the following requirements:

(i) FCA CASS 6.2.1R, 7.11.1R, and 7.12.1R;

(ii) FCA COBS 11.7A.3R;

(iii) Either {FCA IFPRU 2.2.7R(2), 2.2.17R through 2.2.28R, 2.2.30R, and

2.2.32R through 2.2.35R and FCA BIPRU 12.3.4R, 12.3.5R, 12.3.7R, 12.3.8R, 12.3.22AR, 12.3.22BR, 12.3.27R, 12.4.–2R, 12.4.–1R, 12.4.5AR, 12.4.10R, and 12.4.11R} or {PRA Internal Capital Adequacy Assessment Rules 4.1 through 4.4, 5.1, 6.1, 7.1, 7.2, 8.1 through 8.5, 9.1, 10.1, 10.2 and 11.1 through 11.3 and PRA Internal Liquidity Adequacy Assessment Rules 3.1, 3.2, 3.3, 4.1, 7.2, 8.1, 9.2, 11.1, 11.2, 11.4, 12.1, 12.3, and 12.4};

(iv) FCA PRIN 2.1.1R(3);

(v) FCA SYSC 4.1.1R(1), 4.1.2R, 4.3A.1R, 4.3A.2R, 4.3A.3R, 4.3A.4R, 7.1.4R, 7.1.17R, 7.1.18R, 7.1.18BR, 7.1.19R, 7.1.20R, 7.1.21R, 7.1.22R, 9.1.1AR, 10.1.3R, 10.1.7R, 10.1.8R, 10A.1.6R, 10A.1.8R, 10A.1.11R, and 24.2.6R(8) and, if the Covered Entity is a UK bank or UK designated investment firm, also PRA Allocation of Responsibilities Rule 4.1(16); PRA General Organisational Requirements Rules 2.1, 2.2, and 5.1 through 5.3; PRA Record Keeping Rule 2.1; PRA Risk Control Rules 2.3, 2.7, and 3.1 through 3.5; and PRA Senior Management Functions Rule 8.2;

(vi) Either {FCA SYSC 19A.2.1R, 19A.3.1R(1), 19A.3.3R, 19A.3.7R through 19A.3.11R, 19A.3.13R, 19A.3.14R, 19A.3.16R, 19A.3.18R, 19A.3.22R, 19A.3.25R, 19A.3.27R, 19A.3.29R, 19A.3.30R, 19A.3.32R, 19A.3.35R, 19A.3.35AR, 19A.3.36R, 19A.3.38R, 19A.3.40R, 19A.3.40AR, 19A.3.44R through 19A.3.44DR, 19A.3.45R, 19A.3.47R, 19A.3.49R, 19A.3.51R, 19A.3.51AR, and 19A.3.52E} or {FCA SYSC 19D.2.1R, 19D.3.1R, 19D.3.3R, 19D.3.7R through 19D.3.12R, 19D.3.15R, 19D.3.17R, 19D.3.19R, 19D.3.23R, 19D.3.25R, 19D.3.27R, 19D.3.29R, 19D.3.31R, 19D.3.32R, 19D.3.34R, 19D.3.35R through 19D.3.39R, 19D.3.42R through 19D.3.45R, 19D.3.48R through 19D.3.52R, 19D.3.54R, 19D.3.56R, 19D.3.59R, 19D.3.61R, 19D.3.62R, 19D.3.63E, and 19D.3.64R and PRA Remuneration Rules 3.1, 4.2, 5.1, 5.3, 6.2, 6.3, 6.4, 7.2, through 7.4, 8.1, 8.2, 9.1, 11.1, 11.6, 12.1, 13.1, 14.1, and 15.2 through 15.23};

(vii) Either {FSMA schedule 6 part 2D and FCA COND 2.4.1A} or {FSMA schedule 6 parts 3C and 5D, FCA COND 2.4.1C, and PRA Fundamental Rules 3 through 6};

(viii) UK CRR articles 286 through 288 and 293;

(ix) UK EMIR Margin RTS article 2; and

(x) UK MiFID Org Reg articles 21 through 37 and 72 through 76 and Annex IV.

(4) *Additional condition to paragraph (d)(1).* Paragraph (d)(1) further is conditioned on the requirement that the Covered Entity complies with the provisions specified in paragraph (d)(3) as if those provisions also require compliance with:

(i) Applicable requirements under the Exchange Act; and

(ii) The other applicable conditions of this Order in connection with requirements for which the Covered Entity is relying on this Order.

(e) Substituted Compliance in Connection With Counterparty Protection Requirements.

This Order extends to the following provisions related to counterparty protection:

(1) *Disclosure of information regarding material risks and characteristics.* The requirements of Exchange Act rule 15Fh–3(b) relating to disclosure of material risks and characteristics of one or more security-based swaps subject thereto, provided that the Covered Entity, in relation to that security-based swap, is subject to and complies with the requirements of:

(i) FCA COBS 2.2A.2R (excluding paragraph (1)(c) thereof), 6.1ZA.11R, 6.1ZA.12R, 6.2B.33R, 9A.3.6R, and 14.3A.3R; and

(ii) Either {UK MiFID Org Reg articles 48 through 50} or {FCA COBS 6.1ZA.9UK, 6.1ZA.14UK, and 14.3A.5UK}.

(2) *Disclosure of information regarding material incentives or conflicts of interest.* The requirements of Exchange Act rule 15Fh–3(b) relating to disclosure of material incentives or conflicts of interest that a Covered Entity may have in connection with one or more security-based swaps subject thereto, provided that the Covered Entity, in relation to that security-based swap, is subject to and complies with the requirements of either:

(i) FCA SYSC 10.1.8R and UK MiFID Org Reg articles 33 to 35;

(ii) FCA COBS 2.3A.5R, 2.3A.6R, 2.3A.7E, and 2.3A.10R through 2.3A.14R; or

(iii) UK MAR article 20(1) and UK MAR Investment Recommendations Regulation articles 5 and 6.

(3) ''*Know your counterparty.*'' The requirements of Exchange Act rule 15Fh–3(e), as applied to one or more security-based swap counterparties subject thereto, provided that the Covered Entity, in relation to the relevant security-based swap counterparty, is subject to and complies with the requirements of:

(i) FCA SYSC 6.1.1R;

(ii) UK MiFID Org Reg articles 21, 22, 25, and 26 and applicable parts of Annex I;

(iii) FCA SYSC 4.1.1R(1);

(iv) Either {FCA IFPRU 2.2.7R(2) and 2.2.32R} or {PRA General Organisational Requirement 2.1 and PRA Internal Capital Adequacy Assessment Rule 10.1};

(v) MLR 2017 Regulations 27 and 28; and

(vi) MLR 2017 Regulations 19(1) through (3), as applied to policies, controls, and procedures regarding customer due diligence.

(4) *Suitability.* The requirements of Exchange Act rule 15Fh–3(f), as applied to one or more recommendations of a security-based swap or trading strategy involving a security-based swap subject thereto, provided that:

(i) The Covered Entity, in relation to the relevant recommendation, is subject to and complies with the requirements of:

(A) FCA COBS 4.2.1R, 9A.2.1R, and 9A.2.16R;

(B) FCA PROD 3.2.1R and 3.3.1R;

(C) FCA SYSC 5.1.5AAR and 5.1.5ABR; and

(D) UK MiFID Org Reg articles 21(1)(b) and (d), 54, and 55; and

(ii) The counterparty to which the Covered Entity makes the recommendation is a ''professional client'' mentioned in FCA COBS 3.5.2R and is not a ''special entity'' as defined in Exchange Act section 15F(h)(2)(C) and Exchange Act rule 15Fh–2(d).

(5) *Fair and balanced communications.* The requirements of Exchange Act rule 15Fh–3(g), as applied to one or more communications subject thereto, provided that the Covered Entity, in relation to the relevant communication, is subject to and complies with the requirements of:

(i) Either {FCA COBS 2.1.1R and FCA COBS 4.2.1R} or {FCA COBS 2.1.1AR and FCA COBS 4.2.1R};

(ii) FCA COBS 2.2A.2R (excluding paragraph (1)(c) thereof), 2.2A.3R, 6.1ZA.11R, 6.1ZA.12R, 6.1ZA.13R, 6.2B.33R, 6.2B.34R, 9A.3.6R, and 14.3A.3R;

(iii) Either {UK MiFID Org Reg articles 46 through 48} or {FCA COBS 4.5A.9UK, 4.7.–1AUK, 6.1ZA.5UK, 6.1ZA.8UK, 6.1ZA.17UK, 6.1ZA.19UK, 6.1ZA.20UK, 8A.1.5UK to 8A.1.7UK, 14.3A.5UK, 14.3A.7UK, and 14.3A.9UK};

(iv) UK MAR Investment Recommendations Regulation articles 3 and 4; and

(v) UK MAR articles 12(1)(c), 15, and 20(1).

(6) *Daily mark disclosure.* The requirements of Exchange Act rule 15Fh–3(c), as applied to one or more security-based swaps subject thereto, provided that the Covered Entity is

required to reconcile, and does reconcile, the portfolio containing the relevant security-based swap on each business day pursuant to UK EMIR articles 11(1)(b) and 11(2) and UK EMIR RTS article 13.

(f) Substituted Compliance in Connection With Recordkeeping, Reporting, Notification, and Securities Count Requirements.

This Order extends to the following provisions that apply to a Covered Entity related to recordkeeping, reporting, notification, and securities counts:

(1)(i) *Make and keep current certain records.* The requirements of the following provisions of Exchange Act rule 18a–5, provided that the Covered Entity complies with the relevant conditions in this paragraph (f)(1)(i) and with the applicable conditions in paragraph (f)(1)(ii):

(A) The requirements of Exchange Act rule 18a–5(a)(1) or (b)(1), as applicable, provided that:

(*1*) The Covered Entity is subject to and complies with the requirements of PRA Recordkeeping Rule 2.1; UK MiFID Org Reg articles 74, 75, and Annex IV; UK MiFIR article 25(1); and FCA SYSC 9.1.1AR; and

(*2*) With respect to the requirements of Exchange Act rule 18a–5(a)(1), the Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order.

(B) The requirements of Exchange Act rule 18a–5(a)(2), provided that:

(*1*) The Covered Entity is subject to and complies with the requirements of PRA Recordkeeping Rule 2.1; FCA SYSC 9.1.1AR; PRA Internal Capital Adequacy Assessment Rule 3.1; FCA CASS 6, 7, 10.1.3R, 10.1.7, and 10.1.9E; UK MiFID Org Reg articles 72, 74, and 75; and UK EMIR article 39(4); and

(*2*) The Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order;

(C) The requirements of Exchange Act rule 18a–5(a)(3) or (b)(2), as applicable, provided that:

(*1*) The Covered Entity is subject to and complies with the requirements of PRA Recordkeeping Rule 2.1; FCA SYSC 9.1.1AR; FCA CASS 6, 7, 10.1.3R, 10.1.7, and 10.1.9E; UK MiFID Org Reg articles 72, 74, and 75; and UK EMIR article 39(4); and

(*2*) With respect to the requirements of Exchange Act rule 18a–5(a)(3), the Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order;

(D) The requirements of Exchange Act rule 18a–5(a)(4) or (b)(3), as applicable, provided that:

(*1*) The Covered Entity is subject to and complies with the requirements of UK CRR article 103; FCA COND at paragraphs 2C, 2D, 3B, 3C, 5D, and 5F; PRA Fundamental Rules 2 and 6; FCA PRIN 2.1.1.R(2) and (3); PRA Recordkeeping Rule 2.1; UK MiFID Org Reg articles 59, 74, 75 and Annex IV; UK MiFIR article 25(1); FCA SYSC 9.1.1AR; FCA COBS 16A.3.1UK; UK EMIR articles 9(2) and 11(1)(a); and

(*2*) With respect to the requirements of Exchange Act rule 18a–5(a)(4), the Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order;

(E) The requirements of Exchange Act rule 18a–5(b)(4) provided that the Covered Entity is subject to and complies with the requirements of FCA COBS 8A.1.9R, 16A.2.1R, 16A.3.1UK; UK MiFID Org Reg article 59; FCA SYSC 9.1.1AR; and UK EMIR articles 9(2) and 11(1)(a);

(F) The requirements of Exchange Act rule 18a–5(a)(5) or (b)(5), as applicable, provided that:

(*1*) The Covered Entity is subject to and complies with the requirements of PRA Recordkeeping Rule 2.1; UK MiFID Org Reg articles 74, 75, and Annex IV; UK MiFIR article 25(1); and FCA SYSC 9.1.1AR; and

(*2*) With respect to the requirements of Exchange Act rule 18a–5(a)(5), the Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order;

(G) The requirements of Exchange Act rules 18a–5(a)(6) and (a)(15) or (b)(6) and (b)(11), as applicable, provided that:

(*1*) The Covered Entity is subject to and complies with the requirements of PRA Fundamental Rules 2 and 6; PRA Recordkeeping Rule 2.1; CRR articles 103, 105(3), and 105(10); UK MiFID Org Reg articles 59, 74, 75, and Annex IV; UK MiFIR article 25(1); FCA SYSC 9.1.1AR; FCA COBS 8A.1.9R, 16A.2.1R, and 16A.3.1UK; UK EMIR articles 9(2), 11(1)(a), and 39(4); and

(*2*) The Covered Entity applies substituted compliance for the requirements of Exchange Act rule 15Fi–2 pursuant to this Order;

(H) The requirements of Exchange Act rule 18a–5(a)(7) or (b)(7), as applicable, provided that:

(*1*) The Covered Entity is subject to and complies with the requirements of UK MiFIR article 25(1); MLR 2017 Regulations 28 through 30; FCA SYSC 9.1.1AR; and PRA Recordkeeping Rule 2.1; and

(*2*) With respect to the requirements of Exchange Act rule 18a–5(a)(7), the Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order;

(I) The requirements of Exchange Act rule 18a–5(a)(8), provided that:

(*1*) The Covered Entity is subject to and complies with the requirements of CRR articles 103, 105(3), and 105(10); PRA Fundamental Rules 2 and 6; PRA Recordkeeping Rule 2.1; UK MiFID Org Reg articles 59, 74, 75, and Annex IV; UK MiFIR article 25(1); FCA SYSC 9.1.1AR; UK EMIR articles 9(2), 11(1)(a), and 39(4); MLR 2017 Regulations 28 through 30; and

(*2*) The Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order.;

(J) The requirements of Exchange Act rule 18a–5(a)(9), provided that:

(*1*) The Covered Entity is subject to and complies with the requirements of PRA Internal Capital Adequacy Assessment Rule 3.1; FCA CASS 6, 7, 10.1.3R, 10.1.7, and 10.1.9E; UK EMIR article 39(4); and UK MiFID Org Reg articles 72, 74, and 75;

(*2*) The Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order; and

(*3*) This Order does not extend to the requirements of Exchange Act rule 18a–5(a)(9) relating to Exchange Act rule 18a–2;

(K) The requirements of Exchange Act rules 18a–5(a)(10) and (b)(8), provided that the Covered Entity is subject to and complies with the requirements of FSMA sections 63F(2), 63F(5), 63(2A), 60A(2); PRA Fitness and Propriety Rules 2.6 and 2.9; SMR Applications and Notifications Rules 2.1, 2.2, and 2.6; PRA Certification Rule 2.1; PRA General Organisational Requirements Rules 5.1 and 5.2; FCA SUP 10C.10.8D, 10C.10.8AD, 10C.15, 10C.10.16R, and 10C Annex 3D; FCA SYSC 4.3A.1R., 4.3A.3R, 10.1.7R, and 27; and UK MiFID Org Reg articles 21(1)(d) and 35;

(L) The requirements of Exchange Act rule 18a–5(a)(12), provided that:

(*1*) The Covered Entity is subject to and complies with the requirements of UK CRR articles 103, 105(3), and

105(10); PRA Internal Capital Adequacy Assessment Rule 3.1; and MiFID Org Reg. articles 72, 74, and 75;

(*2*) The Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rule 18a–3 pursuant to this Order;

(M) The requirements of Exchange Act rules 18a–5(a)(17) and (b)(13), as applicable, regarding one or more provisions of Exchange Act rules 15Fh–3 or 15Fk–1 for which substituted compliance is available under this Order, provided that:

(*1*) The Covered Entity is subject to and complies with the requirements of FCA COND at paragraphs 2C, 2D, 3B, 3C, 5D, and 5F; PRA Fundamental Rules 2 and 6; FCA PRIN 2.1.1.R(2) and (3); PRA Recordkeeping Rule 2.1; FCA SYSC 9.1.1AR; FCA COBS 9A.2.1R, UK MiFID Org Reg articles 72, 73, and Annex I; and UK EMIR article 39(5), in each case with respect to the relevant security-based swap or activity;

(*2*) With respect to the portion of Exchange Act rules 18a–5(a)(17) and (b)(13) that relates to one or more provisions of Exchange Act rule 15Fh–3 for which substituted compliance is available under this Order, the Covered Entity applies substituted compliance for such business conduct standard(s) of Exchange Act rule 15Fh–3 pursuant to this Order, as applicable, with respect to the relevant security-based swap or activity; and

(*3*) With respect to the portion of Exchange Act rules 18a–5(a)(17) and (b)(13) that relates to Exchange Act rule 15Fk–1, the Covered Entity applies substituted compliance for Exchange Act section 15F(k) and Exchange Act rule 15Fk–1 pursuant to this Order;

(N) The requirements of Exchange Act rules 18a–5(a)(18)(i) and (ii) or (b)(14)(i) and (ii), as applicable, provided that:

(*1*) The Covered Entity is subject to and complies with the requirements of UK EMIR article 11(1)(b) and UK EMIR RTS article 15(1)(a); and

(*2*) The Covered Entity applies substituted compliance for Exchange Act rule 15Fi–3 pursuant to this Order; and

(O) The requirements of Exchange Act rule 18a–5(a)(18)(iii) or (b)(14)(iii), as applicable, provided that:

(*1*) The Covered Entity is subject to and complies with the requirements of UK EMIR article 11(1)(b) and UK EMIR RTS article 15(1)(a), in each case with respect to such security-based swap portfolio(s); and

(*2*) The Covered Entity applies substituted compliance for Exchange Act rule 15Fi–4 pursuant to this Order.

(ii) Paragraph (f)(1)(i) is subject to the following further conditions:

(A) Paragraphs (f)(1)(i)(A) through (D) and (H) are subject to the condition that the Covered Entity preserves all of the data elements necessary to create the records required by the applicable Exchange Act rules cited in such paragraphs and upon request furnishes promptly to representatives of the Commission the records required by those rules;

(B) A Covered Entity may apply the substituted compliance determination in paragraph (f)(1)(i)(M) to records of compliance with Exchange Act rule 15Fh–3(b), (c), (e), (f), and (g) in respect of one or more security-based swaps or activities related to security-based swaps; and

(C) This Order does not extend to the requirements of Exchange Act rule 18a–5(a)(13), (a)(14), (a)(16), (b)(9), (b)(10), or (b)(12).

(2)(i) *Preserve certain records.* The requirements of the following provisions of Exchange Act rule 18a–6, provided that the Covered Entity complies with the relevant conditions in this paragraph (f)(2)(i) and with the applicable conditions in paragraph (f)(2)(ii):

(A) The requirements of Exchange Act rule 18a–6(a)(1) or (a)(2), as applicable, provided that the Covered Entity is subject to and complies with the requirements of UK MiFID Org Reg articles 72, 74, 75, and Annex IV; FCA SYSC 9.1.1AR and 9.1.2R; FSMA section 165; PRA Internal Capital Adequacy Assessment Rule 3.1; PRA Fundamental Rules 2 and 6; PRA Recordkeeping Rules 2.1 and 2.2; FCA PRIN 2.1.1.R(2) and (3); FCA CASS 6, 7, 10.1.3R, 10.1.7, and 10.1.9E; UK CRR article 103; FCA COND at paragraphs 2C, 2D, 3B, 3C, 5D, and 5F; UK MiFIR article 25(1); and UK EMIR article 9(2);

(B) The requirements of Exchange Act rule 18a–6(b)(1)(i) or (b)(2)(i), as applicable, provided that the Covered Entity is subject to and complies with the requirements of UK MiFID Org Reg articles 72, 74, 75, and Annex IV; FCA SYSC 9.1.1AR and 9.1.2R; FSMA section 165; PRA Internal Capital Adequacy Assessment Rule 3.1; PRA Fundamental Rules 2 and 6; PRA Recordkeeping Rules 2.1 and 2.2; FCA PRIN 2.1.1.R(2) and (3); FCA CASS 6, 7, 10.1.3R, 10.1.7, and 10.1.9E; UK CRR article 103; FCA COND at paragraphs 2C, 2D, 3B, 3C, 5D, and 5F; UK MiFIR article 25(1); and UK EMIR article 9(2);

(C) The requirements of Exchange Act rules 18a–6(b)(1)(ii) and (iii), provided that:

(*1*) The Covered Entity is subject to and complies with the requirements of PRA Internal Capital Adequacy Assessment Rule 3.1; FCA CASS 6, 7, 10.1.3R, 10.1.7, and 10.1.9E; UK MiFID Org Reg articles 72, 74, and 75; PRA Recordkeeping Rules 2.1 and 2.2; FCA SYSC 9.1.1AR and 9.1.2R; and UK EMIR article 9(2); and

(*2*) The Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order;

(D) The requirements of Exchange Act rule 18a–6(b)(1)(iv) or (b)(2)(ii), as applicable, provided that the Covered Entity is subject to and complies with the requirements of PRA Fundamental Rules 2 and 6; PRA Recordkeeping Rules 2.1 and 2.2; UK CRR article 103; FCA SYSC 9.1.1AR, 9.1.2R, 10A.1.6R, and 10A.1.8R; UK MiFID Org Reg articles 72, 73, 74, 75, 76, Annex I, and Annex IV; UK MiFIR article 25(1); and UK EMIR article 9(2);

(E) The requirements of Exchange Act rule 18a–6(b)(1)(v), provided that:

(*1*) The Covered Entity is subject to and complies with the requirements of UK EMIR article 9(2); UK CRR articles 99, 294, 394, 415, 430, and Part Six: Title II and Title III; UK CRR Reporting ITS article 14 and annexes I–V and VIII–XIII; PRA Recordkeeping Rules 2.1 and 2.2; FCA SYSC 9.1.1AR and 9.1.2R; and UK MiFID Org Reg article 72(1);

(*2*) With respect to the requirements of Exchange Act rule 18a–6(b)(1)(v), the Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant this Order; and

(*3*) This Order does not extend to the requirements of Exchange Act rule 18a–6(b)(1)(v) relating to Exchange Act rule 18a–2;

(F) The requirements of Exchange Act rule 18a–6(b)(1)(vi) or (b)(2)(iii), as applicable, provided that:

(*1*) The Covered Entity is subject to and complies with the requirements of PRA Recordkeeping Rules 2.1 and 2.2; FCA SYSC 9.1.1AR and 9.1.2R; UK MiFID Org Reg articles 72(1) and 73; and UK EMIR article 9(2); and

(*2*) With respect to the requirements of Exchange Act rule 18a–6(b)(1)(vi), the Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order;

(G) The requirements of Exchange Act rule 18a–6(b)(1)(vii) or (b)(2)(iv), as applicable, provided that:

(*1*) The Covered Entity is subject to and complies with the requirements of PRA Recordkeeping Rules 2.1 and 2.2; FCA SYSC 9.1.1AR and 9.1.2R; UK

MiFID Org Reg articles 72(1) and 73; UK MiFIR article 25(1); and UK EMIR article 9(2); and

(*2*) With respect to the requirements of Exchange Act rule 18a–6(b)(1)(vii), the Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order;

(H) The requirements of Exchange Act rule 18a–6(b)(1)(viii), provided that:

(*1*) The Covered Entity is subject to and complies with the requirements of UK CRR articles 99, 294, 394, 415, 430, and Part Six: Title II and Title III; UK CRR Reporting ITS article 14 and annexes I–V and VIII–XIII, as applicable; PRA Recordkeeping Rules 2.1 and 2.2; FCA SYSC 9.1.1AR and 9.1.2R; and UK MiFID Org Reg article 72(1);

(*2*) The Covered Entity applies substituted compliance for the requirements of Exchange Act rule 18a–7(a)(1), (b), (c) through (h), and Exchange Act rule 18a–7(j) as applied to these requirements pursuant to this Order;

(*3*) With respect to the requirements of Exchange Act rule 18a–6(b)(1)(viii), the Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order;

(*4*) This Order does not extend to the requirements of Exchange Act rule 18a–6(b)(1)(viii)(L); and

(*5*) This Order does not extend to the requirements of Exchange Act rule 18a–6(b)(1)(viii)(M) relating to Exchange Act rule 18a–2.

(I) The requirements of Exchange Act rule 18a–6(b)(1)(ix), provided that:

(*1*) The Covered Entity is subject to and complies with the requirements of FCA SYSC 4.1.1R(1), 6.1.1R, 7.1.4R, 9.1.1AR, 9.1.2R, and 10.1.7R; FCA COBS 2.3A.32R; UK MiFID Org Reg articles 22(3)(c), 23, 24, 25(2), 26, 29(2)(c), 35, and 72(1); PRA Risk Control Rule 2.3; PRA Internal Capital Adequacy Assessment Rules 3 through 11; UK CRR articles 176, 286, and 293(1)(d); UK EMIR RTS; PRA Recordkeeping Rule 2.1 and 2.2; and UK EMIR article 9(2); and

(*2*) The Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order;

(J) The requirements of Exchange Act rule 18a–6(b)(1)(x), provided that:

(*1*) The Covered Entity is subject to and complies with the requirements of PRA Internal Capital Adequacy Assessment Rules 3.1 and 13.2; PRA Recordkeeping Rules 2.1 and 2.2; FCA SYSC 9.1.1AR and 9.1.2R; UK MiFID Org Reg article 72(1); and UK EMIR article 9(2); and

(*2*) The Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order;

(K) The requirements of Exchange Act rule 18a–6(b)(1)(xii) or (b)(2)(vii), as applicable, regarding one or more provisions of Exchange Act rules 15Fh–3 or 15Fk–1 for which substituted compliance is available under this Order, provided that:

(*1*) The Covered Entity is subject to and complies with the requirements of MLR 2017 Regulations 27 through 30; PRA Recordkeeping Rule 2.1 and 2.2; FCA SYSC 9.1.1AR and 9.1.2R; UK MiFID Org Reg article 72(1); and UK EMIR article 9(2), in each case with respect to the relevant security-based swap or activity;

(*2*) With respect to the portion of Exchange Act rule 18a–6(b)(1)(xii) or (b)(2)(vii) that relates to one or more provisions of Exchange Act rule 15Fh–3 for which substituted compliance is available under this Order, the Covered Entity applies substituted compliance for such business conduct standard(s) of Exchange Act rule 15Fh–3 pursuant to this Order, as applicable, with respect to the relevant security-based swap or activity; and

(*3*) With respect to the portion of Exchange Act rule 18a–6(b)(1)(xii) or (b)(2)(vii), as applicable, that relates to Exchange Act rule 15Fk–1, the Covered Entity applies substituted compliance for Exchange Act section 15F(k) and Exchange Act rule 15Fk–1 pursuant to this Order;

(L) The requirements of Exchange Act rule 18a–6(c), provided that:

(*1*) The Covered Entity is subject to and complies with the requirements of PRA Recordkeeping Rules 2.1 and 2.2; FCA SYSC 9.1.1AR and 9.1.2R; and UK MiFID Org Reg articles 21(1)(f) and 72(1); and

(*2*) This Order does not extend to the requirements of Exchange act rule 18a–6(c) relating to Forms SBSE, SBSE–A, SBSE–C, SBSE–W, all amendments to these forms, and all other licenses or other documentation showing the registration of the Covered Entity with any securities regulatory authority or the U.S. Commodity Futures Trading Commission;

(M) The requirements of Exchange Act rule 18a–6(d)(1), provided that the Covered Entity is subject to and complies with the requirements of FSMA sections 63(2A) and 63F(5); FCA SYSC 9.1.1AR and 9.1.2R; UK MiFID Org Reg articles 35 and 72(1); and PRA Recordkeeping Rules 2.1 and 2.2;

(N) The requirements of Exchange Act rule 18a–6(d)(2), provided that:

(*1*) The Covered Entity is subject to and complies with the requirements of PRA Recordkeeping Rules 2.1 and 2.2; FCA SYSC 9.1.1AR and 9.1.2R; UK MiFID Org Reg articles 72(1) and 72(3); and UK EMIR article 9(2); and

(*2*) With respect to the requirements of Exchange Act rule 18a–6(d)(2)(i), the Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order;

(O) The requirements of Exchange Act rule 18a–6(d)(3), provided that:

(*1*) The Covered Entity is subject to and complies with the requirements of FCA COND at paragraphs 2C, 2D, 3B, 3C, 5D, and 5F; PRA Fundamental Rules 2 and 6; FCA PRIN 2.1.1.R(2) and (3); FCA SYSC 6.1.1R, 9.1.1AR, 9.1.2R, 10A.1.6R; PRA Recordkeeping Rules 2.1 and 2.2; UK MiFID Org Reg articles 21(1)(f), 72, and Annex I; and

(*2*) With respect to the requirements of Exchange Act rule 18a–6(d)(3)(i), the Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order;

(P) The requirements of Exchange Act rules 18a–6(d)(4) and (d)(5), provided that:

(*1*) The Covered Entity is subject to and complies with the requirements of FCA COBS 8A.1.9R; PRA Recordkeeping Rules 2.1 and 2.2; FCA SYSC 4.1.1R(1), 6.1.1, 9.1.1AR, and 9.1.2R; UK MiFID Org Reg articles 24, 25(2), 72(1), and 73; and UK EMIR article 9(2); and

(*2*) The Covered Entity applies substituted compliance for Exchange Act rules 15Fi–3, 15Fi–4, and 15Fi–5 pursuant to this Order;

(Q) The requirements of Exchange Act rule 18a–6(e), provided that the Covered Entity is subject to and complies with the requirements of PRA Recordkeeping Rule 2.1; FCA SYSC 4.1.1R, 9.1.1AR, and 9.1.2R; and UK MiFID Org Reg articles 21(2), 58, 72(1), and 72(3); and

(R) The requirements of Exchange Act rule 18a–6(f), provided that the Covered Entity is subject to and complies with the requirements of PRA Outsourcing Rule 2.1; FCA SYSC 8.1.1R; and UK MiFID Org Reg articles 31(1).

(ii) Paragraph (f)(2)(i) is subject to the following further conditions:

(A) A Covered Entity may apply the substituted compliance determination in paragraph (f)(2)(i)(K) to records related to Exchange Act rule 15Fh–3(b),

(c), (e), (f), and (g) in respect of one or more security-based swaps or activities related to security-based swaps; and

(B) This Order does not extend to the requirements of Exchange Act rule 18a–6(b)(1)(xi), (b)(1)(xiii), (b)(2)(v), (b)(2)(vi), or (b)(2)(viii).

(3) *File Reports.* The requirements of the following provisions of Exchange Act rule 18a–7, provided that the Covered Entity complies with the relevant conditions in this paragraph (f)(3):

(i) The requirements of Exchange Act rule 18a–7(a)(1) or (a)(2), as applicable, and the requirements of Exchange Act rule 18a–7(j) as applied to the requirements of Exchange Act rule 18a–7(a)(1) or (a)(2), as applicable, provided that:

(A) The Covered Entity is subject to and complies with the requirements of PRA Definition of Capital Rule 4.5; UK CRR articles 99, 394, 430, and Part Six: Title II and Title III; and UK CRR Reporting ITS annexes I, II, III, IV, V, VIII, IX, X, XI, XII, and XIII, as applicable;

(B) The Covered Entity files periodic unaudited financial and operational information with the Commission or its designee in the manner and format required by Commission rule or order and presents the financial information in the filing in accordance with generally accepted accounting principles that the Covered Entity uses to prepare general purpose publicly available or available to be issued financial statements in the UK.;

(C) With respect to the requirements of Exchange Act rule 18a–7(a)(1), the Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order; and

(D) With respect to the requirements of Exchange Act rule 18a–7(a)(1), the Covered Entity applies substituted compliance for the requirements of Exchange Act rule 18a–6(b)(1)(viii) pursuant to this Order;

(ii) The requirements of Exchange Act rule 18a–7(a)(3) and the requirements of Exchange Act rule 18a–7(j) as applied to the requirements of paragraph (a)(3) of Exchange Act rule 18a–7, provided that:

(A) The Covered Entity is subject to and complies with the requirements of UK CRR articles 99, 394, 431, 433, 452, 454, and 455; UK CRR Reporting ITS annexes I, II, VIII, and IX, as applicable; PRA Definition of Capital Rule 4.5; and Companies Act sections 394, 415, 442, and 475; and

(B) The Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order;

(iii) The requirements of Exchange Act rule 18a–7(b), provided that:

(A) the Covered Entity is subject to and complies with the requirements of UK CRR articles 431 through 455; and Companies Act sections 394, 415, 442, and 475; and

(B) the Covered Entity applies substituted compliance for the requirements of Exchange Act rule 18a–6(b)(1)(viii) pursuant to this Order;

(iv) The requirements of Exchange Act rule 18a–7(c), (d), (e), (f), (g), and (h) and the requirements of Exchange Act rule 18a–7(j) as applied to the requirements of paragraphs (c), (d), (e), (f), (g), and (h) of Exchange Act rule 18a–7, provided that:

(A) The Covered Entity is subject to and complies with the requirements of FCA CASS 6.2.2R, 6.6.2R, 6.6.3R, 6.6.33G, 6.6.34R, 7.12.2R, 7.15.2R, 7.15.3R, 7.15.20R, and 7.15.21R; FCA SUP 3.8.5R, 3.10.4R through 3.10.7R; UK CRR articles 26(2), 132(5), 154, 191, 321, 325bi, 350, 353, 368, 418; Companies Act section 475; and the Capital Requirements (Country-by-Country Reporting) Regulations 2013 Regulation 2(4);

(B) With respect to financial statements the Covered Entity is required to file annually with the UK PRA or FCA, including a report of an independent public accountant covering the financial statements, the Covered Entity:

(*1*) Simultaneously sends a copy of such annual financial statements and the report of the independent public accountant covering the annual financial statements to the Commission in the manner specified on the Commission's website;

(*2*) Includes with the transmission the contact information of an individual who can provide further information about the financial statements and report;

(*3*) Includes with the transmission the report of an independent public accountant required by Exchange Act rule 18a–7(c)(1)(i)(C) covering the annual financial statements if UK laws do not require the Covered Entity to engage an independent public accountant to prepare a report covering the annual financial statements; provided, however, that such report of the independent public accountant may be prepared in accordance with generally accepted auditing standards in UK that the independent public accountant uses to perform audit and attestation services and the accountant complies with UK independence requirements;

(*4*) Includes with the transmission the reports required by Exchange Act rules 18a–7(c)(1)(i)(B) and (C) addressing the statements identified in Exchange Act rule 18a–7(c)(3) or (c)(4), as applicable, that relate to Exchange Act rule 18a–4; provided, however, that the report of the independent public accountant required by Exchange Act rule 18a–7(c)(1)(i)(C) may be prepared in accordance with generally accepted auditing standards in the UK that the independent public accountant uses to perform audit and attestation services and the accountant complies with UK independence requirements;

(*5*) Includes with the transmission the supporting schedules and reconciliations, as applicable, required by Exchange Act rules 18a–7(c)(2)(ii) and (iii), respectively, relating to Exchange Act rule 18a–2; and

(*6*) Includes with the transmission the supporting schedules and reconciliations, as applicable, required by Exchange Act rules 18a–7(c)(2)(ii) and (iii), respectively, relating to Exchange Act rules 18a–4 and 18a–4a;

(C) The Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order; and

(D) The Covered Entity applies substituted compliance for the requirements of Exchange Act rule 18a–6(b)(1)(viii) pursuant to this Order.

(v) The requirements of Exchange Act rule 18a–7(i), provided that:

(A) The Covered Entity is subject to and complies with the requirements of FCA SUP 16.3.17R and PRA Regulatory Reporting Rule 18; and

(B) The Covered Entity:

(*1*) Simultaneously sends a copy of any notice required to be sent by UK law cited in paragraph (f)(3)(v)(A) of the Order to the Commission in the manner specified on the Commission's website; and

(*2*) Includes with the transmission the contact information of an individual who can provide further information about the matter that is the subject of the notice.

(4)(i) *Provide Notification.* The requirements of the following provisions of Exchange Act rule 18a–8, provided that the Covered Entity complies with the relevant conditions in this paragraph (f)(4)(i) and with the applicable conditions in paragraph (f)(4)(ii):

(A) The requirements of paragraphs (a)(1)(i), (a)(1)(ii), (b)(1), (b)(2), and (b)(4) of Exchange Act rule 18a–8 and the requirements of Exchange Act rule 18a–8(h) as applied to the requirements of

paragraphs (a)(1)(i), (a)(1)(ii), (b)(1), (b)(2), and (b)(4) of Exchange Act rule 18a–8, provided that:

(*1*) The Covered Entity is subject to and complies with the requirements of FCA PRIN 2.1.1R (Principle 11); PRA Fundamental Rule 7; FCA SUP 15.3.1R, 15.3.11R, 15.3.15R, 15.3.17R, and 15.3.21R; PRA Notifications Rules 2.1, 2.4, 2.5, 2.6, 2.8, and 2.9; FCA SYSC 18.6.1R; PRA General Organisational Requirements 2A.2, 2A.1(2) and 2A.3 to 2A.6; and CRR article 366(5); and

(*2*) The Covered Entity applies substituted compliance with respect to the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order;

(B) The requirements of Exchange Act rule 18a–8(c) and the requirements of Exchange Act rule 18a–8(h) as applied to Exchange Act rule 18a–8(c), provided that the Covered Entity is subject to and complies with the requirements of FCA PRIN 2.1.1R (Principle 11); PRA Fundamental Rule 7; FCA SUP 15.3.1R, 15.3.11R, 15.3.15R, 15.3.17R, and 15.3.21R; FCA CASS 6.6.57R and 7.15.33R; PRA Notifications Rules 2.1, 2.4, 2.5, 2.6, 2.8, and 2.9; FCA SYSC 18.6.1R; and PRA General Organisational Requirements 2A.2, 2A.1(2), and 2A.3 to 2A.6;

(C) The requirements of Exchange Act rule 18a–8(d) and the requirements of Exchange Act rule 18a–8(h) as applied to the requirements of Exchange Act rule 18a–8(d), provided that:

(*1*) The Covered Entity is subject to and complies with the requirements of FCA PRIN 2.1.1R (Principle 11); PRA Fundamental Rule 7; FCA SUP 15.3.1R, 15.3.11R, 15.3.15R, 15.3.17R, and 15.3.21R; FCA CASS 6.6.57R and 7.15.33R; PRA Notifications Rules 2.1, 2.4, 2.5, 2.6, 2.8, and 2.9; FCA SYSC 18.6.1R; and PRA General Organisational Requirements 2A.2, 2A.1(2), and 2A.3 through 2A.6; and

(*2*) This Order does not extend to the requirements of Exchange Act rule 18a–8(d) to give notice with respect to books and records required by Exchange Act rule 18a–5 for which the Covered Entity does not apply substituted compliance pursuant to this Order;

(D) The requirements of Exchange Act rule 18a–8(e) and the requirements of Exchange Act rule 18a–8(h) as applied to the requirements of Exchange Act rule 18a–8(e), provided that:

(*1*) The Covered Entity is subject to and complies with the requirements of FCA PRIN 2.1.1R (Principle 11); PRA Fundamental Rule 7; FCA SUP 15.3.1R, 15.3.11R, 15.3.15R, 15.3.17R, and 15.3.21R; FCA CASS 6.6.57R and 7.15.33R; PRA Notifications Rules 2.1, 2.4, 2.5, 2.6, 2.8, and 2.9; FCA SYSC 18.6.1R; and PRA General Organisational Requirements 2A.2, 2A.1(2), and 2A.3 through 2A.6;

(*2*) The Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order;

(*3*) This Order does not extend to the requirements of Exchange act rule 18a–8(e) relating to Exchange Act rule 18a–2 or to the requirements of Exchange Act rule 18a–8(h) as applied to the requirements Exchange Act rule 18a–8(e) relating to Exchange Act rule 18a–2; and

(*4*) This Order does not extend to the requirements of Exchange act rule 18a–8(e) relating to Exchange Act rule 18a–4 or to the requirements of Exchange Act rule 18a–8(h) as applied to the requirements of Exchange Act rule 18a–8(e) relating to Exchange Act rule 18a–4;

(ii) Paragraph (f)(4)(i) is subject to the following further conditions:

(A) The Covered Entity:

(*1*) Simultaneously sends a copy of any notice required to be sent by UK law cited in this paragraph of the Order to the Commission in the manner specified on the Commission's website; and

(*2*) Includes with the transmission the contact information of an individual who can provide further information about the matter that is the subject of the notice.

(B) This Order does not extend to the requirements of paragraphs (a)(2) and (b)(3) of Exchange Act rule 18a–8 relating to Exchange Act rule 18a–2 or to the requirements of Exchange Act rule 18a–8(h) as applied to the requirements of paragraphs (a)(2) and (b)(3) of Exchange Act rule 18a–8 relating to Exchange Act rule 18a–2; and

(C) This Order does not extend to the requirements of paragraph (g) of Exchange Act rule 18a–8 or to the requirements of Exchange Act rule 18a–8(h) as applied to the requirements of paragraph (g) of Exchange Act rule 18a–8.

(5) *Securities Counts.* The requirements of Exchange Act rule 18a–9, provided that:

(*1*) The Covered Entity is subject to and complies with the requirements of FCA CASS 6.2.1R, 6.2.2R, 6.3.4A–1R, 6.3.6AR, 6.6.2R, 6.6.3R, 6.6.34R, 6.6.4R, 6.6.8R, 10.1.3R, 10.1.7R, and 10.1.9E; FCA SUP 3.10.4R through 3.10.7R; UK MiFID Org Reg articles 74 and 75; UK EMIR article 11(1)(b); and UK EMIR RTS articles 12 and 13; and

(*2*) The Covered Entity applies substituted compliance for the requirements of Exchange Act section 15F(e) and Exchange Act rules 18a–1 through 18a–1d pursuant to this Order.

(6) *Daily Trading Records.* The requirements of Exchange Act section 15F(g), provided that the Covered Entity is subject to and complies with the requirements of PRA Fundamental Rules 2 and 6; FCA PRIN 2.1.1.R(2) and (3); PRA Recordkeeping Rule 2.1; FCA SYSC 9.1.1AR; and MiFID Org Reg article 21(1)(f), 21(4), and 72(1).

(7) *Examination and Production of Records.* Notwithstanding the forgoing provisions of paragraph (f) of this Order, this Order does not extend to, and Covered Entities remain subject to, the requirement of Exchange Act section 15F(f) to keep books and records open to inspection by any representative of the Commission and the requirement of Exchange Act rule 18a–6(g) to furnish promptly to a representative of the Commission legible, true, complete, and current copies of those records of the Covered Entity that are required to be preserved under Exchange Act rule 18a–6, or any other records of the Covered Entity that are subject to examination or required to be made or maintained pursuant to Exchange Act section 15F that are requested by a representative of the Commission.

(8) *English Translations.* Notwithstanding the forgoing provisions of paragraph (f) of this Order, to the extent documents are not prepared in the English language, Covered Entities must promptly furnish to a representative of the Commission upon request an English translation of any record, report, or notification of the Covered Entity that is required to be made, preserved, filed, or subject to examination pursuant to Exchange Act section 15F of this Order.

(g) Definitions

(1) ''Covered Entity'' means an entity that:

(i) Is a security-based swap dealer or major security-based swap participant registered with the Commission;

(ii) Is not a ''U.S. person,'' as that term is defined in rule 3a71–3(a)(4) under the Exchange Act;

(iii) Is a ''MiFID investment firm'' or ''third country investment firm,'' as such terms are defined in the FCA Handbook Glossary, that has permission from the FCA or PRA under Part 4A of FSMA to carry on regulated activities relating to investment services and activities in the United Kingdom; and

(iv) Is supervised by the FCA under the fixed supervision model and, if the firm is a PRA-authorized person, also supervised by the PRA as a Category 1 firm.

(2) ''Capital Requirements Regulations 2013'' means the UK Capital Requirements Regulations 2013, as amended from time to time.

(3) ''Companies Act'' means the UK Companies Act 2006, as amended from time to time.

(4) ''FCA'' means the UK's Financial Conduct Authority.

(5) ''FCA BIPRU'' means the Prudential Sourcebook for Banks, Building Societies and Investment Firms of the FCA Handbook, as amended from time to time.

(6) ''FCA CASS'' means the Client Asset Sourcebook of the FCA Handbook, as amended from time to time.

(7) ''FCA COBS'' means the Conduct of Business Sourcebook of the FCA Handbook, as amended from time to time.

(8) ''FCA COND'' means the Threshold Conditions of the FCA Handbook, as amended from time to time.

(9) ''FCA Enforcement Guide'' means the Enforcement Guide of the FCA Handbook, as amended from time to time.

(10) ''FCA FCG'' means the Financial Crime Guide of the FCA Handbook, as amended from time to time.

(11) ''FCA FIT'' means the Fit and Proper Test for Employees and Senior Personnel Sourcebook of the FCA Handbook, as amended from time to time.

(12) ''FCA Handbook'' means the FCA's Handbook of rules and guidance, as amended from time to time.

(13) ''FCA Handbook Glossary'' means the Glossary part of the FCA's Handbook of rules and guidance, as amended from time to time.

(14) ''FCA IFPRU'' means the Prudential Sourcebook for Investment Firms of the FCA Handbook, as amended from time to time.

(15) ''FCA PRIN'' means the Principles for Businesses Sourcebook of the FCA Handbook, as amended from time to time.

(16) ''FCA PROD'' means the Product Intervention and Product Governance Sourcebook of the FCA Handbook, as amended from time to time.

(17) ''FCA SUP'' means the Supervision Sourcebook of the FCA Handbook, as amended from time to time.

(18) ''FCA SYSC'' means the Senior Management Arrangements, Systems and Controls Sourcebook of the FCA Handbook, as amended from time to time.

(19) ''FSMA'' means the UK's Financial Services and Markets Act 2000, as amended from time to time.

(20) ''ICVC'' means investment company with variable capital as defined in the FCA Handbook Glossary.

(21) ''MLR 2017'' means the UK's Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, as amended from time to time.

(22) ''PRA'' means the UK's Prudential Regulation Authority.

(23) ''PRA Capital Buffer Rules'' means the Capital Buffer Part of the PRA Rulebook for CRR Firms, as amended from time to time.

(24) ''PRA Certification Rules'' means the Certification Part of the PRA Rulebook for CRR Firms, as amended from time to time.

(25) ''PRA Definition of Capital Rules'' means the Definition of Capital Part of the PRA Rulebook for CRR Firms, as amended from time to time.

(26) ''PRA Fitness and Proprietary Rules'' means the Fitness and Propriety Part of the PRA Rulebook for CRR Firms, as amended from time to time.

(27) ''PRA Fundamental Rules'' means the Fundamental Rules Part of the PRA Rulebook for CRR Firms, as amended from time to time.

(28) ''PRA General Organisational Requirements'' means the General Organisational Requirements Part of the PRA Rulebook for CRR Firms, as amended from time to time.

(29) ''PRA Internal Capital Adequacy Assessment Rules'' means the Internal Capital Adequacy Assessment Part of the PRA Rulebook for CRR Firms, as amended from time to time.

(30) ''PRA Internal Liquidity Adequacy Assessment Rules'' means the Internal Liquidity Adequacy Assessment Part of the PRA Rulebook for CRR Firms, as amended from time to time.

(31) ''PRA Liquidity Coverage Requirement—UK Designated Investment Firms Rules'' means the PRA Liquidity Coverage Requirement—UK Designated Investment Firms Part of the PRA Rulebook for CRR Firms, as amended from time to time.

(32) ''PRA Notifications Rules'' means the Notifications Part of the PRA Rulebook for CRR Firms, as amended from time to time.

(33) ''PRA Outsourcing Rules'' means the Outsourcing Part of the PRA Rulebook for CRR Firms, as amended from time to time.

(34) ''PRA Recordkeeping Rules'' means the Recordkeeping Part of the PRA Rulebook for CRR Firms, as amended from time to time.

(35) ''PRA Regulatory Reporting Rules'' means the Regulatory Reporting Part of the PRA Rulebook for CRR Firms, as amended from time to time.

(36) ''PRA Remuneration Rules'' means the Remuneration Part of the PRA Rulebook for CRR Firms, as amended from time to time.

(37) ''PRA Risk Control Rules'' means the Risk Control Part of the PRA Rulebook for CRR Firms, as amended from time to time.

(38) ''PRA Rulebook'' or ''PRA Rulebook for CRR Firms'' means the PRA's Rulebook for Capital Requirement Regulation Firms, as amended from time to time.

(39) ''PRA Rulebook Glossary'' means the Glossary part of the PRA Rulebook for CRR Firms, as amended from time to time.

(40) ''PRA Senior Management Functions Rules'' means the Senior Management Functions Part of the PRA Rulebook for CRR Firms, as amended from time to time.

(41) ''Prudentially regulated'' means a Covered Entity that has a ''prudential regulator'' as that term is defined in Exchange Act section 3(a)(74).

(42) ''SMR'' means the Senior Managers Regime that forms part of the Senior Managers and Certification Regime, as amended from time to time.

(43) ''UK'' means the United Kingdom.

(44) ''UK CRR'' means the UK version of Regulation (EU) No 575/2013, as amended from time to time.

(45) ''UK CRR Reporting ITS'' means the UK version of Commission Implementing Regulation (EU) 680/2014.

(46) ''UK EMIR'' means the UK version of the ''European Market Infrastructure Regulation,'' Regulation (EU) No 648/2012, as amended from time to time.

(47) ''UK EMIR Margin RTS'' means the UK version of Commission Delegated Regulation (EU) 2016/2251, as amended from time to time.

(48) ''UK EMIR RTS'' means UK version of Commission Delegated Regulation (EU) No 149/2013, as amended from time to time.

(49) ''UK MAR'' means the UK version of Market Abuse Regulation (EU) 596/2014, as amended from time to time.

(50) ''UK MAR Investment Recommendations Regulation'' means the UK version of Commission Delegated Regulation (EU) 2016/958, as amended from time to time.

(51) ''UK MiFID Org Reg'' means the UK version of Commission Delegated Regulation (EU) 2017/565, as amended from time to time.

(52) ''UK MiFIR'' means the UK version of the ''Markets in Financial Instruments Regulation,'' Regulation (EU) 600/2014, as amended from time to time.

(53) ''UK Regulated Activities Order'' means the Financial Services and Markets Act 2000 (Regulated Activities) Order (SI 2001/544), as amended from time to time.

By the Commission.

Vanessa A. Countryman,

Secretary.

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