

5. The question of whether the weather is getting worse is a red herring. The much more relevant question is whether current system operations and tariff and market design are adequate to maintain reliability. The present high risk of reliability failures proves that they are not. That the policies of the Commission and other government bodies are undermining reliability is far more obvious than the question of whether, and how, the weather is getting worse and what specific effects that worsening weather might have on the stability of the electric system. That question of the weather's effect on reliability is a subject that doubtless merits study and planning, but misguided government policies are the root cause of the alarming reliability issues facing the nation, not the weather.

For these reasons, I respectfully concur.

James P. Danly,  
Commissioner.

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## DEPARTMENT OF COMMERCE

### International Trade Administration

#### 19 CFR Part 362

[Docket No. 220629-0144]

RIN 0625-AB21

#### Procedures Covering Suspension of Liquidation, Duties and Estimated Duties in Accord With Presidential Proclamation 10414

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** On June 6, 2022, the President signed Presidential Proclamation 10414 (Proclamation). The Proclamation declares an emergency to exist and states that immediate action is needed to ensure access to a sufficient supply of solar cells and modules to assist in meeting the United States' electricity generation needs. Accordingly, the Proclamation authorizes the Secretary of Commerce (Secretary) to exercise authority under section 318(a) of the Tariff Act of 1930, as amended (the Act), to extend during the course of such emergency the time to perform any act. The Proclamation also authorizes the Secretary to allow the importation of certain solar cells and modules from

certain Southeast Asian countries free of the collection of duties and estimated duties under the antidumping and countervailing duty laws until 24 months after the date of the Proclamation, or until the emergency is declared terminated, whichever occurs first. In accordance with the Proclamation and the authority granted to the Department of Commerce (Commerce), Commerce is issuing a proposed rule to postpone and waive the application of certain regulations, if otherwise applicable, to solar cells and modules, exported from the identified Southeast Asian countries, that are subject to certain circumvention inquiries currently before Commerce. This proposed rule would provide that, in the event of an affirmative preliminary or final determination in the circumvention inquiries, Commerce would not instruct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of these cells and modules, collect cash deposits on those entries, or apply antidumping or countervailing duties to those entries, so long as the entries of the cells or modules were entered, or withdrawn from warehouse, for consumption before June 6, 2024 or before the date the emergency has terminated, whichever occurs first (in either case, the Date of Termination).

**DATES:** Written comments must be received by August 1, 2022.

**ADDRESSES:** Submit comments through the Federal eRulemaking Portal at <http://www.Regulations.gov>, Docket No. ITA-2022-0006. Comments may also be submitted by mail or hand delivery/courier, addressed to Lisa W. Wang, Assistant Secretary for Enforcement and Compliance, Room 1870, Department of Commerce, 1401 Constitution Ave. NW, Washington, DC 20230.

Commerce will consider all comments received before the close of the comment period. All comments responding to this document will be a matter of public record and will generally be available on the Federal eRulemaking Portal at <http://www.Regulations.gov>. Commerce will not accept comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. Therefore, do not submit confidential business information or otherwise sensitive or protected information.

Any questions concerning the process for submitting comments should be submitted to Enforcement & Compliance (E&C) Communications office at (202) 482-0063 or [ECCOMMS@trade.gov](mailto:ECCOMMS@trade.gov).

**FOR FURTHER INFORMATION CONTACT:** Dana Moreland, Enforcement & Compliance (E&C) Communications office at (202) 482-0063 or [ECCOMMS@trade.gov](mailto:ECCOMMS@trade.gov).

#### SUPPLEMENTARY INFORMATION:

##### Presidential Proclamation 10414

On June 6, 2022, President Joseph R. Biden signed Proclamation 10414, "Declaration of Emergency and Authorization for Temporary Extensions of Time and Duty-Free Importation of Solar Cells and Modules from Southeast Asia" (87 FR 35067) (the Proclamation). As part of the Proclamation, the President declared an emergency to exist for purposes of section 318(a) of the Act (19 U.S.C. 1318(a)) and made that section's authority available to the Secretary according to the section's terms. The Proclamation directs the Secretary to "consider taking appropriate action under section 1318(a) of title 19, United States Code, to permit, until 24 months after the date of this proclamation or until the emergency declared herein has terminated, whichever occurs first, under such regulations and under such conditions as the Secretary may prescribe, the importation, free of the collection of duties and estimated duties, if applicable, under sections" 701, 731, 751 and 781 of the Act (19 U.S.C. 1671, 1673, 1675, 1677j) with respect to certain solar cells and modules exported from the Kingdom of Cambodia (Cambodia), Malaysia, the Kingdom of Thailand (Thailand), and the Socialist Republic of Vietnam (Vietnam), and that are not already subject to an antidumping or countervailing duty order as of the date of the Proclamation. Further, the Proclamation directs the Secretary to consider taking action to "temporarily extend during the course of the emergency the time therein prescribed for the performance of any act related to such imports."<sup>1</sup>

As the Proclamation states, electricity is an essential part of modern life that powers homes, business, and industry. It is critical to the function of hospitals, schools, public transportation, and the

<sup>1</sup> Section 318(a) of the Act (19 U.S.C. 1318(a)) gives the Secretary of the Treasury authority, on a temporary basis, to take certain actions to respond immediately where the President declares the existence of an emergency. This authority, insofar as it encompasses antidumping and countervailing duties, was delegated to the Secretary of Commerce in 1979, to be exercised in consultation with the Secretary of Treasury. Section 5(a)(1)(e) of the Reorg. Plan No. 3 of 1979. Consistent with the Reorganization Plan, we have consulted with the Department of Treasury. Consistent with the Proclamation, we have consulted with the Department of Homeland Security.

defense industrial base. It is key to the country's infrastructure, as well as to national security and defense. A robust and reliable electric power system is therefore a basic human necessity—vital to the function and sustainability of major sectors of the economy.

Currently, the United States is faced with threats to its ability to generate sufficient electricity, including energy market disruptions caused by Russia's invasion of Ukraine and extreme weather events exacerbated by climate change. For example, in parts of the country, drought conditions coupled with heatwaves are simultaneously causing projected electricity supply shortfalls and record electricity demand. Utilities and grid operators must engage in planning at this time to build adequate capacity to address expected demand, including in the face of these threats and others.

Solar energy is among the fastest-growing sources of new electric generation in the United States and is increasingly relied upon by utilities and grid operators to ensure sufficient resources and maintain reliable service. In fact, additions of solar capacity and batteries were expected to account for over half of new electric sector capacity in 2022 and 2023.

The Proclamation states that “[i]n recent years, the vast majority of solar modules installed in the United States were imported, with those from Southeast Asia making up approximately three-quarters of imported modules in 2020.” Against this backdrop, the Proclamation states that U.S. entities have been unable to import solar modules recently in sufficient quantities to achieve energy goals. Across the country, solar projects are being postponed or canceled, and an insufficient supply of solar modules jeopardizes planned capacity additions, which in turn threatens the availability of sufficient electricity generation to meet customer demands.

Moreover, electricity produced using solar energy is critical to reducing the United States' dependence on electricity generated through burning fossil fuels, which drives climate change, a recognized threat to the United States' national security. If U.S. entities cannot import sufficient quantities of solar materials for the foreseeable future, the United States will be unable to ensure sufficient electricity grid resources and meet climate and clean energy goals.

In light of these concerns, the Proclamation seeks to ensure that the United States has access to a sufficient supply of certain solar cells and modules to help meet the nation's electricity needs while efforts to expand

domestic solar manufacturing capacity continue.

This proposed rule is intended to provide relief from the emergency declared in, and in accordance with, the Proclamation.

#### **Existing Procedures for Suspension of Liquidation and Cash Deposits in Circumvention Inquiries**

Commerce's regulations governing circumvention inquiries can be found at 19 CFR 351.226. Section 351.226(l)(1) provides that, when Commerce publishes a notice of initiation of a circumvention inquiry, Commerce will notify CBP of the initiation and will direct CBP to continue to suspend liquidation of entries of products subject to the circumvention inquiry that were already subject to suspension of liquidation, and to apply the cash deposit rate that would be applicable if the product were determined to be covered by the scope of the order (*i.e.*, estimated duties). Section 351.226(l)(2) provides that, if Commerce conducts the circumvention inquiry and subsequently issues an affirmative preliminary circumvention determination, Commerce will direct CBP to (i) continue suspension of liquidation of previously suspended entries and apply the applicable cash deposit rate; (ii) begin the suspension of liquidation of unliquidated entries not yet suspended that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the notice of initiation of the inquiry, and require the collection of cash deposits of estimated duties for those entries; and (iii) potentially apply its affirmative determination to unliquidated entries entered, or withdrawn from warehouse, for consumption prior to the date of publication of the notice of initiation of the inquiry based on certain allegations and information. Section 351.226(l)(3) provides similar directions if Commerce subsequently issues an affirmative final circumvention determination.

#### **New Procedures in Accord With Presidential Proclamation 10414**

Commerce is currently conducting circumvention inquiries to determine whether imports of crystalline silicon photovoltaic cells, whether or not assembled into modules, which are completed in Cambodia, Malaysia, Thailand, or Vietnam using parts and components manufactured in the People's Republic of China (China) and exported to the United States, are circumventing the antidumping and countervailing duty orders on solar cells

and modules from China.<sup>2</sup> To respond to the emergency declared in the Proclamation, and pursuant to the Proclamation and section 318(a) of the Act, in this proposed rule, Commerce would add Part 362 to extend the time for, and waive, the actions provided for in 19 CFR 351.226(l)(1), (2), and (3), if applicable, in the ongoing circumvention inquiries covering SA-Completed Cells and Modules<sup>3</sup> that are not already subject to an antidumping or countervailing duty order as of June 6, 2022 (the date the Proclamation was signed). Furthermore, this proposed rule provides that, in the event of an affirmative final determination of circumvention, no resulting antidumping or countervailing duties would be applied to SA-Completed Cells and Modules before the Date of Termination.

As explained above, this proposed rule would apply only to SA-Completed Cells and Modules. This proposed rule would not apply to solar cells and modules that are manufactured and exported from China and are subject to

<sup>2</sup> See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Initiation of Circumvention Inquiry on the Antidumping Duty and Countervailing Duty Orders*, 87 FR 19071 (April 1, 2022) (*Circumvention Inquiries Initiation*).

<sup>3</sup> Southeast Asian-Completed Cells and Modules (SA-Completed Cells and Modules) are the products subject to certain circumvention inquiries currently before Commerce. See *Circumvention Inquiries Initiation*, 87 FR at 19071. Specifically, SA-Completed Cells and Modules are crystalline silicon photovoltaic cells, whether or not assembled into modules (solar cells and modules), which are completed in Cambodia, Malaysia, Thailand, or Vietnam using certain parts and components from China, and subsequently exported from Cambodia, Malaysia, Thailand or Vietnam to the United States. In addition to SA-Completed Cells and Modules, there may be other cells and modules using Chinese solar cells completed in and exported from those four countries and already subject to certain antidumping and countervailing duty orders covering Chinese merchandise because, for purposes of those orders, they are considered to be of Chinese origin. See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order*, 77 FR 73018 (December 7, 2012); *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Countervailing Duty Order*, 77 FR 73017 (December 7, 2012) (collectively, Chinese Solar Orders). There likewise may be cells and modules completed in Cambodia, Malaysia, Thailand, and Vietnam using Taiwanese solar cells that are already subject to a certain antidumping duty order covering Taiwanese merchandise because, for purpose of that order, they are considered to be of Taiwanese origin. See *Certain Crystalline Silicon Photovoltaic Products from Taiwan: Antidumping Duty Order*, 80 FR 8596 (February 18, 2015) (this Taiwan solar order, along with the Chinese Solar Orders are herein collectively referred to as, Certain Solar Orders). Such cells and modules are not considered SA-Completed Cells and Modules for purposes of this proposed rule.

the existing antidumping or countervailing duty orders on solar cells and modules from China (A-570-979; C-570-980). Nor would it apply to solar cells and modules that are exported from Cambodia, Malaysia, Thailand, and Vietnam that are already subject to the Chinese Solar Orders.<sup>4</sup> In addition, this proposed rule would not apply to certain solar products that are manufactured and exported from Taiwan and are subject to the existing antidumping duty order on solar products from Taiwan (A-583-853), as well as certain solar products that are exported from Cambodia, Malaysia, Thailand, and Vietnam but are (already) subject to the order covering Taiwanese merchandise (*i.e.*, the country of origin is considered Taiwan).

Commerce would continue to use the certification requirements in place as an enforcement tool to monitor imports of solar cells and modules that are either Chinese or Taiwanese in origin and covered by the current antidumping and countervailing duty orders. Consistent with the Proclamation, the extension and waiver described in this proposed rule would apply only to entries of SA-Completed Cells and Modules that were entered into the United States, or withdrawn from warehouse, for consumption before the Date of Termination.

Under this proposed rule, the following would apply:

(1) Where, in connection with initiation of the circumvention inquiries, pursuant to § 351.226(l)(1), Commerce has already directed CBP to continue suspension of liquidation of entries that were already subject to suspension and to collect cash deposits, Commerce would issue instructions to CBP to discontinue the suspension of liquidation and collection of cash deposits of estimated antidumping and countervailing duties for those entries on the basis of the circumvention inquiries. If, at the time Commerce issues instructions to CBP, the entries are suspended only for purposes of the circumvention inquiries, Commerce would direct CBP to liquidate those entries without regard to antidumping and countervailing duties and refund those cash deposits collected pursuant to the circumvention inquiries.

<sup>4</sup> Commerce has determined under the Chinese Solar Orders that the country-of-origin is determined by where the solar cell is manufactured. If solar cells from China are sent to Cambodia, Malaysia, Thailand and Vietnam, and then incorporated into solar modules and panels, the solar products incorporating such cells and exported from those four countries remain subject to the Chinese Solar Orders.

(2) If, before the Date of Termination, Commerce issues an affirmative preliminary determination in a circumvention inquiry covering SA-Completed Cells and Modules, Commerce would not, at that time, direct CBP to suspend liquidation and collect cash deposits of estimated antidumping and countervailing duties for entries of that merchandise entered, or withdrawn from warehouse, for consumption before, on, or after the date of initiation of that circumvention inquiry, notwithstanding § 351.226(l)(2).

(3) If, before the Date of Termination, Commerce issues an affirmative final determination in a circumvention inquiry covering SA-Completed Cells and Modules, Commerce would not, at that time, direct CBP to suspend liquidation and collect cash deposits of estimated antidumping and countervailing duties for entries of that merchandise entered, or withdrawn from warehouse, for consumption before, on, or after the date of initiation of that circumvention inquiry and before the Date of Termination, notwithstanding § 351.226(l)(3).

(4) If, before or after the Date of Termination, Commerce issues an affirmative final determination in a circumvention inquiry covering SA-Completed Cells and Modules:

a. Commerce would direct CBP to liquidate without regard to antidumping or countervailing duties entries of those SA-Completed Cells and Modules entered, or withdrawn from warehouse, for consumption before the Date of Termination if liquidation instructions were issued to CBP pursuant to a different segment of the proceeding in accordance with section 751 of the Act.

b. Commerce would direct CBP to commence suspension of liquidation of the SA-Completed Cells and Modules, as applicable, and collect cash deposits of estimated antidumping and countervailing duties at the applicable rate only on SA-Completed Cells and Modules entered, or withdrawn from warehouse, for consumption, on or after the Date of Termination.

Consistent with the authority granted by the Proclamation, Commerce notes that these proposed actions would ensure that duties or estimated duties would not be collected on entries of SA-Completed Cells and Modules that entered the United States both before and after the signing of the Proclamation, so long as they enter, or are withdrawn from warehouse, for consumption, before the Date of Termination. This treatment of pre-Proclamation entries is merited because the President has determined that an emergency exists that affects both

current and potential future energy projects dependent on solar module imports. Consistent with the purpose of the Proclamation, entities that use SA-Completed Cells and Modules should not be financially restricted from investing in near-term or future solar capacity additions because they had to pay cash deposits on merchandise that entered the United States just a few months, or even days, before the signing of the Proclamation. Indeed, there may be ongoing projects that would use some modules imported before the Proclamation's signing and other modules imported afterwards. It would create market confusion and dissuade investment in future solar projects if this proposed rule were to treat such entries differently. An intent of the Proclamation is to help increase the supply of United States solar energy for electricity generation purposes, and the applicability of this proposed rule to imports of SA-Completed Cells and Modules that entered the United States both before and after the signing of the Proclamation furthers that goal.

Furthermore, under section 781 of the Act and § 351.226, for the circumvention inquiries at issue, both the preliminary and final determinations will post-date the signing of the Proclamation. In the normal course under Commerce's procedures, there would be no collection of duties or estimated duties until those actions take place. Indeed, for now, so long as they were not already suspended for other reasons, entries of SA-Completed Cells and Modules following the issuance of the Circumvention Inquiries Initiation are still not subject to suspension of liquidation and antidumping and countervailing duty cash deposit requirements. Under Commerce's regulations and normal proceedings, a change to the status of those entries would occur only if Commerce made an affirmative finding in a preliminary or final circumvention determination.

Accordingly, in keeping with Commerce's equal treatment of merchandise covered by a circumvention inquiry, if Commerce makes a determination or determinations of circumvention after the signing of the Proclamation, then the postponement of these actions should be consistent across all entries of SA-Completed Cells and Modules, as long as those entries are before the Date of Termination. To do otherwise would be inconsistent with both the purpose of the Proclamation and the normal application of circumvention determinations to entries that precede a preliminary or final circumvention

determination under 19 CFR 351.226(l). Merchandise that is otherwise considered the same under Commerce's circumvention laws and regulations is treated the same.

Commerce is invoking all authorities provided for in the Proclamation, pursuant to section 318(a) of the Act, as well as Commerce's authority to issue regulations under section 781 of the Act (19 U.S.C. 1677j), to take these proposed steps to respond to the emergency declared in the Proclamation. Section 351.226(l) governs when merchandise found to be circumventing an antidumping or countervailing duty order should be subject to suspension of liquidation and cash deposit requirements. Thus, in light of the emergency, Commerce is proposing to extend the time period established by regulation for Commerce to instruct CBP to begin suspension of liquidation and cash deposit requirements and the date on which suspension of liquidation and cash deposit requirements will begin, including for entries of SA-Completed Cells and Modules that Commerce previously instructed CBP to continue to suspend pursuant to the initiation of the circumvention inquiries.<sup>5</sup>

In addition, Commerce is proposing to permit, for the duration provided for in the Proclamation, the importation, free of the collection of antidumping or countervailing duties and estimated duties, if applicable, of SA-Completed Cells and Modules that are not already subject to an existing antidumping or countervailing duty order as of the date the Proclamation was signed, *i.e.*, June 6, 2022. Cash deposit requirements would not apply to SA-Completed Cells and Modules that were entered, or withdrawn from warehouse, for consumption before the Date of Termination.

Finally, it should be noted that Commerce has determined that, although there is an emergency declared by the Proclamation, the existing regulations at 19 CFR part 358 ("Supplies for Use in Emergency Relief Work"), which set out procedures for the duty-free importation of certain merchandise to be used in emergency relief work, would not apply to the solar cells and modules that are the subject of this proposed rule. This is because none of the merchandise addressed by the Proclamation was subject to an existing

antidumping or countervailing duty order as of the date the Proclamation was signed. By its terms, part 358 applies only to merchandise already subject to an antidumping or countervailing duty order. Instead, this proposed rule, rather than part 358, would temporarily govern the importation free of collection of certain duties and estimated duties, if applicable, for SA-Completed Cells and Modules, which were not subject to an existing antidumping or countervailing duty order as of the date the Proclamation was signed. Importers of merchandise subject to this proposed rule would not need to comply with the requirements of part 358, including the requirement for the submission of prior written requests.

As set forth in the Proclamation and described in greater detail above, immediate action is needed. Drought conditions coupled with heatwaves are simultaneously causing projected electricity supply shortfalls and record electricity demand. The United States has been unable to import solar modules in sufficient quantities to achieve our climate and clean energy goals, help combat rising energy prices, and, most immediately, ensure electricity grid resource adequacy. As explained above, imports of solar modules from Southeast Asia account for approximately three-quarters of all solar module imports, so it is vital that we address this issue. Roughly half of solar deployment that had been anticipated over the next year is currently in jeopardy, with solar projects being postponed or canceled.

Therefore, with the President having proclaimed that immediate action is needed to ensure that the United States has access to a sufficient supply of solar cells and modules, as authorized in the Proclamation, Commerce would, if applicable, do the following: (1) issue instructions to CBP to cease suspending liquidation of entries already suspended pursuant to the circumvention inquiries at issue. If, at the time Commerce issues its instructions, the entries are suspended only for purposes of the circumvention inquiries, Commerce would direct CBP to liquidate those entries and refund any cash deposits thus far collected from those entries;<sup>6</sup> (2) in the event of an affirmative preliminary and/or final determination of circumvention, postpone instructing CBP to suspend liquidation and to

collect cash deposits of estimated duties on entries of SA-Completed Cells and Modules; and (3) permit the importation of those SA-Completed Cells and Modules free of collection of antidumping and countervailing estimated duties and duties until the Date of Termination. Furthermore, (4) in the event of an affirmative final determination of circumvention, if Commerce subsequently issues instructions to CBP that cover certain SA-Completed Cells and Modules entered, or withdrawn from warehouse, for consumption before the Date of Termination, in accordance with section 751 of the Act, Commerce would direct CBP to liquidate entries of that merchandise without regard to antidumping or countervailing duties. Commerce would continue to conduct the circumvention inquiries at issue under its normal procedures and, in the event of an affirmative final determination, would direct CBP to begin suspension of liquidation and require cash deposits for each unliquidated entry of SA-Completed Cells and Modules that is entered, or withdrawn from warehouse, for consumption on or after the Date of Termination. Taken together, these proposed actions would help ensure that the United States has a sufficient supply of solar cells and modules to assist in meeting our electricity generation needs while domestic solar manufacturing capacity continues to expand. This proposed rule therefore responds directly and appropriately to the emergency that is the subject of the Proclamation.

In addition, if Commerce issues an affirmative final determination of circumvention, Commerce would instruct CBP to suspend liquidation and collect cash deposits on SA-Completed Cells and Modules that are entered, or are withdrawn from warehouse, for consumption on or after the Date of Termination. This proposed action would ensure that once this emergency has passed, suspension of liquidation and collection of cash deposits of antidumping and countervailing estimated duties and duties would be instituted and applied prospectively, to post-Date of Termination entries, as set forth by statute and regulation.

Commerce is interested in hearing from the public concerning this proposed rule and will accept comments for 30 days after the date of publication of this proposed rule.

<sup>5</sup> The implementation of this proposed rule in no way would affect CBP's ability to act pursuant to its own independent authorities, including its ability to determine if the declared country of origin of merchandise upon importation has been misidentified and suspend liquidation and collect deposits of estimated AD/CVD duties on entries subject to the Certain Solar Orders.

<sup>6</sup> CBP will only cease suspension of liquidation and collection of cash deposits for entries on the basis of the circumvention inquiries. If the entries at issue continue to be suspended on another basis at the time Commerce issues its instructions to CBP, no liquidation or refunding of cash deposits will occur.

## Classification

### *Executive Order 12866*

The Office of Management and Budget has determined that this proposed rule is economically significant for purposes of Executive Order 12866.

### Regulatory Impact

The Proclamation explains that, in recent years, the vast majority of solar modules installed in the United States were imported, with approximately three-quarters of those imports in 2020 coming from Southeast Asia. The Proclamation states, however, that recently the United States has been unable to import solar modules in sufficient quantities to ensure solar capacity additions necessary to ensure electricity grid resource adequacy. The supply constraints on solar modules and module components have put at risk near-term solar capacity additions that could otherwise have the potential to help ensure the sufficiency of electricity generation to meet customer demand, and solar projects across the country are being postponed or canceled. Furthermore, the Proclamation states that roughly half of the domestic deployment of solar modules anticipated over the next year is currently in jeopardy due to insufficient supply. Accordingly, Commerce is taking action pursuant to the Proclamation under section 318(a) of the Act.

The Proclamation identifies certain threats to the ability of the United States to provide sufficient electricity generation to serve expected demand, declares an emergency to exist, and states that immediate action is needed to ensure access to a sufficient supply of solar modules to assist in meeting the United States' electricity generation needs. This proposed regulatory action supports the Proclamation. Multiple government publications describe the expansive growth of the solar sector in the United States, the rapid pace of solar installations, and the critical role that this sector plays in meeting the Nation's energy needs and addressing the climate crisis.

For example, the U.S. Energy Information Administration (EIA) estimated in January 2022 that solar power would account for nearly half of new U.S. electric generating capacity for the year based on its expectation that U.S. utility-scale solar generating capacity would grow by 21.5 gigawatts in 2022.<sup>7</sup> The EIA projects that the share

<sup>7</sup> U.S. Energy Information Administration, *Solar Power Will Account for Nearly Half of New U.S. Electric Generating Capacity in 2022* (Jan. 10, 2022),

of U.S. power generation from renewables will increase from 21% in 2021 to 44% by 2050, and that solar will account for 51% of renewable energy generation.<sup>8</sup>

Additionally, in September 2021, the U.S. Department of Energy released the Solar Futures Study<sup>9</sup> detailing the significant role solar will play in decarbonizing the nation's power grid. The study shows that, by 2035, solar energy has the potential to power 40% of the nation's electricity, drive deep decarbonization of the grid, and employ as many as 1.5 million people—without raising electricity prices. Decarbonizing the entire energy system could result in as much as 3,000 GW of solar power by 2050 due to increased electrification in the transportation, buildings, and industrial sectors.

In taking the proposed actions described in this proposed rule, Commerce would act to respond to the emergency identified in the Proclamation. The proposed actions would remove uncertainty concerning potential antidumping and countervailing estimated duties or duties that might otherwise be owed on merchandise subject to the circumvention inquiries and entered before the Date of Termination. The uncertainty surrounding the potential antidumping and countervailing estimated duties or duties may be contributing to the circumstances surrounding the insufficient imports of modules from Southeast Asia. Given the strong interest in ensuring access to a sufficient supply of solar modules to assist in meeting the United States' electricity generation needs, we would remove this source of market uncertainty in order to encourage sufficient imports of modules from these Southeast Asian countries until the Date of Termination and while domestic capacity expands. However, we lack data to quantify these effects, and we seek public comment on these impacts.

While this proposed regulatory action might result in decreased totals of antidumping or countervailing duties collected, the quantification of any such decrease would be speculative. At the time of publication of this notice, Commerce is conducting circumvention inquiries involving certain cells and

<https://www.eia.gov/todayinenergy/detail.php?id=50818>.

<sup>8</sup> U.S. Energy Information Administration, *EIA Projects that Renewable Generation Will Supply 44% of U.S. Electricity by 2050* (Mar. 18, 2022), <https://www.eia.gov/todayinenergy/detail.php?id=51698>.

<sup>9</sup> U.S. Department of Energy, *Solar Futures Study* (Sept. 2021), <https://www.energy.gov/eere/solar/solar-futures-study>.

modules exported from the Southeast Asian countries of Cambodia, Malaysia, Thailand, and Vietnam. Commerce has not yet made any determinations regarding whether these cells and modules are circumventing existing antidumping and countervailing duty orders. Accordingly, whether antidumping or countervailing duties will apply to these cells and modules is unknown at the time of publication of this notice. Further, even if there is a final determination that circumvention is taking place, the total antidumping and countervailing duties that would be collected from any such imports cannot, at this time, be calculated with any degree of precision.

Finally, this rule would provide for an exemption from the collection of cash deposits and duties, if applicable, on imports of certain SA-Completed Cells and Modules, and Commerce assesses that the affected importers would not need to take additional action to come into compliance with this rule were it to be put into effect.

### *Regulatory Flexibility Act*

Pursuant to section 603 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), Commerce has prepared this Initial Regulatory Flexibility Analysis. A statement of the objectives of, and legal basis for, the proposed rule is provided earlier in this preamble and are not repeated here.

This proposed rule is intended to temporarily encourage sufficient imports of solar cells and modules from these Southeast Asian countries in order to respond to the emergency declared in the Proclamation. It would be in effect for a limited time (24 months from the date of the Proclamation or until the emergency is terminated, whichever occurs first). The proposed rule would postpone and waive the application of certain regulations related to circumvention inquiries, if otherwise applicable, to certain SA-Completed Cells and Modules exported from the identified Southeast Asian countries. Additionally, it would permit the importation of those SA-Completed Cells and Modules free of collection of antidumping and countervailing estimated duties and duties. In doing so, it would directly affect importers of certain SA-Completed Cells and Modules exported from the identified Southeast Asian Countries. The number of importers that are classified as small entities is unknown.

The proposed rule would provide a benefit to regulated entities, including small entities, by removing uncertainty concerning potential antidumping and countervailing estimated duties or

duties that might otherwise be owed on merchandise subject to the circumvention inquiries and entered before the Date of Termination. Were there to be a final determination in the inquiries involving certain cells and modules exported from the four Southeast Asian countries that circumvention is taking place, the rule could also potentially provide a benefit by allowing importers, including small entities, to receive an exemption from the collection of antidumping and countervailing cash deposits and duties, if applicable, on imports of certain SA-Completed Cells and Modules. As a result, it would not place a substantial number of small entities who are importers, or any segment of these small entities, at a significant competitive disadvantage. But any benefit resulting from such an exemption would be entirely speculative at this point. As noted in the regulatory impact analysis above, Commerce has not yet made any determinations regarding whether these cells and modules are circumventing existing antidumping and countervailing duty orders.

Accordingly, whether antidumping or countervailing duties will apply to these cells and modules, much less the value of those duties, is not currently known. The proposed rule has no projected reporting, recordkeeping and other compliance requirements and does not duplicate, overlap, or conflict with other Federal rules.

Because the rule would not result in direct adverse impacts on small entities and because the benefits it would provide to importers, including those who are small entities, are not readily quantifiable (*i.e.*, reducing uncertainty) or are merely speculative insofar as they depend on an unknown outcome of an ongoing inquiry, Commerce does not expect the proposed action to have a significant economic impact on a substantial number of small entities for the purposes of the Regulatory Flexibility Act. Therefore, Commerce believes there are no regulatory alternatives for reducing burdens on small entities.

Commerce invites comments on this Initial Regulatory Flexibility Analysis, including information about the direct impact on small entities, including importers and members of other industries directly affected by this proposed rule.

#### *Paperwork Reduction Act*

This proposed rule contains no information collection subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### **List of Subjects in 19 CFR Part 362**

Administrative practice and procedure, Antidumping duties, Countervailing duties, Emergency powers.

**Lisa W. Wang,**

*Assistant Secretary for Enforcement and Compliance.*

■ For the reasons stated in the preamble, the Department of Commerce proposes to amend 19 CFR chapter III by adding part 362 as follows:

#### **PART 362—PROCEDURES COVERING SUSPENSION OF LIQUIDATION, DUTIES AND ESTIMATED DUTIES IN ACCORD WITH PRESIDENTIAL PROCLAMATION 10414**

Sec.

- 362.101 Scope.
- 362.102 Definitions.
- 362.103 Actions.
- 362.104 Certifications.

**Authority:** Proc. 10414, 87 FR 35067; 19 U.S.C. 1318.

##### **§ 362.101 Scope.**

This part sets forth the actions the Secretary is taking to respond to the emergency declared in Presidential Proclamation 10414.

##### **§ 362.102 Definitions.**

For purposes of this part:

*Act* means the Tariff Act of 1930, as amended (19 U.S.C. 1202 *et seq.*).

*Applicable Entries* means the entries of Southeast Asian-Completed Cells and Modules subject to the Solar Circumvention Inquiries that are entered into the United States, or withdrawn from warehouse, for consumption, before the Date of Termination.

*CBP* means United States Customs and Border Protection of the United States Department of Homeland Security.

*Certain Solar Orders* means Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order; Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Countervailing Duty Order; and Certain Crystalline Silicon Photovoltaic Products from Taiwan: Antidumping Duty Order.

*Date of Termination* means June 6, 2024 or the date the emergency described in Presidential Proclamation 10414 has been terminated, whichever occurs first.

*Secretary* means the Secretary of Commerce or a designee.

*Solar Circumvention Inquiries* means some or all of the inquiries at issue in Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Initiation of Circumvention Inquiry on the Antidumping Duty and Countervailing Duty Orders.

*Southeast Asian-Completed Cells and Modules* means crystalline silicon photovoltaic cells, whether or not assembled into modules (solar cells and modules), which are completed in the Kingdom of Cambodia, Malaysia, the Kingdom of Thailand, or the Socialist Republic of Vietnam using parts and components manufactured in the People's Republic of China, and subsequently exported from Cambodia, Malaysia, Thailand or Vietnam to the United States. Southeast Asian-Completed Cells and Modules does not mean solar cells and modules that, on June 6, 2022, the date Proclamation 10414 was signed, were already subject to Certain Solar Orders.

##### **§ 362.103 Actions Being Taken Pursuant to Presidential Proclamation 10414 and Section 318(a) of the Act.**

(a) *Importation of applicable entries free of duties.* The Secretary will permit the importation of Applicable Entries free of the collection of antidumping and countervailing estimated duties under sections 701, 731, 751 and 781 of the Act until the Date of Termination. Part 358 of this chapter shall not apply to these imports.

(b) *Suspension of liquidation and collection of cash deposits.* (1) To facilitate the importation of Southeast Asian-Completed Cells and Modules without regard to estimated antidumping and countervailing duties, notwithstanding § 351.226(l) of this chapter, Commerce shall do the following with respect to estimated duties:

(i) Where, based on initiation of the Solar Circumvention Inquiries, Commerce previously instructed CBP to continue to suspend liquidation of entries of Southeast Asian-Completed Cells and Modules that were already subject to suspension and to continue to collect cash deposits of estimated duties, the Secretary will instruct CBP to discontinue such suspension of liquidation and collection of cash deposits based on the circumvention inquiry. If at the time instructions are conveyed to CBP the entries at issue are suspended and cash deposits collected only on the basis of the circumvention inquiries, then Commerce will direct CBP to liquidate the entries without

regard to antidumping and countervailing duties and to refund cash deposits collected on that basis.

(ii) In the event of an affirmative preliminary or final determination of circumvention in the Solar Circumvention Inquiries before the Date of Termination, the Secretary will not, at that time, direct CBP to suspend liquidation and collect cash deposits of estimated duties in connection with the affirmative determination for Applicable Entries.

(2) In the event of an affirmative final determination of circumvention in the Solar Circumvention Inquiries, notwithstanding § 351.226(l) of this chapter, the Secretary will direct CBP to begin suspension of liquidation and require a cash deposit of estimated antidumping and countervailing duties, at the applicable rate, for each unliquidated entry of Southeast Asian-Completed Cells and Modules that is entered, or withdrawn from warehouse, for consumption on or after the Date of Termination.

(c) *Waiver of assessment of duties.* In the event the Secretary issues an affirmative final determination of circumvention in the Solar Circumvention Inquiries and thereafter, in accordance with other segments of the proceedings, pursuant to section 751 of the Act and § 351.212(b) of this chapter, issues liquidation instructions to CBP, the Secretary will direct CBP to liquidate Applicable Entries without regard to antidumping and countervailing duties that would otherwise apply pursuant to an affirmative final determination of circumvention.

#### **§ 362.104 Certifications.**

Nothing in this section shall preclude the Secretary from requiring a certification for Southeast Asian-Completed Cells and Modules pursuant to § 351.228 of this chapter in the event of an affirmative preliminary or final determination in the Solar Circumvention Inquiries.

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## **CENTRAL INTELLIGENCE AGENCY**

### **32 CFR Part 1900**

#### **Freedom of Information Act Regulations**

**AGENCY:** Central Intelligence Agency.

**ACTION:** Notice of proposed rulemaking and request for public comment.

**SUMMARY:** The Central Intelligence Agency (CIA or the Agency) has

undertaken and completed a review of its public regulations governing its implementation of the Freedom of Information Act (FOIA), as amended by the FOIA Improvement Act of 2016. As a result of this review, the Agency proposes to revise its FOIA regulations concerning the requirements for filing FOIA requests and CIA's procedures for processing and reviewing such requests. As required by the FOIA, the Agency is providing an opportunity for interested persons to submit comments on these proposed regulations.

**DATES:** Comments will be accepted until August 30, 2022.

**ADDRESSES:** All submissions must be in English. Comments may be submitted by the following methods: By mail to Brian C. O'Neill, Director, Advanced Data Lifecycle Solutions, Central Intelligence Agency, Washington, DC 20505; or by email to [FedRegComments@ucia.gov](mailto:FedRegComments@ucia.gov). Please include "FOIA PROPOSED RULEMAKING" in the subject line of the message.

**FOR FURTHER INFORMATION CONTACT:** Brian C. O'Neill; (571) 280-2899.

**SUPPLEMENTARY INFORMATION:** CIA is amending its regulations governing implementation of the FOIA, as amended by the FOIA Improvement Act of 2016. CIA has undertaken and completed a review of its public FOIA regulations that govern certain aspects of its processing of FOIA requests. As a result of this review, the Agency proposes to revise its FOIA regulations found in chapter 19 of title 32 of the Code of Federal Regulations.

These proposed regulatory changes are intended to enhance the administration and operations of the Agency's FOIA program by ensuring compliance with all legal requirements and by increasing the transparency and clarity of the regulations governing the Agency's FOIA program.

#### **Statutory and Executive Order Reviews**

##### *Executive Order 12866 and 13563*

These proposed regulations have been drafted and reviewed in accordance with Executive Order 12866, *Regulatory Planning and Review*, section 1, *Statement of Regulatory Philosophy and Principles*, and in accordance with Executive Order 13563, *Improving Regulation and Regulatory Review*, section 1, General Principles of Regulation. Because these proposed regulations do not constitute a significant regulatory action under section 3(f) of Executive Order 12866, they were not subject to mandatory prior review by the Office of

Management and Budget Office of Information and Regulatory Affairs (OMB/OIRA) under section 6 of Executive Order 12866.

##### *Paperwork Reduction Act*

Because these proposed regulations do not involve a collection of information, the review and OMB clearance requirements of the Paperwork Reduction Act, 44 U.S.C. 3506 & 3507, do not apply.

##### *Executive Order 12988*

These proposed regulations meet the applicable standards set forth in Executive Order 12988, *Civil Justice Reform*.

##### *Executive Order 13132*

Because these proposed regulations will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, they do not constitute policies that have federalism implications under Executive Order 13132. Thus, the requirements of Executive Order 13132 sections 2, 3, and 8, governing agency policies or regulations do not apply.

##### *Regulatory Flexibility Act*

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), CIA has reviewed these proposed regulations and certifies that they will not have a significant economic impact on a substantial number of small entities, and thus no regulatory flexibility analysis is required. These proposed regulations pertain to CIA's policies and practices for processing FOIA requests, and do not impose any new requirements on small entities.

##### *Unfunded Mandates Reform Act of 1995*

These proposed regulations will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532(a) & 1533(a).

##### *Small Business Regulatory Enforcement Fairness Act of 1996*

These proposed regulations will not result in an annual effect on the economy of \$100 million or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability